

LEASE AGREEMENT

This LEASE AGREEMENT (hereinafter sometimes referred to as the "Agreement") is made and entered into the _____ day of March, 2019, by and between the **VILLAGE OF PINEHURST**, a body corporate and politic in Moore County, North Carolina (hereinafter referred to as LESSOR) and the **MOORE COUNTY BOARD OF EDUCATION**, a body corporate and politic in Moore County, North Carolina (hereinafter referred to as LESSEE). The LESSEE will lease from LESSOR a certain approximate 7.99 acre parcel of LESSOR'S real property (the "Leased Premises") for LESSEE'S construction of temporary facilities and campus for students of Pinehurst Elementary School, which temporary facilities will be utilized while the construction of the permanent school buildings take place, through the completion of the new, permanent Pinehurst Elementary School campus, and through the final removal of the temporary facilities from the Leased Premises (the "construction period").

1. **Term.** The Term of the agreement shall commence on the 1st day of February, 2019, and conclude upon either the end of the construction period (e.g., the complete removal of all temporary facilities and final clean up and restoration of the Leased Premises), or the 1st day of December, 2021, whichever first occurs (the "Term").

2. **Consideration.** In recognition of the undertakings herein of LESSOR, and LESSOR foregoing various economic opportunities, LESSEE agrees to provide LESSOR the following consideration for this Agreement:

2.1. In consideration of the payment of \$1.00 (the "Rental Payment") LESSOR (a) herewith grants to LESSEE a non-exclusive lease for the use the Leased Premises (as hereinafter defined) for the period set forth in and as described in Section 1, subject to the use by the LESSOR for such purposes as described herein.

3. **Use of Land.** The LESSEE shall have access to and the use of, as more particularly described below, the Leased Premises, including its parking areas, playground, and facilities, owned by LESSOR, the general location of such Leased Premises being shown on the map attached hereto as Exhibit A and herein incorporated by reference (the "Map") for the purposes of constructing the temporary school facilities and for the housing of Pinehurst Elementary School's students and staff, for the time periods described herein. LESSEE shall maintain all areas within their fencing. Lessor shall continue to maintain the parking areas, the playground, splash pad, concession stand, hockey rink, tennis courts, shuffleboard, and bocce ball amenities. The playground, splash pad, and hockey rink will be closed during school hours. All other amenities of LESSOR will remain open to the public (trails, bocce, tennis, shuffleboard), and LESSEE shall have access to and may use such amenities as second priority after LESSOR's scheduled uses.

3.1. **Title and Quiet Possession.** LESSOR represents and covenants that LESSOR has title to the Leased Premises and that it has the full right and authority to give this lease to LESSEE. Except as stated in 3.2 below, LESSEE shall have quiet and peaceful possession of the Leased Premises through the Term.

3.2. Access. Full access rights to all the Leased Premises and its facilities subject to this Agreement are retained by LESSOR, its employees and officials, and such other persons that LESSOR may designate for the limited purpose of carrying out normal business of the LESSOR not inconsistent with the terms and purposes hereof, including access for participants in LESSOR'S Parks and Recreation programs. The parties acknowledge that LESSOR had previously contracted with a third-party for the purchase and installation of new playground equipment to be erected on the Leased Premises, and LESSEE has agreed to contribute and pay to LESSOR on or before March 31, 2019, the sum of Forty Thousand Dollars (\$40,000.00) towards the overall total cost of LESSOR's playground equipment, while LESSOR shall be financially responsible for any remaining balance. For the Term of this Lease Agreement, LESSOR and LESSEE shall each have full access to the playground equipment, and at the conclusion of the Term, the playground equipment shall remain property of LESSOR. Likewise, during the Term of the Lease Agreement, Pinehurst Elementary students and staff shall be entitled to access LESSOR's existing tennis facilities when not in use by LESSOR's Parks and Recreation program. LESSOR acknowledges that G.S. 14-208.18 prohibits registered sex offenders from being on property used as a school.

3.3. Plans for development of the Leased Premises. A detailed plan for development and modification work, including locations of temporary structures, graveling and/or screening, removal and reconstruction of fences, and specific landscape improvements for the Leased Premises shall be submitted by the LESSEE to the LESSOR for review on or before January 30, 2019. LESSOR acknowledges that, as of the date of this Agreement, LESSEE has submitted, and LESSOR has approved, the concept plan and layout plans attached to this Agreement as Exhibit B. Said plans are attached for reference only and may be modified by LESSEE with approval of LESSOR. The development and modification work by LESSEE, including graveling and/or screening, removal and reconstruction of fences, and specific landscape improvements shall be made only after approval by LESSOR, which approval shall not be unreasonably denied. Review, modification and acceptance of all plans by the LESSOR shall be completed within forty-five (45) days of receipt by LESSOR. LESSEE shall commence the development work no sooner than April 1, 2019.

