

NORTH CAROLINA

LEASE AGREEMENT

BRUNSWICK COUNTY

THIS LEASE AGREEMENT (hereinafter referred to as the “Lease”) is made and entered into by and between Mr. Marvin Fullwood, (hereinafter referred to as “Landlord”) and Brunswick County, a body politic and corporate of the State of North Carolina (hereinafter referred to as “County”).

WITNESSETH:

1. LEASED PREMISES. On the terms and conditions hereinafter set forth, and in consideration of the mutual covenants and undertakings herein contained, the Landlord does hereby agree to lease to County and County does hereby agree to lease from Landlord the property and premises set forth on Exhibit “A” attached hereto (hereinafter referred to as the “Leased Premises”).

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Lease. Any conflict between the language in an exhibit or attachment and the main body of this Lease shall be resolved in favor of the main body of this Lease.

2. TERM OF LEASE. The initial term of this Lease begins on July 1, 2021 (the “Effective Date”) and continues in effect until June 30, 2023, unless earlier terminated pursuant to any of the terms and conditions contained herein. The parties will negotiate in good faith to renew this Lease every two (2) years unless either party gives notice to the other party at least sixty (60) days before the end of the then current fiscal year of its intention not to renew the Lease by delivering or mailing such notice to the other party at the address(es) below.

3. TERMINATION.

- a. **Without Cause.** County may terminate this Lease at any time without cause by giving sixty (60) calendar days written notice to Landlord.
- b. **For Cause.** County may terminate this Lease for cause by giving written notice of a breach to Landlord. Landlord shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Lease. County may terminate this Lease immediately and without notice if Landlord becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Landlord, or has a receiver or trustee appointed for substantially all of its property, or if Landlord allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

- c. **Fire or Casualty.** Notwithstanding the foregoing, if the Leased Premises is destroyed by fire or other casualty and rendered unfit for occupancy for ninety-six (96) consecutive hours, County may terminate this Lease immediately and without further obligation to Landlord.

4. **RENT.** County agrees to pay Landlord the sum of One Thousand Two Hundred and No/100 (\$1,200.00) monthly during the term of this Lease. Payment shall be made to Landlord on or before the first day of each calendar month at the address set forth below or at such other address as Landlord may designate in writing. No security deposit shall be required.

5. **NONAPPROPRIATION.** If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Lease for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Landlord of the non-appropriation and this Lease will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Lease.

6. **USE OF PREMISES.** County shall not use the Leased Premises for any unlawful purpose. County shall not permit any noxious or offensive sights, odors or activities on or about the Leased Premises and shall not conduct or permit any nuisance thereon. County shall not permit the Leased Premises or any part thereof to be used in any manner, or anything to be done therein, or permit anything to be brought into or kept in the Leased Premises which in any way (i) causes structural injury to the building or any part thereof; (ii) interferes with the normal operations, heating, air conditioning, ventilation, plumbing or other mechanical or electrical systems of the building; (iii) constitutes a public or private nuisance; or (iv) alters the appearance of the exterior or interior of the building or any portion thereof other than as permitted herein.

7. **REPRESENTATIONS AND WARRANTIES.** Each party to this Lease represents and warrants that:

- a. It is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- b. It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Lease;
- c. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Lease;
- d. It shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses, if any; and
- e. It shall not violate any agreement with any third party by entering into or performing the obligations under this Lease.

8. LANDLORD'S COVENANTS. Landlord covenants that it has fee simple title to the Leased Premises and that the Leased Premises is free of encumbrances and restrictions that would prohibit its use for the purposes hereunder.

9. INSURANCE.

- a. County shall procure and maintain in full force and effect at all times and at its sole cost and expense Workers' Compensation, Commercial General Liability, Commercial Automobile Liability and Professional Liability insurance and any additional insurance as may be required by Landlord with limits acceptable to Landlord. All insurance policies (with the exception of Worker's Compensation and Professional Liability) shall be endorsed, specifically or generally, to include Landlord as an additional insured and as a certificate holder. County shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by Landlord. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. County shall have no right of recovery or subrogation against Landlord (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.
- b. County shall insure, at its own expense, the assets, possessions and furnishings contained within the Leased Premises and make available to Landlord copies of said insurance on an annual basis.
- c. Landlord shall maintain fire and casualty insurance on the Leased Premises including extended coverage, vandalism and malicious mischief and make available to County copies of said insurance on an annual basis.

10. INDEMNIFICATION. To the extent allowed by law, County does hereby covenant and agree to indemnify and hold harmless Landlord from and against any and all claims for injury or damage to persons or property or for the loss of life or of property occurring upon, in or about the Leased Premises, the public portion of the building and the public portions of the parking lot.

