

COLUMBUS COUNTY BOARD OF COMMISSIONERS

Friday, December 17, 2021

8:30 A.M.

The Honorable Columbus County Commissioners met on the above stated date and time at the Dempsey B. Herring Courthouse Annex, 112 West Smith Street, Whiteville, North Carolina 28472, for the purpose of conducting the Special Called Meeting.

COMMISSIONERS PRESENT:

Ricky Bullard, **Chairman**
 Jerome McMillian, **Vice Chairman**
 Chris Smith
 Brent Watts
 Charles T. McDowell
 Giles E. Byrd
 Lavern Coleman

APPOINTEES PRESENT:

Eddie Madden, Jr., **County Manager**
 Amanda B. Prince, **Staff Attorney/Clerk to Board**
 Jay Leatherman, **Finance Director**

APPOINTEES ABSENT (EXCUSED):

Boyd Worley, **Board Attorney**

Agenda Items #1, #2 and #3: MEETING CALLED to ORDER, INVOCATION and PLEDGE of ALLEGIANCE:

At 8:30 A.M. Chairman Ricky Bullard called the Friday, December 17, 2021 Columbus County Board of Commissioners Special Called Meeting to order. The invocation was delivered by Commissioner Brent Watts. Everyone in attendance stood and pledged Allegiance to the Flag of the United States of America which was led by Commissioner Charles McDowell.

Agenda Item #4: APPROVAL of LEASE with COLUMBUS COUNTY BOARD of EDUCATION:

Eddie Madden, County Manager, discussed the lease agreement with the Board of Education and requested Board Approval.

LEASE AGREEMENT

This Lease Agreement (hereinafter referred to as the "Agreement") is made and entered into as of this ____ day of December 2021, by and between Columbus County (hereinafter referred to as "Lessor") and Columbus County Schools a/k/a Columbus County Board of Education (hereinafter referred to as "Lessee"), both parties established by the laws of the State of North Carolina.

WITNESSETH:

THAT WHEREAS, Lessor owns certain property known as Building A located at 2586 James B. White HWY N north of Whiteville, North Carolina, (0282.00-56-4708.000).

THAT WHEREAS, Lessee desires to lease the above described property from Lessor to be used for the Columbus County Board of Education Administration.

NOW, THEREFORE IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREINAFTER SET OUT, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. Lessor hereby agrees to demise, lease, and let unto Lessee the property known as Building A located at 2586 James B. White HWY N north of Whiteville, North Carolina, (0282.00-56-4708.000). The Lessor, as an integral part of the Lease Agreement, agrees to provide adequate onsite parking areas for the Lessee's employees, patrons and visitors.
2. The term of this Lease Agreement shall commence the 1st day of January, 2022, and shall continue until midnight the 31st day of December, 2062, with automatic renewal for four five year terms if parties fail to notify the other in writing of their intent to end the lease 60 days prior to the end of the term of the Lease.
3. Lessee agrees to pay Lessor the sum of One Dollar and 00/100 (\$1.00) per year for the term of the Lease.
4. Lessee does hereby agree to the following:
 - a. Provide housekeeping on the premises at no cost to the Lessor,
 - b. Pay all utilities for the leased premises.
 - c. Reimburse the Lessor for costs associated with upkeep of landscaping surrounding the building to be billed on a monthly basis,
 - d. Obtain prior approval from the Lessor to make alterations to the structure of the property,

