

**Prepared by and return original to: Campbell Shatley, PLLC, 674 Merrimon Ave., Suite 210, Asheville, NC 28804**

**STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA**

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (“Lease” or “Agreement”) is made and entered into on this [ ] day of [ ], 2019, by and between the **TRANSYLVANIA COUNTY BOARD OF EDUCATION**, a body corporate being a county board of education organized and existing pursuant to N.C. Gen. Stat. § 115C (“Landlord”), and **TRANSYLVANIA COUNTY**, a body politic and corporate (“Tenant”) (collectively “Parties”).

**WHEREAS**, Tenant and Landlord seek to co-develop the construction and renovation of some or schools owned by Landlord;

**WHEREAS**, Tenant and Landlord shall be co-developers of identified new school and renovation projects;

**WHEREAS**, as part of the co-development of the identified projects, Landlord shall lease identified school sites to Tenant in order to enable the County to reclaim sales and use taxes paid by the various contractors and vendors;

**WHEREAS**, Tenant has designated the Landlord as its agent to carry out the construction projects and Landlord has accepted the appointment pursuant to the terms of the Interlocal Agency Agreement executed by Landlord and Tenant on [ ], 2019, and as may be amended from time to time (the “Interlocal Agreement”);

**WHEREAS**, Tenant intends to claim the sales and use tax refunds on the construction projects and appropriate the same to Landlord pursuant to the terms of the Interlocal Agreement as supplemental funding for school capital building and renovation projects approved the

Tenant; and

**WHEREAS**, N.C. Gen. Stat. §§ 115C-518 and 160A-272 and -274 authorize Landlord to lease its property to Tenant, and N.C. Gen. Stat. § 153A-11 and -158 authorize Tenant to lease property from the Landlord.

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

**ARTICLE I**  
**BASIC LEASE INFORMATION**

Basic Lease Information. In addition to the terms that are defined elsewhere in this Lease, these terms are used in this Lease:

- 1.1** Landlord's Address: Transylvania County Schools  
c/o Office of Superintendent  
225 Rosenwald Ln.  
Brevard, NC 28712
- 1.2** Tenant's Address: Transylvania County  
c/o Office of County Manager  
101 South Broad Street  
Brevard, NC 28712
- 1.3** LAND: The land described in Section 2.1, which is more specifically shown on Exhibit A.
- 1.4** IMPROVEMENTS: The improvements now or hereafter located on the Land whether placed thereon by Landlord, Tenant, or their respective agents.
- 1.5** PREMISES or LEASED PREMISES: The Land together with all easements and rights of access over and upon the Land, as defined more particularly in Section 2.1.
- 1.6** INTERLOCAL AGREEMENT: The Interlocal Agreement, dated [REDACTED], 2019 entered into by Tenant and Landlord and fully incorporated by reference herein.
- 1.7** Exhibits. The following exhibits are attached to this Lease and are made a part of this Lease: Exhibit A – Properties Subject to the Lease.

- 1.8 Consideration. The Parties' mutual desire to seek reimbursement of sales tax shall serve as consideration of this Lease.

**ARTICLE II**  
**PREMISES, TERM, TERMINATION AND USE**

- 2.1 Leased Premises. Under the limited terms, provisions and conditions hereof, and each in consideration of the duties, covenants and obligations of the other hereunder, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord that certain land(s) owned by Landlord located in and more particularly described in Exhibit A, attached hereto and made a part hereof (the "Land"), together with all easements, rights-of-way, streets, alleys, passages, sewer/water rights, tenements, hereditaments, appurtenances and rights belonging or relating or appertaining to the Land and all rights, title and interest in, if any, of the Landlord, now or hereafter affecting the Land (collectively, with the Land, hereinafter referred to as the "Leased Premises" or the "Premises").
- 2.2 Title to Leased Premises. Landlord represents and warrants that as of the time of the execution of this Lease it has title to the Leased Premises and that it has full power and authority to grant this Lease to Tenant.
- 2.3 Term. To have and to hold said Premises, together with all privileges and appurtenances thereunto belonging, subject to the terms, provisions and conditions hereof, this Lease shall continue in force for a term (the "Term") commencing upon execution of this Lease by all Parties and recordation (fees to be paid by Landlord) of a memorandum of such in the Office of the Register of Deeds (the "Commencement Date"), and terminating pursuant to the terms and conditions as stated in Section 2.4.
- 2.4 Expiration and Termination. This Lease shall automatically expire seven (7) years from the Commencement Date. Notwithstanding the foregoing, upon 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 or that removes the authority for counties to reclaim sales and use taxes paid to the State of North Carolina, either party may terminate this Lease with provision of sixty (60) days' notice of termination to the other party. Further, in the event the Interlocal Agreement between Landlord and Tenant expires or is terminated for any reason before the expiration of this Lease, then this Lease shall be immediately terminated.

