

APPENDIX I

Item: Agreement for lease of classroom space between New Hanover County Board of Education and Wrightsville Beach Baptist Church.

Background/Historical Context: Wrightsville Beach Elementary School is in need of additional classroom space. Wrightsville Beach Baptist Church has available space suitable for the needs of the children.

Recommendation: It is recommended the Board approve a lease with Wrightsville Beach Baptist Church while long term solutions are implemented.

Rationale for Recommendation: Wrightsville Beach Baptist Church is willing to lease space for the purpose of classroom instruction. Wrightsville Beach Elementary is in immediate need of classroom space. The properties are within close proximity of each other for ease of transportation, meal times and itinerant instruction.

Short and Long Term Impact: The lease of the space will reconcile immediate needs while providing an option for yearly renewals to a fourth term. Lessee will pay rent for the first year in the amount of \$2,244.00. The lease will provide for the needs of the children in conjunction with long term solutions being implemented.

Supporting Documentation: Lease Agreement

Board Action: _____ Recommendation Accepted
 _____ Recommendation Rejected
 _____ Tabled for Further Study
 _____ Other

LEASE AGREEMENT

This Lease, made and entered into this ____ day of May, 2013 by and between Wrightsville Beach Baptist Church, hereinafter designated as "Lessor", and the New Hanover County Board of Education, 6410 Carolina Beach Road, Wilmington, North Carolina, 28412, hereinafter designated "Lessee", is as follows:

WITNESSETH:

Lessee, for the consideration hereinafter set forth, does hereby lease from Lessor and Lessor does hereby lease to Lessee, certain Leased Space subject to the terms and conditions as follows:

1. **LEASED SPACE.** Lessee hereby leases from Lessor the following property which will be referred to herein as the "Leased Space": two classrooms, one divisible into three (3) smaller areas and identified by room numbers 101, 102, & 103, and one identified by room number 106, at Wrightsville Beach Baptist Church located at 601 Causeway Drive, Wrightsville Beach, North Carolina 28480, together with the right to use, jointly with Lessor, the first floor group bathrooms adjacent to such classrooms, ingress and egress to and from such classrooms and the right to use three (3) of Lessor's parking spaces adjacent to such classrooms. Lessee acknowledges that it has inspected the Leased Space and accepts the Leased Space "as is". Other than the Leased Space, Lessee shall have no right to use any portion of Lessor's property.
2. **TERM.** The term of this Lease shall be from June 15, 2013 through June 15, 2014. However, and Lessee has the right and option, in its sole discretion, to terminate this Lease for its convenience upon 90 days written notice to Lessor and in such event Lessee shall not be liable to Lessor for any costs, expenses or damages arising out of such termination for convenience. The beginning date of the lease term shall be extended to the date zoning approval for this lease is obtained from the Town of Wrightsville Beach, in the event it is not obtained by June 15, 2013. Lessee shall use reasonable efforts to obtain such approval in an expeditious manner. This lease is contingent on Lessee obtaining such zoning approval. Lessee shall have the option to renew this Lease on the same terms and conditions except for the rent, for three additional one year terms provided it is not in breach of this Lease beyond any applicable cure period as specified in paragraph 15 of this Lease. In order to exercise its option to renew, Lessee must provide Lessor written notice that it is exercising its option no less than sixty (60) days prior to the end of the Lease term in effect at the time the notice is given. Renewals are contingent upon Lessee receiving zoning approval for the Lease for the renewal year from the Town of Wrightsville Beach.
3. **USE OF LEASED SPACE.** The Leased Space shall be used by Lessee solely in connection with the instruction of students enrolled in Wrightsville Beach Elementary School, the preparation for such instruction by Lessee's staff, parent/teacher conferences and for no more than two "Open Houses" for parents to meet the teachers and view the classroom space. Lessee shall have use of the Leased Space only on the days and times as follows:

- a. Mondays through Fridays, when Lessee's staff works, from 6:30 am until 7:00 pm, except that on Wednesdays Lessee's use shall end at 5:30 pm, and
- b. Saturdays from 6:30 am to 7:00 pm, if designated by the Lessee as make-up instructional days due to inclement weather or other emergency school cancellations.

Under no circumstances shall Lessee have possession of the Leased Space on Sundays, or at times of day not specified above, except that Lessee and Lessee's students may leave their instructional materials, personal belongings and equipment in the classrooms, throughout the term of this Lease.