- e. Obtain prior approval from the Lessor to make alterations to the interior structure of the property, which approval shall not be unreasonably withheld.
- f. Shall place current sign used at 817 Washington Street on the property,
- g. Allow the Lessor use of any and all generators located on the property, and
- h. Lessee will return the premises at the expiration of the Lease Agreement in a clean condition.
5. Lessee agrees to insure all contents owned by Lessee on the leased property.
6. Lessee assumes all risk of loss of injury to property or persons arising from any of its operations or omissions under this Lease Agreement. Lessee will indemnify and hold harmless the Lessor, its officers and agents and employees from any and all suits, actions, legal proceeding, claims, demands, damages, cost, expenses, and attorney's fees arising from any claims, willful or negligent act or omission of the Lessee, its officers, agents and employees in performance of this Lease Agreement.
7. Lessor does hereby agree to the following:
 - a. Maintain the structure of the property, including roof, walls, mechanical, and parking lots,
 - b. Maintain and service the generators located thereon, and
 - c. To place and maintain additional needed signage.
8. This Lease Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.
9. After the end of the initial forty (40) year lease, either party may terminate the Lease Agreement with a One Year prior written notice of the intent to terminate.
10. This Lease Agreement in contingent upon approval and execution of the attached Land Purchase and Sale Contract.
11. If the Lessor shall ever sell this property, the Lessee shall have the right of first refusal to purchase the property.

IN WITNESS WHEREOF, this Lease Agreement has been executed by the parties hereto as of the day and year first above written.

LESSOR

Columbus County

By: _____
 Name: Ricky Bullard
 Title: Chairman

LESSEE

Columbus County Board of Education

By: _____
 Name: Worley Edwards
 Title: Chairman

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

 Columbus County Finance Officer

County Manager Eddie Madden stated the following:

- We needed to call the Board together to formerly approve the lease between Columbus County and the Columbus County Board of Education.
- Their Board has already approved and accepted the lease before you today.
- In essence, this is a 40-year lease and the attorney is here to my left to clarify anything that may need clarifying.
- It's a 40-year lease with consecutive 5 year extensions of the lease with notice.
- The lease is for \$1 per year and of course that's only for the reason that, as I understand it, all contracts have to have some consideration to be valid and enforceable.
- So that is really just a contractual number and not something of significant value.
- The reason for that is, as you all know, and I don't have to explain it to you all but I will for the sake of those who might be listening.
- The County provides funding to the Board of Education for its facilities, so rather than putting some arbitrary lease amount on paper that we would then ultimately underwrite and then pay for out of our budget, we felt like it was just cleaner and simpler if we made it for \$1 per year for the extent of the lease.

-The school system is responsible for the routine maintenance and upkeep of the building.

-We are responsible for any major repairs or mechanical issues that may result from the building, so the roof, the building itself, the structure, HVAC, those larger expenditures we are responsible for going forward.

-As we've talked about in the past, the school system is responsible for the total cost of renovations, and we've communicated to them that they should not come to this Board in the future asking for money to upgrade for their needs.

-They will of course be settling out with us at the beginning of the next fiscal year for the purchase of their property, which in essence is the mechanism by which they will be paying for these upgrades.

-The Board of Education has already voted to approve this and Dr. Meadows has been very pleased with the facility and as I've stated before, this is not only an opportunity for us but it is a significant opportunity for the Board of Education to move to a facility that adequately provides for their staff and for the public as they enter into the facilities at the Board of Education.

-I'd be happy to answer any questions and the attorney will as well.

Commissioner Byrd stated the following:

-I would like to say, this lease has already been approved by the other Board as you have stated, but I think we're taking a major undertaking, when we take on keeping up the building, as far as air conditioning and things like that.

-Here, you have some things itemized, but you're saying "we" as the County Board, which I know the money to fund them comes through this Board also, but, I don't particularly agree with that.

-But, if the lease has already been approved, I just feel like they should be responsible for their own maintenance of the building as far as the heat and air.

County Manager Eddie Madden stated the following:

-This is a complicated scenario in that, particularly in regard to the water and the sewer and the mechanical, it's all interconnected between buildings.

-It would be very costly for us to try to segregate...

Commissioner Byrd stated the following:

-The water and sewer but not the air conditioning.

County Manager Eddie Madden stated the following:

-With regard to the generator that's on the property, it's on the site of Building A and it supplies the entire property.