**ARTICLE III**  
**LANDLORD'S COVENANTS**

- 3.1 Landlord's Obligations. Subject to Tenant's performance of its obligations hereunder, Landlord makes the following assurances to Tenant:
- 3.1.1 Leases, Easements, Roadway Dedications, and Rights of Way. Landlord has the absolute right to negotiate and execute any lease, 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 or other purposes over the Premises. Any such grant will not terminate this Lease, but the Lease will continue subject to the portion of the Premises conveyed or dedicated. Should Landlord require Tenant's execution of any document for leases, easements or other partial interests, the Landlord, as agent for the Tenant, shall have the authority to execute any leases, easements, rights of way, and roadway dedications it deems necessary.

**3.1.2** Use of Site. During the term of this Agreement, the Landlord shall retain exclusive rights to possess, use, occupy, improve and insure any properties and all improvements thereon identified pursuant to Section 2.1 as subject to this Agreement 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 as Landlord determines in its discretion thereafter until termination as hereinafter provided, subject only to Tenant's limited grant of access to and use of the Leased Premises as described in Section 4.1. In addition to the above, the Landlord shall have full discretion and the sole right to authorize the use by third parties for non-school use, pursuant to Landlord's policies, of any properties identified in Section 2.1 as being subject to this Agreement. Tenant's limited rights of access to and use of the Leased Premises shall be subordinate to such third-party use, unless otherwise indicated in writing by the Landlord.

**3.1.3** Utilities. Landlord shall be responsible for electrical, gas, telephone, water, sewer, and garbage removal with respect to the Leased Premises.

**3.1.4** Insurance. Landlord shall be responsible for carrying adequate property insurance on all the Leased Premises. Tenant shall not be required to carry any insurance covering the Leased Premises.

#### **ARTICLE IV TENANT'S COVENANTS**

**4.1** Use of Site. During the term of this Lease, Tenant shall have the limited right to access and use the Leased Premises only to extent necessary to effectuate the performance of the construction or renovation projects authorized by the Landlord under the terms of the Interlocal Agency Agreement, including the limited right to enter upon the site and inspect any identified construction or renovation project from time to time during construction or renovation. This limited right of access and use shall be subject to any and all applicable written policies of the Landlord regarding access to and conduct on school properties, and shall be subordinate to any other interests in the subject properties granted by the Landlord to third parties pursuant to any other deeds, leases, conveyances, or joint use agreements of any kind, whether those interests are transferred by the Landlord before or after the subject properties are made subject to this Lease Agreement, unless otherwise expressly indicated by the Landlord in writing.

**4.2** Alterations. Tenant shall not make any alterations, additions or improvements to the Premises, unless made by Landlord as agent for Tenant, without the prior written consent of Landlord. Tenant shall not make any alterations, additions or improvements

to the Premises which will contravene Landlord's policies insuring against loss or damage by fire or other hazards, including but not limited to commercial general liability, or which will prevent Landlord from securing such policies in companies acceptable to Landlord.

- 4.3** Assignment/Subletting. Tenant may not assign or encumber this Lease and may not sublet any part or all of the Leased Premises.

**ARTICLE V**  
**MUTUAL COVENANTS: ADDITIONAL MATTERS**

- 5.1** Alterations, Improvements, and Changes Permitted. Landlord shall have the right to make such alterations, improvements, and changes to any building which may from time to time be on the premises as Landlord may deem necessary, subject to all other applicable municipal regulations.

**5.1.1** Disposition of New Improvements. Any and all improvements constructed upon the Leased Premises by Tenant or by Landlord as agent for Tenant pursuant to the Interlocal Agreement shall automatically become the property of Landlord upon completion of the construction or renovation project, subject to Tenant's leasehold interest therein. Such improvements shall remain upon the Premises upon expiration or termination of the Lease. All other alterations, improvements, changes, or additions made by Landlord in or to the Leased Premises shall be the property of Landlord, subject to Tenant's leasehold interest therein.

- 5.2** Fire or Other Casualty. In the event the Leased Premises is damaged by fire or other casualty, Landlord at its option may, either in its own capacity or as agent for Tenant pursuant to the Interlocal Agreement, rebuild or restore its improvements on the said Leased Premises to as good or better condition than that existing immediately prior to said fire or other casualty, and this Lease shall not terminate.

- 5.3** Eminent Domain. In the event a portion of Leased Premises shall be acquired by taking (any acquisition by any government authority in the legal and valid exercise of its power of eminent domain or by private purchase in lieu thereof) and such taking relates to a portion of the fee simple title to Leased Premises, as well as to the right, title and interest of Tenant, the rights and obligations of the parties hereunder shall continue except as to that portion of the Leased Premises that has been taken. All compensation awarded for any taking (or the proceeds of a private sale in lieu thereof) shall be the property of Landlord whether such award is for compensation for damages to the Landlord's or Tenant's interest in the Leased Premises, and Tenant hereby assigns all of its interest in any such award to Landlord.

- 5.4** Waiver of Subrogation. Landlord and Tenant hereby release each other from any loss or damage to property caused by fire or any other perils insured through or under either by way of subrogation or otherwise for any loss or damage to property caused by fire or any other perils insured in policies of insurance covering such property, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to the loss or damage

occurring during such times as the releasor's policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder and then only to the extent of the insurance proceeds payable under such policies.

