

FORSYTH COUNTY
BOARD OF COMMISSIONERS

BRIEFING
DRAFT

MEETING DATE: NOVEMBER 12, 2020 AGENDA ITEM NUMBER: 13

SUBJECT: RESOLUTION ACCEPTING THE HIGHEST OFFER TO PURCHASE A 30-ACRE PORTION OF COUNTY OWNED REAL PROPERTY BY NEGOTIATED OFFER, ADVERTISEMENT, AND UPSET BIDS PROCEDURE (4897 LANSING DRIVE)

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

ATTACHMENTS: YES NO

SIGNATURE: _____ DATE: _____
COUNTY MANAGER

**RESOLUTION ACCEPTING THE HIGHEST OFFER TO PURCHASE A 30-ACRE
PORTION OF COUNTY OWNED REAL PROPERTY BY NEGOTIATED OFFER,
ADVERTISEMENT, AND UPSET BIDS PROCEDURE
(4897 LANSING DRIVE)**

WHEREAS Forsyth County currently owns real property located at 4897 Lansing Drive, Winston-Salem, N.C., further identified as Block 3191, Lot 105, Parcel Identification Number 6847-05-4421.00, for which the County has no use for and wishes to sell to the highest bidder;

WHEREAS on August 19, 2020, Forsyth County received an offer in the amount of \$1,551,059 from Front Street-Garner, LLC, to purchase a 30-acre portion of the above-described real property, subject to advertisement and increased/upset bids;

WHEREAS upon sale of the property, Front Street-Garner, LLC, would lease back to Forsyth County a portion of the property for use by Winston-Salem/Forsyth County Schools for continued use of its maintenance facilities for a period of at least 2 years following Front Street's occupancy of its Phase 1 facility;

WHEREAS by Resolution Authorizing Publication of an Offer to Purchase County Owned Real Property by Negotiated Offer, Advertisement, and Upset Bids Procedure adopted by the Forsyth County Board of Commissioners at its October 8, 2020, meeting, a Notice of Offer to Purchase Real Property Owned by Forsyth County and Request for Increased/Upset Bids was advertised as required by N.C.G.S. 160A-269 relating to the above-described property;

WHEREAS after due advertisement of said offer, no upset bids have been received within the time allowed by law; and

WHEREAS County staff recommends that the Forsyth County Board of Commissioners accept the original offer and sell the said property to Front Street-Garner, LLC, for \$1,551,059;

NOW, THEREFORE, BE IT RESOLVED, that the Forsyth County Board of Commissioners hereby accepts the offer of the highest bidder, Front Street-Garner, LLC, in the amount of \$1,551,059, to purchase a 30-acre portion of the above-described County owned real property; and

BE IT FURTHER RESOLVED, that the Chairman or County Manager and Clerk to the Board are hereby authorized to execute any necessary documents and collect the balance of the purchase price to complete the sale of the above-described property, consistent with the terms outlined in the advertisement and Contract to Purchase, subject to a pre-audit certificate by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

Adopted this the 12th day of November 2020.

**NOTICE OF OFFER
TO PURCHASE REAL PROPERTY
OWNED BY FORSYTH COUNTY
AND REQUEST FOR INCREASED/UPSET BIDS**

Forsyth County hereby publishes notice, pursuant to the provisions of N.C.G.S. 160A-269, of an offer from Front Street-Garner, LLC, in the amount of One Million Five Hundred Fifty One Thousand Fifty Nine and 00/100 dollars (\$1,551,059.00) to purchase real property owned by Forsyth County located at 4897 Lansing Drive, Winston-Salem, N.C. and further identified as Parcel Identification Number 6847-05-4421. Front Street-Garner, LLC has deposited five percent (5%) of the bid with the Clerk to the Board.

The terms of the said offer to purchase are cash payment at closing in the full amount of the offer. Notice is hereby given that within ten (10) days of the date of publication of this notice, any person may raise the bid by not less than ten percent (10%) of the first one thousand dollars (\$1,000) and five percent (5%) of the remainder. Any qualifying increased/upset bidder will be required to deposit with the Clerk to the Board five percent (5%) of the total increased bid and the Clerk shall re-advertise the offer at the increased bid amount. This procedure will be repeated until no further qualifying upset bids are received, at which time the Forsyth County Board of Commissioners may accept the final offer and sell the above-described property to the highest bidder.

The Forsyth County Board of Commissioners may at any time reject any and all offers.

This 13th day of October 2020.

FORSYTH COUNTY BOARD OF COMMISSIONERS
Ashleigh M. Sloop, Clerk

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made and entered into effective as of the ____ day of November, 2020 (the “**Effective Date**”), by and between **FRONT STREET – GARNER, LLC**, a North Carolina limited liability company, its permitted successors and/or assigns (the “**Buyer**”) and **FORSYTH COUNTY**, a political subdivision of North Carolina (the “**Seller**”) (Seller and Buyer are hereinafter collectively referred to as the “**Parties**”).