-With regard to anything else that's mechanical related, those are large expenditures of course, when they go out they are expensive to replace, but the truth of the matter is, and with talking with Stuart Carroll, and Stuart is here and he can attest to this, a number, if not most of the units on the property, Building A included, are in need of replacement now.

-I explained to Dr. Meadows and Dr. Williams that we purchased the property at a sub-market rate, we received an especially good deal so we took it as is.

-Because of that we had certain expectations that things may come up that will need our attention.

-I didn't want to pass along to the Board of Education, a property that was immediately in need of some pretty major mechanical repairs and replacements.

-That's the reason I said that we would assume those responsibilities on this lease and then if there is anything minor, you take care of it.

-The maintenance of everything else, inside particularly, they would be responsible for.

Commissioner Byrd stated the following:

-Also, in offset to that, we're paying them for their building at tax value, and trading them for a building that's worth \$1.7 million dollars.

County Manager Eddie Madden stated the following:

-Well, no, not exactly.

-At first we contemplated a swap of deeds and as it was pointed out by Ms. Prince, our property, Building A is valued at \$1.7 million dollars, theirs is valued at \$350,000.

-We didn't want to make a property swap that was that inequitable to us, so we wanted to retain ownership.

-But, in order to make this a reality we knew that a lease would be the only way to accomplish it.

-They couldn't afford to buy the property from us at \$1.7 million, even if we were buying theirs at tax value.

-The end result, I think, is we're getting what we need, in acquiring their property, and then they are using their money from that sale to improve our building and we still own it.

Commissioner Byrd stated the following:

-We own it, but its tied up for 40 years plus 5 year increments.

-So technically, they might as well own it, we're just paying the taxes on it.

-So, they've got it tied up for all those years as if they do own it.

County Manager Eddie Madden stated the following:

-I think we all would acknowledge that this property was bought at a sub-market rate.

-We paid \$1.25 million dollars and I believe it was on the books for over \$4 maybe \$5 million.

-So the remainder of the properties far exceed what we paid for the entire tract.

-As I explained to Dr. Meadows, ordinarily we wouldn't be able to put this deal together, but because of the purchase price of the entire tract, it puts us in a good position to help them and they in turn help us.

Commissioner Byrd stated the following:

-And, it's still all county property, and I'm aware of that, but it's kind of hard to swallow buying a \$350,000 property and then giving a \$1.7-million-dollar property for 40 years.

Chairman Bullard stated the following:

-Well this will decrease their request to the County for capital outlay.

County Manager Eddie Madden stated the following:

-They will not be budgeting for some of the repairs and maintenance of the building that we would ordinarily pick up through the year.

-Also, Commissioner Byrd, I think it's a good thing for the County to own property instead of lease.

Commissioner Byrd stated the following:

-But if they had to pay for all of the air conditioning repairs and things they would be a little more conservative with it.

-If you can just sign it over and pass it on to somebody else it doesn't matter.

-That's why I feel like they really should be over that part but I'm not going to hold up anything over it.

MOTION:

Commissioner Coleman made a motion to approve the lease for the Columbus County Board of Education under the lease agreement, seconded by Vice Chairman McMillian. The motion unanimously passed.

Agenda Item #5: APPROVAL OF LEASE PURCHASE AND SELL CONTRACT WITH COLUMBUS COUNTY BOARD OF EDUCATION:

Eddie Madden, County Manager, requested Board Approval.

LAND PURCHASE AND SALE CONTRACT

I. The Parties. This Land Purchase and Sale Contract ("Agreement") made on December 13 2021 ("Effective Date") is between:

Buyer: A business entity known as Columbus County with a mailing address of 110 Courthouse Square, Whiteville, North Carolina, 28472 ("Buyer") who agrees to buy,

AND

Seller: A business entity known as COLUMBUS COUNTY BOARD OF EDUCATION with a mailing address of 817 Washington Street, Whiteville, North Carolina, 28472 ("Seller").