11. REPAIRS AND MAINTENANCE.

- a. County shall maintain and deliver at the end of the Lease term the Leased Premises, including the building and furnishings, in such good repair and condition (except for ordinary wear and tear or damage caused by casualty) as the Leased Premises was in at the beginning of the County's occupancy of the Leased Premises. All damage or injury to the Leased Premises and its fixtures, glass appurtenances, and equipment caused by County moving property in or out of the building or by installation or explosion, short circuits, flow or leakage

of water, steam, sewer or by frost or by bursting by leaking of pipes or plumbing, or from another cause of any other kind or nature whatsoever, due to carelessness, omission, neglect, improper conduct, or other cause of County, its servants, employees, agents, visitors, or licensees, shall be repaired, restored, or replaced promptly by County to the reasonable satisfaction of Landlord at County's sole cost and expense except to the extent that such cost and expense is covered by insurance proceeds recovered by Landlord. All of said repairs and any restorations or replacements required in connection therewith shall be of quality and class at least equal to the original work or installations and shall be done in a good and workmanlike manner.

- b. Landlord shall be responsible for routine maintenance of lawns and paved areas, including cutting of grass, trimming of trees, and snow or ice removal.
- c. Landlord shall be responsible for all structural maintenance and repairs, including: the exterior roof and walls of the Leased Premises; HVAC maintenance and repair; and electrical and plumbing maintenance on the current structure. Maintenance shall include, but is not limited to, furnishing and replacing electrical light fixture ballasts, air conditioning and ventilation equipment filters, if applicable, and broken glass. In the event Landlord fails, refuses or neglects to correct any condition following written notice by County, or in the event of an emergency constituting a hazard to the health or safety of any individual or property, County shall have the right, but not the obligation, in addition to any other remedy County may have, to make such repair at its own cost and expense and deduct the amount thereof from any rent due or to become due.

12. COUNTY'S RIGHT TO ALTER AND IMPROVE; SIGNAGE.

- a. County shall make no structural or interior alterations to the Leased Premises or upon the grounds of the Leased Premises or place any signage or advertisements upon the Leased Premises or grounds without the prior written consent of Landlord.
- b. County shall give advance written notice to Landlord of the proposed alterations or signage and describe the same or submit drawings or sketches of the proposed work in sufficient detail that such drawings or sketches can be easily understood by Landlord.
- c. Landlord shall have sixty (60) days within which to object to the alterations and attempt to reach a mutual agreement with County concerning the extent and type of alterations proposed. If Landlord does not object to such alterations within the sixty (60) day period, County may proceed with the alterations upon issuance of the appropriate building and zoning permits. If Landlord objects to such alterations or improvements, its decision is binding.

- d. Any alteration, addition or improvement made by County after consent has been given and any fixtures permanently installed as a part thereof in such manner that removal would damage the Leased Premises shall, at Landlord's option, become the property of Landlord upon expiration or sooner termination of this Lease. County shall have no duty to remove any improvement or fixture placed by it on the Leased Premises or to restore any portion of the Leased Premises altered by it. In the event County elects to remove any improvements or fixtures and such removal causes damage or injury to the Leased Premises, County will repair that portion of the Leased Premises at its sole cost and expense.

13. UTILITIES AND SERVICES. Landlord agrees to provide the following at its sole cost and expense:

- a. Heating facilities, air conditioning facilities, electrical facilities, adequate lighting fixtures and sockets, hot and cold-water facilities and adequate toilet facilities.
- b. Janitorial services (limited to the toilet, floor of the restroom and sink outside the restroom).
- c. Trash dumpster.
- d. All utilities except telephone.
- e. Parking.
- f. Handicapped accessibility.

14. LANDLORD'S RIGHT OF ACCESS. Landlord and its representatives may enter the Leased Premises at any reasonable time to inspect the Leased Premises to ensure it is being maintained in good working order, that County is in compliance with the provisions of this Lease and for performing any work required by the terms of this Lease.

15. QUIET ENJOYMENT. Except for Landlord's right of access as set forth herein, so long as County pays all rental amounts when due and has not breached any of its obligations hereunder, County shall peacefully hold and quietly enjoy the Leased Premises without interruption by Landlord or any other person, firm or entity.

16. ACCEPTANCE OF PREMISES BY COUNTY. Landlord has made no representations with respect to the building, the land upon which it is erected or the Leased Premises except as expressly set forth in the provisions of this Lease. County acknowledges that it has examined the Leased Premises and accepts it in its present condition.