WITNESSETH:

WHEREAS, Seller is the owner of those certain parcels of real property being that approximately 31 acres, more or less, parcel described as a portion of Parcel ID 6847-05-4421.000 with an address of 4897 Lansing Drive, Winston-Salem, Forsyth County, North Carolina, together with all improvements and appurtenances thereon, the boundary of which will be determined by an agreed upon boundary description generally conforming to the area shown on **Exhibit A** attached hereto and incorporated herein by reference (the “**Land**”), together with the following: (i) all building pads, improvements and fixtures located on the Land, including without limitation all buildings and other structures on the Land, all parking lots, walkways and other paved areas on the Land, any and all landscaping on the Land (collectively, the “**Improvements**”); (ii) all oil, gas, water, mineral rights and water rights which affects the Land; (iii) all easements, rights of way and any and all other appurtenances, rights and privileges benefiting or appurtenant to the Land, including any interest in rights of way of roads fronting to the Land; ; and (iv) all permits, plans, specifications, and certificates of occupancy related to Land (all the aforementioned collectively the “**Property**”).

WHEREAS, Buyer desires to purchase the Property from Seller, and Seller desires to sell the Property to Buyer, on the terms and conditions set forth hereinafter.

NOW THEREFORE, the Parties do hereby agree as follows:

1. Sale of the Property. Seller agrees to quitclaim all of Seller’s rights, title, and interest in the Property to Buyer, and Buyer agrees to purchase and accept the Property from Seller, for the price and on the terms and conditions set forth herein. It is intended that the Property include all property rights of Seller to the Property, all Improvements and other property rights, all of which are included within the meaning of “Property” as that term is used herein. The Land is part of a larger parcel owned by the Seller and must be subdivided from the parent parcel prior to Closing (as hereinafter defined), via a subdivision plat prepared by Buyer and acceptable to both Buyer and Seller as set forth herein (the “**Subdivision**”). The Buyer agrees to accept this Property in its present state, ‘as-is’, and without warranty. Buyer acknowledges that the Purchase Price of the Property is reflective of environmental conditions at the Property, known or unknown. Seller makes no representations as to the Property, express or implied.

2. Purchase Price; Earnest Money.

2.1. Purchase Price. The total purchase price for the Property (the “**Purchase Price**”) will One Million Five Hundred Fifty-One Thousand Fifty-Nine Dollars and 00/100 (\$1,551,059.00) payable by Buyer to Seller at the Closing. Payment of the Purchase Price shall be by wire transfer, certified or bank cashier’s check, attorney’s trust account check or other mutually acceptable transfer. The total amount of the cash to closing, which shall be the Purchase Price less the Deposit, is \$1,473,506, plus other expenses taxed to Buyer.

2.2. Deposit. As required by **GS 160A-269**, Buyer has previously deposited with the Seller, as part of the competitive bidding process for sale the Property, a deposit in the amount of Seventy-Seven Thousand Five Hundred Fifty-Three Dollars and 00/100 (\$77,553.00) (the “**Deposit**”). The Deposit will be applied to the Purchase Price at Closing.

3. **Closing.** The consummation of the transaction contemplated by this Agreement with respect to the Property (the “**Closing**”) shall take place on or before the later of thirty (30) days after the earlier of the expiration of the Inspection Period (as defined herein) (the “**Closing Date**”), and shall be conducted at the office of Buyer’s counsel, or such other place as is mutually agreeable to Buyer and Seller.

4. **Due Diligence; Title and Survey.**

4.1. **Due Diligence.**

(a) For a period that expires at 11:59 Eastern Time on the date that is sixty (60) days after the Effective Date, or on the date that is the next business day thereafter if such date falls on a Saturday, Sunday, or federal holiday (the “**Inspection Period**”), Buyer shall have the right to determine, in Buyer’s sole discretion, whether Buyer’s proposed purchase and use of the Property is acceptable to the Buyer. During such time, Buyer shall also be entitled (i) to examine title and the survey of the Property, (ii) to conduct such other investigation and testing on, about or related to the Property as Buyer shall reasonably determine, including without limitation, a Phase I environmental site assessment or other additional environmental assessments or geotechnical testing, and (iii) to physically inspect and review the Property, which investigation shall be of such scope as Buyer shall determine. Notwithstanding the foregoing, Buyer may access the Property only with the prior written consent of Seller, which such consent may be given by email. At any point during the Inspection Period, Buyer may waive in writing its contingencies and the remaining Inspection Period and, with the written consent of Seller, proceed to Closing prior to the Closing Date (“**Expedite Closing**”). In the event that Buyer opts to Expedite Closing, Seller shall have sixty (60) days from the end of the Inspection Period to remove vehicles, personal property, and equipment (except as permitted by the Lease) from the Land.