4. **RENT AND SECURITY DEPOSIT.** As consideration for entering into this Lease, Lessee agrees to pay to Lessor rent in the amount of \$2,244 per month due on the first of each month. Payments for any partial months shall be prorated. If Lessee exercises its option to renew for a second year, the rent shall increase to \$2,288.88 per month for the second year. If Lessee exercises its option to renew for a third year, the rent shall increase to \$2,334.66 per month for the third year. If Lessee exercises its option to renew for a fourth year, the rent shall increase to \$2,381.35 per month for the fourth year. In determining which years are the second, third and fourth years of this Lease, the lease term ending June 15, 2014 shall be considered the first year even though Lessee leased the Leased Space from Lessor under a prior lease which ended (or will end) on June 14th, 2013. Prior to the commencement of this Lease, Lessee shall deposit with Lessor the sum of \$2,200.00 as a security deposit. Lessor acknowledges that Lessee has deposited a Security Deposit in the amount of \$2,200 with Lessor in October, 2012 and that no additional Security Deposit shall be required. Such deposit shall be held by Lessor and returned in full to Lessee within 30 days of the termination of this Lease, except that Lessor may deduct from such deposit any damages caused by Lessee's breach of this Lease. Lessor also retains all other remedies against Lessee in the event of a breach by Lessee. Lessor shall provide to Lessee an accounting of any portion of such deposit withheld by Lessor along with applicable receipts and estimates for Lessor's damages.
5. **CARE, MAINTENANCE AND REPAIR.** The Lessor will be responsible for all maintenance and repairs of the Leased Space including but not limited to all HVAC, electrical, structural and plumbing repairs, except those repairs occasioned by Lessee's intentional acts, negligence or misuse or the intentional acts or negligence of Lessee's employees or students. Lessee will be responsible for the daily custodial cleaning of the leased classrooms and jointly used restrooms including but not limited to dusting, mopping, sweeping, vacuuming and trash removal.
6. **DISPLAY OF RELIGIOUS SYMBOLS OR MATERIALS AND RELIGIOUS COMMUNICATIONS.** Because Lessee is a public school system it must comply with the requirements of the "free exercise of religion" and the "establishment of religion" clauses of the U. S. Constitution. Thus, Lessee is entitled to temporarily relocate or cover all religious symbols or materials located in the Leased Space and Lessee will replace or uncover such items at the termination of this Lease. No member, employee or agent of Lessor shall communicate with Lessee's students or staff about religious issues or distribute or attempt to distribute any religious items or materials to Lessee's students or staff within the Leased Space while Lessee is using such Leased Space. Nothing in this Lease will prevent any religious distribution or communication with Lessee's staff or students who choose to enter the Leased Space or

Lessor's sanctuary or other property on their own personal time. Notwithstanding the restrictions on religious symbols and materials within the Leased Space, Lessee acknowledges that Lessor is a church and accepts the fact that the remainder of the building is used accordingly.

7. **ALTERATIONS.** No alterations to the Leased Space may be made by Lessee without the written consent of Lessor. No structural alterations are permitted. Consent for cosmetic alterations shall not be unreasonably withheld.

8. **UTILITIES.** Lessor shall pay for all utilities, including but not limited to, garbage, gas, heating fuel, electricity, alarm, water and sewer. Lessor shall ensure that the classrooms leased are climate controlled so that the air conditioning will maintain a maximum temperature of 76 degrees Fahrenheit and the heating system will maintain a minimum temperature of 72 degrees Fahrenheit. Lessee shall have the right to control the temperature settings in the classrooms used by Lessee if they have separate thermostats from the rest of Lessor's adjoining structure.

9. **HOLD HARMLESS.** Lessee shall hold harmless, defend and indemnify Lessor from and against any liability, claim, action, cost, damage or loss, for injury, including but not limited to death to any person, or damage to any property, including the Leased Space, arising out of Lessee's activities under this Lease, but excluding liability due to the sole negligence or sole willful misconduct of Lessor or of those for which Lessor is legally responsible.

10. **LIABILITY COVERAGE.** With respect to this Lease, Lessee shall maintain during the lease term, liability coverage as described below:
 - a. Workers' compensation insurance with limits of \$1,000,000.00 or more with an insurance carrier licensed to do business in the State of North Carolina.
 - b. General Liability coverage through the North Carolina School Board's Trust in an amount no less than \$1,000,000.00.

11. **FIRE AND CONTENTS INSURANCE.** Lessor shall maintain fire and casualty insurance on the Leased Space throughout the term of this Lease. Lessee shall maintain adequate casualty insurance to cover any personal property it brings onto the Leased Space.

12. **DESTRUCTION OF LEASED SPACE.** In the event of destruction of the Leased Space or a substantial part of the Leased Space, through no fault of Lessee, Lessee shall be entitled, at its election, to terminate the Lease without any liability to Lessor other than to pay rent prorated through the date of termination. In the event of damage or destruction of all or part of the Leased Space so as to make it unusable for its intended purpose, Lessor shall use reasonable efforts to repair or replace the damage from available insurance proceeds but shall not otherwise be liable to Lessee for any costs, expenses or damages, including a replacement Leased Space.

13. **ASSIGNMENT AND SUBLETTING.** This Lease, or any interest of Lessee therein, shall not be assignable by Lessee or by operation of law without the written consent of Lessor. This Lease or any interest therein may not be sublet without the written consent of Lessor. Any

attempt to so assign or sublet without Lessor's prior written consent shall be null and void.