3.4. Restoration. The LESSEE, at its own expense, and upon completion of the construction period, agrees to use its best efforts to restore the Leased Premises to its original pre-lease condition and appearance to LESSOR'S reasonable satisfaction, normal wear and tear excepted. The LESSEE will use its best efforts to ensure that this work will be completed within three (3) months after the new Pinehurst Elementary School facilities are completed, and/or the temporary school facilities are no longer being utilized, whichever is later. The parties may also agree to extend the restoration period by mutual written agreement.

3.5. LESSOR'S Right to Restore. In the event any restoration work has not been completed by the applicable date following the completion of the construction period or following the date the temporary school facilities are no longer needed, LESSOR may, at its option and only after providing notice and an opportunity to cure pursuant to Section 10 of this Agreement, undertake the completion of restoration work and LESSEE shall reimburse LESSOR for any and all reasonable expenses related directly to LESSOR'S restoration work. LESSEE'S liability for these expenses is not in lieu of any actual damages incurred by LESSOR for LESSEE'S failure to complete the required restoration by the applicable dates.

4. Surrender of Property Upon Expiration. All of Lessee's improvements, fixtures and equipment that can be removed without damage to the Leased Premises shall remain the property of LESSEE and shall be removed by LESSEE within three (3) months of the completion of the new Pinehurst Elementary School facilities, and/or when the temporary facilities are no longer needed, or such later date as otherwise agreed by the parties in writing. LESSOR and LESSEE agree that they shall meet and confer 90 days prior to the expiration of the Term to determine whether any stormwater basins installed by LESSEE on the Leased Premises should remain or be removed by LESSEE, and should the parties agree that the stormwater basins should remain in place, then in that event, any such stormwater basins shall become the sole responsibility of LESSOR upon expiration of this Agreement.

5. Damages. Subject to the restoration and indemnification provisions set forth herein, LESSEE agrees that if the Leased Premises or any equipment or fixtures therein are damaged by the negligence or willful misconduct of the LESSEE, its officers, agents, employees, guests, invitees and contractors, subcontractors or their subcontractors, their guests invitees or their invitees, LESSEE shall be liable, provided, however, the foregoing shall in no event apply to any damages related to the LESSOR's parks and recreation program or to the negligence or willful misconduct of LESSOR, or its officers, agents, employees, contractors, subcontractors, or invitees. LESSOR agrees that if any of the LESSEE's improvements, fixtures, and equipment on the Leased Premises are damaged by the negligence or willful misconduct of the LESSOR, its officers, agents, employees, contractors, subcontractors, or invitees, LESSOR shall be liable, provided, however, that the foregoing shall in no event apply to any damages related to the negligence or willful misconduct of LESSEE, or its officers, agents, employees, guests, invitees and contractors, subcontractors or their subcontractors, their guests invitees or their invitees. The responsible party shall repair or restore such damages at its sole expense on ten (10) days written notice of same from the other party. In the event a party shall fail to repair or restore such damages within 60 days, the other party, at its option, may repair same and the responsible party shall pay to the other party upon demand such sum as shall be reasonably necessary to replace or restore the Leased Premises, improvements, equipment or fixtures, as applicable, to their same condition preceding the Lease Period, normal wear and tear excepted.

6. LESSOR'S Obligations.

6.1. Licenses and Permits; Village Services. LESSOR shall advise LESSEE of, and provide all reasonable assistance with obtaining, all licenses and permits required for LESSEE's conduct of all operations relating to this Agreement.

7. LESSEE'S Obligations.

7.1. LESSEE shall not permit any mechanics' lien or liens to be placed upon any portion of the Leased Premises.

7.2. LESSEE shall not make any alterations or improvements to the Leased Premises other than those needed for LESSEE'S planned uses as set forth herein. LESSOR shall have the right to make any alterations or improvements to the portion of the Leased Premises not needed by LESSEE as determined reasonably necessary by LESSOR, as well as to comply

with any applicable laws provided that LESSOR'S alterations or improvements shall, to the extent possible, be done at such times and in such manner so as not to interfere with Lessee's use of the Leased Premises or Lessee's expected expense for such use.

8. Indemnification/Hold Harmless. To the extent permitted by applicable law, the LESSEE shall defend, indemnify and save harmless the LESSOR, its employees, invitees, elected and appointed officials, and officers (collectively, the "LESSOR Parties") from all loss, costs and expenses, including attorney's fees, arising out of any liability, negotiated settlement, judgment, or claim of liability including, negotiated settlement for injury, death or damages to any business, persons or property sustained, incurred/occurred, or alleged to have been sustained or incurred/occurred by anyone whomsoever arising directly or indirectly from

the LESSEE's negligent use of the Leased Premises herein described during the term of this Agreement. To the same extent and nature as stated hereinabove, the LESSOR shall defend, indemnify and save harmless the LESSEE, its employees, officials, invitees, officers, and independent contractors from all loss, costs and expenses, including attorney's fees, arising out of any liability, negotiated settlement, judgment, or claim of liability including, negotiated settlement for injury, death or damages to any business, persons or property sustained, incurred/occurred, or alleged to have been sustained or incurred/occurred by anyone whomsoever arising directly or indirectly from the negligence of any LESSOR Party or its invitee during the term of this Agreement.