II. Legal Description. The real property is described as vacant land with a total gross area of 8.49 Acres (AC). The real property is further described as:

Street Address: 817 Washington Street, Whiteville, North Carolina, 28472

Tax Parcel Information (i.e., "Parcel ID" or "Tax Map & Lot"): 0281.03-43-3357.000

Other Description: Columbus County Board of Education Administration

III. Earnest Money. The Buyer shall not be required to make a payment, down payment, or any other type of monetary deposit that would be deemed consideration ("Earnest Money"). Consideration under this Agreement, unless otherwise required by State law, shall be the full faith of the Buyer's ability to perform under the terms of this Agreement.

IV. Purchase Price and Terms. The Buyer agrees to purchase the Property by payment of \$350,000.00 as follows:

a.) All Cash Offer. No loan or financing of any kind is required in order to purchase the Property. Buyer shall provide Seller written third (3rd) party documentation verifying sufficient funds to close no later than July 1 2022 at 05:00 PM. Seller shall have three (3) business days after the receipt of such documentation to notify Buyer, in writing, if the verification of funds is not acceptable. If Buyer fails to provide such documentation, or if Seller finds such verification of funds is not acceptable, Seller may terminate this Agreement. Failure of Seller to provide Buyer written notice of objection to such verification shall be considered acceptance to verification of funds.

V. Sale of Another Property. Buyer's performance under this Agreement shall not be contingent upon selling another property.

VI. Closing Costs. The costs attributed to the Closing of the Property shall be the responsibility of Buyer. The fees and costs related to the Closing shall include but not be limited to a title search (including the abstract and

any owner's title policy), preparation of the deed, transfer taxes, recording fees, and any other costs by the title company that is in standard procedure with conducting the sale of a property.

VII. Funds at Closing. Buyer and Seller agree before the recording can take place, funds provided shall be in one (1) of the following forms: cash, interbank electronic transfer, money order, certified check or cashier's check drawn on a financial institution located in the State, or any above combination that permits the Seller to convert the deposit to cash no later than the next business day.

VIII. Closing Date. This transaction shall be closed on July 1 2022 05:00 PM or earlier at the office of a title company to be agreed upon by the Parties. Any extension of this date and time must be agreed upon, in writing, by Buyer and Seller. Real estate taxes, rents, dues, fees, and expenses relating to the Property for the year in which the sale is closed shall be prorated as of the date of Closing. Taxes due for prior years shall be paid by Seller.

IX. Survey. Buyer may obtain a survey of the Property before the Closing to assure that there are no defects, encroachments, overlaps, boundary line or acreage disputes, or other such matters, that would be disclosed by a survey ("Survey Problems"). The cost of the survey shall be paid by the Buyer. Not later than July 1 2022, Buyer shall notify Seller of any Survey Problems which shall be deemed to be a defect in the title to the Property. Seller shall be required to remedy such defects within 5 business days and prior to the Closing.

If Seller does not or cannot remedy any such defect(s), Buyer shall have the option of canceling this Agreement.

X. Mineral Rights. It is agreed and understood that all rights under the soil, including but not limited to water, gas, oil, and mineral rights shall be transferred by the Seller to the Buyer at Closing.

XI. Title. Seller shall convey title to the property by Warranty Deed or equivalent. The Property may be subject to restrictions contained on the plat, deed, covenants, conditions, and restrictions, or other documents noted in a Title Search Report.

Upon receipt of the Title Search Report, the Buyer shall have 5 business days to notify the Seller, in writing, of any matters disclosed in the report which is unacceptable to Buyer. Buyer's failure to timely object to the report shall constitute acceptance of the Title Search Report.

If any objections are made by Buyer regarding the Title Search Report, mortgage loan inspection, or other information that discloses a material defect, the Seller shall have 5 business days from the date the objections were received to correct said matters. If Seller does not remedy any defect discovered by the Title Search Report, Buyer shall have the option of canceling this Agreement.