14. **ABANDONMENT BY LESSEE.** Should Lessee breach this Lease and abandon Leased Space prior to the natural expiration of the term of this Lease, such abandonment shall be considered a Default of Lessee.
15. **LESSOR'S REMEDIES ON DEFAULT.** If Lessee defaults in the performance of any of the other covenants or conditions of this Lease, Lessor may terminate this Lease by written notice; however, before terminating this Lease, Lessor shall give Lessee written notice of such default and if Lessee does not cure any such default within thirty (30) days, after the giving of such notice, or if such default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such thirty (30) days and thereafter proceed with reasonable diligence and in good faith to cure such default, then Lessor may terminate this Lease. On the date properly specified in the notice, the term of this Lease shall terminate and Lessee shall then quit and surrender the Leased Space to Lessor, but Lessee shall remain liable as provided below and for damages as allowed by law. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Leased Space by any lawful means and remove Lessee or other occupants and their effects.
16. **QUIET ENJOYMENT AND PERMITTED USE.** Lessor warrants that Lessee, so long as no default has occurred and is then continuing under this Lease, shall have peaceful possession and quiet enjoyment of the Leased Space during the term of this Lease, subject to the limitations on such use and Lessor's right to joint use of part of the Leased Space as set forth in paragraphs 1 and 3 above. .
17. **COMPLIANCE WITH LAW.** Lessee shall not use the Leased Space or permit anything to be done in or about the Leased Space which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Lessee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force.
18. **SEVERABILITY.** The invalidity or illegality of any provision shall not affect the remainder of the Lease.
19. **NOTICE.** As used in this Lease, notice includes but is not limited to the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment. All notices must be in writing. Notice is considered given either (a) when delivered in person to the recipient named as below, or (b) three business days from when deposited in the United States Mail in a sealed envelope or container, postage and postal charges prepaid, certified mail return receipt requested, and addressed to the party or person intended as follows:
 - a. **Notice to Lessee:** Assistant Superintendent, Operations
New Hanover County Schools
6410 Carolina Beach Road
Wilmington, NC 28412

b. **Notice to Lessor:** Rev. Keith Louthan, Pastor
Wrightsville Beach Baptist Church
601 Causeway Drive
Wrightsville Beach, North Carolina 28480

20. **SUCCESSORS IN INTEREST.** The provisions and conditions of this Lease shall extend to and bind the permitted assignees or transferees under said Lease, and shall also extend to and bind successors in interest of the parties hereto.
21. **HOLDING OVER.** If Lessee, with Lessor's consent, remains in possession of the Leased Space after expiration or termination of the term or any renewal term, or after the date in any notice given by Lessor to Lessee terminating this Lease, such possession by Lessee shall be deemed to be a month-to-month tenancy terminable on thirty (30) days notice given at any time by either party. All provisions of this Lease, except those pertaining to term and option to extend shall apply to the month-to-month tenancy.
22. **AMERICANS WITH DISABILITIES ACT (ADA).** It is acknowledged that Leased Space, at time of original occupancy by Lessee, was in compliance with the Americans with Disabilities Act ("ADA"). Lessor is responsible for compliance with the ADA, its supporting regulations, and all similar Federal, state or local laws, regulations and ordinances relating to removal of barriers within the workplace, i.e. arrangement of interior furnishings and access within the Leased Space.
23. **CONDITION AT TERMINATION.** During the term of this Lease, Lessee shall at all times maintain the Leased Space in a good, clean and safe condition except where Lessor has such duty as specified elsewhere in this Lease. Upon the expiration of the term of this Lease and any renewals thereof or upon the sooner termination thereof, Lessee shall surrender to Lessor possession of the Leased Space. Lessee shall leave the Leased Space in as good order and condition as said Leased Space were in at the beginning of the term of this Lease, ordinary wear and tear thereof excepted.
24. **MISCELLANEOUS.**
- A. No failure of the parties to exercise any power given to them hereunder or to insist upon strict compliance by the other of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of the parties' right to demand exact compliance with the terms hereof. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law.
- B. This Lease constitutes the sole and entire agreement among the parties hereto and no modification of this Lease shall be binding unless in writing and signed by all parties hereto.
- C. Each signatory to this Lease represents and warrants that he or she has full authority to sign this Lease and such instruments as may be necessary to effectuate any transaction contemplated by this Lease on behalf of the party for whom he or she signs and that his or her signature binds such party.

- D. Upon request by either Lessor or Lessee, the parties hereto shall execute a short form lease (memorandum of lease) in recordable form, setting forth such provisions hereof (other than the amount of annual rental and other sums due) as either party may wish to incorporate. The cost of recording such memorandum of lease shall be borne by the party requesting execution of same.
- E. In the event of a breach of this Lease by either party, said breaching party shall be responsible for the reasonable attorney's fees, costs and litigation expenses arising out of such breach.
- F. This Lease shall be construed and any dispute arising hereunder shall be resolved in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed the day and year first above written.

NEW HANOVER COUNTY BOARD OF EDUCATION

By: _____

WRIGHTSVILLE BEACH BAPTIST CHURCH

By: _____