9. North Carolina School Boards Trust (NCSBT) Fund Participation Required/Workers Compensation. For the entire term of this Lease, Lessee shall maintain participation in the NCSBT Errors and Omissions/General Liability Fund, through which it will have general liability coverage limits of \$1,000,000 per claim and \$3,150,000 in the aggregate per coverage period. Lessee shall also maintain participation in the NCSBT Automobile/Inland Marine Fund, through which it will have automobile liability coverage limits of \$1,000,000 per occurrence. The NCSBT Coverage Agreement for each fund is not a contract of insurance by a company or corporation duly licensed and authorized to execute insurance contracts in this State or by a qualified insurer as determined by the Department of Insurance. Lessee shall file with Lessor NCSBT's Certificate of Coverage for Licensor's obligations pursuant to this section.

10. Default. Any of the following shall constitute a default under this Agreement:

(i) LESSEE'S failure to pay any undisputed sums payable under this Agreement when due and such failure shall continue for a period of twenty (20) days after written notice thereof; and

(ii) Either party's failure to comply with any of the covenants, representations, agreements, forms or conditions of this Agreement and such failure shall continue for a period of twenty (20) days after written notice thereof to the defaulting party specifying the nature of such failure.

In the event of a default which remains uncured beyond the specified time period, the non-defaulting party may seek specific performance and any damages arising from the default, including reasonable attorney fees and costs.

10.1. In as much as the use of the Leased Premises pursuant to the terms of this Agreement cannot be duplicated or replaced during the term of this Agreement, with the resulting

difficulty for LESSEE being able to determine its monetary damages for being deprived of access to the Leased Premises, in the event of default by the LESSOR subject to the Force Majeure, (Section 13. hereof); LESSOR or LESSEE may bring an action for specific performance in a court of competent jurisdiction provided; if either LESSOR or LESSEE intentionally denies access to the other party for the use of the Leased Premises and, after ten (10) days (unless such intentional denial occurs during the time of use by LESSEE under this Agreement in which event such notice shall be one (1) day) for the opportunity to cure and such failure to cure, at that point, the damaged party may seek specific performance in a court of competent jurisdiction.

11. Notices and Addresses. Any notice, approval or other communications required or permitted hereunder shall be in writing; and

- (i) delivered personally with receipt acknowledged, or
- (ii) sent by certified mail, return receipt requested, postage prepaid, addressed as shown below.

All notices personally delivered shall be deemed received on the day of delivery. All notices forwarded by mail shall be deemed received on a date seven (7) days (excluding Sundays and holidays) immediately following date of deposit in the U.S. mail, provided, however, the return receipt indicating the date upon which all notices were received shall be prima facie evidence that such notices were received on the date on the return receipt.

If to LESSOR; Village of Pinehurst
 Village Manager
 395 Magnolia Road
 Village of Pinehurst, NC 28374

With a Copy to: Michael J. Newman
 Van Camp Meacham and Newman
 2 Regional Circle
 Pinehurst, NC 28374

If to LESSEE: Moore County Board of Education
 P.O. Box 1180
 Carthage, NC 28327
 Attn: Superintendent of Moore County Schools

With Copies to: Rod Malone
 THARRINGTON SMITH, LLP
 P.O. Box 1151, Raleigh, NC 27602

The addresses and addressees may be changed by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes. No notice to either party

hereto shall be deemed given or received unless the entity noted "With a copy to" is simultaneously delivered notice in the same manner as any notice given to either party hereto.

12. Miscellaneous. Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires. The use of a conjunctive herein includes the use of the disjunctive, and the use of the disjunctive includes the conjunctive. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement. This Agreement shall be construed under and in accordance with the laws of the State of North Carolina, and all obligations of the parties created hereunder and performable in Moore County, North Carolina. In case any one or more of the provisions contained in this Agreement shall be held to be illegal, such illegality shall not affect any other provision thereof and this Agreement shall be construed as if such illegal provision had never been contained herein. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting the within subject matter. The agreement may not be amended except in a writing executed by all parties.

13. Force Majeure. Neither LESSOR or LESSEE shall be required to perform any term, condition or covenant in this Agreement so long as such performance is delayed or prevented by Force Majeure, which shall mean acts of God, terrorist attacks, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot or floods.

14. Provision Captions. The underscored captions to the provisions contained in this Agreement are in no way to be used in construing, interpreting, expanding or limiting any provision contained herein.

15. Special Terms and Conditions. Only those matters delineated or expressly stated herein shall be governed by this Agreement.

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IN WITNESS WHEREOF, the undersigned LESSOR and LESSEE hereto executed this Agreement as of the day and year first above written.

LESSOR:

VILLAGE OF PINEHURST

Nancy Roy Fiorillo, Mayor

Attest

LESSEE:

MOORE COUNTY BOARD OF EDUCATION

Helena Wallin-Miller, Chair

Dr. Robert P. Grimesey, Jr., Secretary

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

(Date)

(Signature of finance officer)

EXHIBIT A

MAP SHOWING GENERAL LOCATION OF LEASED PREMISES



EXHIBIT B
APPROVED PLANS