After Closing, Buyer shall receive an owner's standard form policy of title insurance insuring marketable title in the Property to Buyer in the amount of the Purchase Price, free and clear of the objections and all other title exceptions agreed to be removed as part of this transaction.

XII. Property Condition. Seller agrees to maintain the Property in its current condition, subject to ordinary wear and tear, from the time this Agreement comes into effect until the Closing. Buyer recognizes that the Seller, along with any licensed real estate agent(s) involved in this transaction, makes no claims as to the validity of any property disclosure information. Buyer is required to perform their own inspections, tests, and investigations to verify any information provided by the Seller. Afterward, the Buyer shall submit copies of all tests and reports to the Seller at no cost.

Therefore, Buyer shall hold the right to hire licensed contractors, or other qualified professionals, to further inspect and investigate the Property until July 1 2022.

After all inspections are completed, Buyer shall have until July 1 2022 to present any new property disclosures to the Seller in writing. The Buyer and Seller shall have 5 business days to reach an agreement over any new property disclosures found by the Buyer. If the Parties cannot come to an agreement, this Agreement shall be terminated.

If the Buyer fails to have the Property inspected or does not provide the Seller with written notice of the new disclosures on the Property, in accordance with this Agreement, Buyer hereby accepts the Property in its current condition and as described in any disclosure forms presented by the Seller.

In the event improvements on the Property are destroyed, compromised, or materially damaged prior to Closing, the Agreement may be terminated at Buyer's option.

XIII. Seller's Indemnification. Except as otherwise stated in this Agreement, after recording, the Buyer shall accept the Property AS IS, WHERE IS, with all defects, latent or otherwise. Neither Seller nor their licensed real estate agent(s) or any other agent(s) of the Seller, shall be bound to any representation or warranty of any kind relating in any way to the Property or its condition, quality or quantity, except as specifically set forth in this

Agreement or any property disclosure, which contains representations of the Seller only, and which is based upon the best of the Seller's personal knowledge.

XIV. Appraisal. Buyer's performance under this Agreement shall not be contingent upon the appraisal of the Property being equal to or greater than the agreed-upon Purchase Price.

XV. Required Documents. Prior to the Closing, the Parties agree to authorize all necessary documents, in good faith, in order to record the transaction under the conditions required by the recorder, title company, lender, or any other public or private entity.

XVI. Termination. In the event this Agreement is terminated, as provided in this Agreement, absent of default, parties being relieved of their obligations as set forth herein.

XVII. Sex Offenders. Section 2250 of Title 18, United States Code, makes it a federal offense for sex offenders required to register pursuant to the Sex Offender Registration and Notification Act (SORNA), to knowingly fail to register or update a registration as required. State convicted sex offenders may also be prosecuted under this statute if the sex offender knowingly fails to register or update a registration as required, and engages in interstate travel, foreign travel, or enters, leaves, or resides on an Indian reservation.

A sex offender who fails to properly register may face fines and up to ten (10) years in prison. Furthermore, if a sex offender knowingly fails to update or register as required and commits a violent federal crime, he or she may face up to thirty (30) years in prison under this statute. The Buyer may seek more information online by visiting <https://www.nsopw.gov/>.

XVIII. Time. Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and they may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement.

XIX. Dispute Resolution. Buyer and Seller agree to mediate any dispute or claim arising out of this Agreement, or in any resulting transaction, before resorting to arbitration or court action.

a.) Mediation. If a dispute arises, between or among the Parties, and it is not resolved prior to or after recording, the Parties shall first proceed in good faith to submit the matter to mediation. Costs related to mediation shall be mutually shared between or among the Parties. Unless otherwise agreed in mediation, the Parties retain their rights to proceed to arbitration or litigation.

b.) Exclusions. The following matters shall be excluded from the mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed, mortgage or installment land sale contract as defined in accordance with State law; (ii) an unlawful detainer action, forcible entry detainer, eviction action, or equivalent; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation and arbitration provisions of this Section.