17. ASSIGNMENT AND SUBLETTING. County shall not assign, mortgage, pledge or otherwise encumber its interests in this Lease or the Leased Premises, nor sublet, nor permit the property or any part thereof to be used or occupied by others, except as provided herein or as

specifically approved by Landlord. Notwithstanding the foregoing, Landlord acknowledges that County will sublet the Leased Premises to the State of North Carolina, Department of Public Safety for the operation of parole/probation offices and related purposes, and Landlord expressly approves such subletting and use. Such sublease shall not relieve County of any of its obligations under this Lease.

18. SUBORDINATION OF LEASEHOLD INTEREST. This Lease shall be subject at all times to all existing mortgages or deeds of trust encumbering the Leased Premises and to all modifications, extensions or consolidations thereof.

19. TAXES. Landlord shall be responsible for all *ad valorem* property taxes on the land and Leased Premises, if any, and County shall be responsible for all *ad valorem* taxes on any personal property, equipment, furnishings and contents located on the Leased Premises.

20. DEFAULT. If County shall fail to pay any rental amount within fifteen (15) days after the same is due, or if Tenant shall fail to pay any other sums or perform any other obligations, duties or responsibilities for which it is liable hereunder after being given fifteen (15) days written notice of such failure, or if the Leased Premises is deserted or vacated by County, then in any of said events Landlord may (a) terminate this Lease and/or (b) take any other legal action or pursue any other remedy against County or against any guarantors of this Lease. In the event of such default, the Landlord may, at its option, relet the Leased Premises, or any part thereof, and County shall pay Landlord the difference between the rent hereby reserved and agreed to be paid by County for the portion of the term remaining at the time of reentry or repossession and the amount, if any, received or to be received under such reletting for such portion of the term.

21. SURRENDER OF POSSESSION. Upon expiration or termination of this Lease or any extension thereof, County shall surrender the Leased Premises to Landlord in as good a condition as the same was at the beginning of the Lease term, reasonable wear and tear excepted. Any holdover by County shall be construed to be a tenancy from month to month and shall otherwise be on the terms and conditions herein specified. Landlord may elect to remove County at the end of any month upon seven (7) days written notice, provided no new lease agreement has been entered into in writing by the parties.

22. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL. Landlord hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

23. DEBARMENT. Landlord hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Lease by any governmental department or agency. Landlord must notify County within thirty (30) days if debarred by any governmental entity during this Lease.

24. NOTICES.

- a. **Delivery of Notices.** Any notice required or permitted to be given in connection with this Lease shall be in writing and shall be delivered in person,

by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.

- b. **Effective Date of Notices.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- c. **Notice Address.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Lease shall be sent to:

TO COUNTY: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022

TO LANDLORD: Mr. Marvin Fullwood
711 Dale Avenue
Southport, NC 28461

25. GOVERNING LAW AND VENUE. This Lease shall be governed by the laws of the State of North Carolina, without regard for its choice of law provisions. All actions relating in any way to this Lease shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

26. DISPUTE RESOLUTION. Should a dispute arise as to the terms of this Lease, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

27. GOVERNMENTAL IMMUNITY. County, to the extent applicable, does not waive its governmental immunity by entering into this Lease and fully retains all immunities and defenses provided by law with regard to any action based on this Lease.

28. NON-WAIVER. Failure by either party at any time to require the strict performance of any of the provisions of this Lease shall in no way affect said party's right hereunder to enforce the same, nor shall any waiver by a party of any breach be held to be a waiver of any succeeding breach or a waiver.

29. ENTIRE AGREEMENT. This Lease constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Lease supersedes all prior agreements, negotiations, representations and proposals, written or oral.

30. HEADINGS. The headings in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

31. SEVERABILITY. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Lease shall not affect the validity of the remaining portion of the Lease so long as the material purposes of this Lease can be determined and effectuated. If a provision of this Lease is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Lease shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

32. SIGNATURES. This Lease, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same Lease. This Lease may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Lease by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board /
Deputy Clerk to the Board

By: _____
Chairman, Board of Commissioners

[SEAL]

LANDLORD

By: _____

Printed Name: Marvin Fullwood

Date: _____

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

Julie A. Miller, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

EXHIBIT "A"
DESCRIPTION OF LEASED PREMISES/FLOOR PLAN

CORRECTED EXHIBIT A OF
800 N. HOWE ST. SOUTHPORT, N.C.
DATE 6-25-2019



- #1: CORRECT FOOT PRINT OF REST ROOM AREA * NO NON-DEC SPACE
 - #2: BLUE DOTS AND ARROWS INDICATE 864 SQ. FT. (27' X 32') DOES NOT INCLUDE PPC
- BRUNSWICK COUNTY 65541 AND REST ROOM
- . RU³