- 5.5** Recording. Landlord and Tenant agree that a memorandum of this Lease will be recorded in the Transylvania County Public Registry but that this Lease itself will not be so recorded.
- 5.6** Compliance with Interlocal Agreement. The respective obligation of the Parties regarding construction and renovation projects on any part of the Leased Premises and the mechanism for recovering sales tax reimbursement for those construction and renovation projects shall be governed by the Interlocal Agreement, and any amendments thereto, which are incorporated herein by reference.
- 5.7** Indemnity. To the extent allowed by law, Landlord shall indemnify, defend and hold harmless Tenant 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 the Leased Premises (including, without limitation, reasonable attorneys' fees). Landlord shall assume, on behalf of Tenant, and conduct with due diligence and in good faith, the defense of all such claims, suits, actions and proceedings against Tenant whether or not the Landlord is joined therein, even if such claims, suits, actions or proceedings are groundless, false or fraudulent, and Landlord shall bear the costs of all judgments and settlements in connection therewith; provided, however, Tenant may defend or participate in the defense of any or all of such claims, suits, actions or proceedings.

## **ARTICLE VI DEFAULT**

- 6.1** Default. The failure by either party in the performance or compliance with any of the agreements, terms, covenants or conditions under this Lease, for a period of thirty (30) days after written notice, shall constitute a breach of this Lease. If the breaching party cannot cure the event of noncompliance within thirty (30) days, then in such event the non-breaching party may begin such actions as are necessary to cure the default within the thirty (30) day period from receipt of written notice and diligently pursue the cure of such default to completion, and the non-breaching party may pursue any other remedy available at law, or in equity.

## **ARTICLE VII MISCELLANEOUS**

- 7.1** Notices. Any notice which may or shall be made under this Lease shall be in writing and shall be either delivered by hand or sent by United States Registered or Certified Mail, Return Receipt Requested, or by any overnight mail service (e.g. Federal Express, United Parcel Services), postage prepaid, to the address set out in Article I hereof or to such address as may be contained in a notice given as provided above.

- 7.2** Entire Agreement. This Lease and all exhibits hereto and other agreements referred to herein (which are expressly incorporated herein by this reference) shall constitute the entire agreement between Landlord and Tenant and no other prior written or prior or contemporaneous oral promises or representations shall be binding. This Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto.
- 7.3** Interpretation: Governing Law. Pronouns, where used herein, of whatever gender, shall include natural persons, corporations, and associations of every kind and character, and the singular shall include the plural and vice versa where and as often as may be appropriate. Article and section headings under this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Whenever the terms "hereof," "hereby," "herein," or words of similar import are used in this Lease, they shall be construed as referring to this Lease in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Paragraph" shall be construed as referring to the indicated Article or Paragraph of this Lease. Statements herein in respect to compliance with applicable law or text of similar import shall be construed to require compliance with applicable law as now or hereafter in effect.
- The law of the State of North Carolina shall govern the validity, performance and enforcement of this Lease and this Lease shall be construed pursuant to such laws.
- 7.4** Binding Effect. The provisions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns or the parties, but this provision shall in no way alter the restrictions on assignment and subletting applicable to Tenant hereunder.
- 7.5** Severability. In the event any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to full extent permitted by law.
- 7.6** No Waiver. The waiver by either party of any agreement, condition, or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Lease, nor will any custom or practice that may grow up between the parties in the administration of the terms of this Lease be construed to waive or lessen the right of one party to insist upon the performance by the other party in strict accordance with the terms of this Lease.
- 7.7** Non-Merger of Fee and Leasehold Estate. If both the Estate of Landlord and the Estate of Tenant in the Premises or improvements located thereon or both become vested in the same owner, this Lease shall not be terminated by application of the doctrine of merger, except by mutual consent of Tenant and Landlord.

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

**COUNTY OF TRANSYLVANIA**

**ATTEST:**

\_\_\_\_\_  
Trisha Hogan  
Clerk of the Board of Commissioners

\_\_\_\_\_  
Michael Hawkins  
Chair, County Commissioners

**ATTEST:**

**TRANSYLVANIA COUNTY  
BOARD OF EDUCATION**

\_\_\_\_\_  
Jeff McDaris, Ed.D.  
Superintendent and Secretary to Board

\_\_\_\_\_  
Tawny McCoy  
Chair, Board of Education

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**EXHIBIT A**



Properties subject to Lease

- Brevard High School, 609 Country Club Rd., Brevard, NC 28712 (PIN# 8585-44-6723)
- Rosman Middle School, 2770 Old Rosman Highway, Rosman, NC 28722 (PIN# 85552-78-9617; 8552-89-1248; 8552-89-0466; 8552-89-4323)
- Rosman High School, 749 Pickens Highway, Rosman, NC 28722 (PIN# 85552-78-9617; 8552-89-1248; 8552-89-0466; 8552-89-4323)

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