XX. Governing Law. This Agreement shall be interpreted in accordance with the laws in the State where the Property is located.

XXI. Terms and Conditions of Offer. This is an offer to purchase the Property in accordance with the above stated terms and conditions of this Agreement. If at least one, but not all, of the Parties initial such pages, a counteroffer is required until an agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of acceptance. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of licensed real estate agent(s) compensation. This Agreement and any supplement, addendum or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

XXII. Binding Effect. This Agreement shall be for the benefit of, and be binding upon, the Parties, their heirs, successors, legal representatives, and assigns, which therefore, constitutes the entire agreement between the Parties. No modification of this Agreement shall be binding unless signed by both Buyer and Seller.

XXIII. Severability. In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.

XXIV. Offer Expiration. This offer to purchase the Property as outlined in this Agreement shall be deemed revoked unless this Agreement is signed by Seller and a copy of this Agreement is personally given to the Buyer by January 1 2022 05:00 PM.

XXV. Acceptance. Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Therefore, by the Seller's authorization below, he/she/they accepts the above offer and agrees to sell the Property on the above terms and conditions and agrees to the agency relationships in accordance with any agreement(s) made with licensed real estate agent(s). Seller has read and acknowledges receipt of a copy of this Agreement and authorizes any licensed real estate agent(s) to deliver a signed copy to the Buyer.

Delivery may be in any of the following: (i) hand delivery; (ii) email under the condition that the party transmitting the email receives electronic confirmation that the email was received to the intended recipient; and (iii) by facsimile to the other party or the other party's licensee, but only if the transmitting fax machine prints a confirmation that the transmission was successful.

XXVI. Licensed Real Estate Agent(s). If Buyer or Seller have hired the services of licensed real estate agent(s) to perform representation on their behalf, he/she/they shall be entitled to payment for their services as outlined in their separate written agreement.

XXVII. ATTACHED DOCUMENTS. It is acknowledged by the Parties that the following disclosures, attachments, or addendums are made part of this Agreement:

Lease to Building A

XXVIII. Additional Terms and Conditions. This Contract is contingent upon approval of the Lease for Building A.

XXIX. Entire Agreement. This Agreement together with any attached addendums or disclosures shall supersede any and all other prior understandings and agreements, either oral or in writing, between the parties with respect to the subject matter hereof and shall constitute the sole and only agreements between the parties with respect to the said Property. All prior negotiations and agreements between the parties with respect to the Property hereof are merged into this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or by anyone acting on behalf of any party, which are not embodied in this Agreement and that any agreement, statement or promise that is not contained in this Agreement shall not be valid or binding or of any force or effect.

Signature Area

Buyer's Signature: _____ **Date:** _____
Columbus County

Seller's Signature: _____ **Date:** _____
COLUMBUS COUNTY BOARD OF EDUCATION

County Manager Eddie Madden stated the following:

- The Board of Education is in agreement to sell property to you all.
- The purchase price for their facility plus the 8 acres or so that comes with it is \$350,000.
- We set a tentative closing date of on or before July 1st.
- They will remain in their building until the new facilities are renovated and readied for occupancy, which they have assured us will be before the July 1 deadline.
- We are recommending you all approve the purchase.

MOTION:

Commissioner McDowell made a motion to approve the purchase of the Board of Education property, seconded by Vice Chairman McMillian. The motion unanimously passed.

Agenda Item #23: ADJOURNMENT:

At 8:43 A.M., Commissioner Smith made a motion to adjourn, seconded by Vice Chairman McMillian. The motion unanimously passed. These minutes were typed by LaToya Williams.

LATOYA WILLIAMS, Deputy Clerk

RICKY BULLARD, Chairman

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