(b) Seller shall in good faith cooperate with Buyer in facilitating Buyer’s investigation of the Property. Seller shall provide Buyer and its agents, employees or consultants with reasonable access to the Property to inspect each and every part thereof and allow Buyer and its agents or consultants, provided that Buyer, its agents, employees and consultants must receive Seller’s prior written consent before entering the Property. Seller shall make reasonable efforts to produce, within a reasonable period of time, documents requested by the Buyer, to the extent such documents are known and in the possession of Seller. Nothing herein shall be construed to imply any warranty by Seller or relieve Buyer of notice of any instrument in the public record.

(c) Buyer will indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyer and Buyer’s agents and contractors relating to the Property . This repair obligation and indemnity shall survive this Contract and any termination hereof. Buyer and Buyer’s agents entering the Property shall maintain in effect throughout the term of this Agreement comprehensive general liability insurance with bodily injury and property damage coverage of at least One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, naming Seller as an additional insured, and including a waiver of any right of subrogation against Seller. Buyer and Buyer’s agents shall maintain workers’ compensation insurance with North Carolina statutory limits. The employers’ liability limits shall be no less than \$1,000,000. Buyer shall provide Seller with a certificate of insurance evidencing Buyer and Buyer’s agents compliance with the insurance requirements set forth herein. Additional insurance may be required of Buyer’s agents depending on the scope of work being performed.

(d) If Buyer determines, in its sole discretion, for any reason or no reason, that the Property is unsuitable for its purposes or that Buyer’s proposed acquisition and operation of the Property is not economical or otherwise feasible or if Buyer’s proposed tenant decides not to lease the Property, then Buyer shall have the right to

terminate this Agreement by delivery of written notice to Seller at its address set forth herein prior to the expiration of Inspection Period. The Deposit shall not be refunded unless Buyer breached this Agreement.

(e) [Omitted]

4.2. Buyer's Obligations. Buyer shall, prior to the expiration of the Inspection Period, obtain a Survey, Boundary Description, Subdivision Plat, and Required Approvals as set forth herein.

(a) Buyer shall obtain a new survey (the "Survey") and boundary description of the Property which shall show the boundary of the property ("Boundary Description") and such other items as Buyer shall in good faith determine to be necessary. The Boundary Description shall substantially conform to the Property Description in Exhibit A. Seller shall have fifteen (15) days to review the Survey and object thereto, provided that if Seller and Buyer are not able to agree on a boundary description or other matters set forth in the Survey in good faith within 15 days from the date that Seller informs Buyer of an objection, this Agreement shall terminate and neither Party shall have further obligations hereunder, except as may be specifically set provided in this Agreement.

(b) Buyer shall take all steps necessary to subdivide the Property and shall prepare a Subdivision Plat. Prior to filing the subdivision plat, Seller shall have fifteen (15) days to review a proposed Subdivision plat and object thereto. If Seller and Buyer are not able to agree on a boundary description or other matters set forth in the Subdivision Plat in good faith within 15 days from the date that Seller informs Buyer of an objection, this Agreement shall terminate and neither Party shall have further obligations hereunder, except as may be specifically set provided in this Agreement.

(c) Buyer shall secure all required releases and approvals ("Required Approvals") necessary to allow for the sale of this property, including all releases and approvals required from the North Carolina Department of Transportation and the Federal Aviation Administration. Without limitation, Buyer acknowledges that, as a condition precedent to Closing, it must receive the following Required Approvals: NC Division of Aviation and FAA Land Release Process. Seller acknowledges that Buyer may be required to submit a remediation plan relating to fuel tanks on the Property to State and Federal Agencies in order to secure a required approval. Buyer shall release, indemnify, and agree to hold harmless the County from costs arising from the fuel tanks or related to remediation, mitigation, or removal of the fuel tanks or other environmental conditions on the property, without regard to whether the remediation is necessary as a result of Seller's negligence, and this release, indemnification, and hold harmless shall survive the termination of this Agreement or the failure to close on the purchase of the Property set forth herein. The Inspection Period may be extended by mutual agreement in writing by both Parties for the limited purpose of securing the Required Approvals, but may not be extended beyond December 31, 2021.

4.3. Title to the Property.

At Closing, Seller shall deliver to Buyer a quitclaim deed (the "Deed") for the Property in form and content set forth as **Exhibit B** conveying to Buyer all of Seller's right, title, and interest in and to the Property

5. Seller Lease. Seller desires to continue to lease a portion of the Property, as shown on **Exhibit C** attached hereto and incorporated herein by reference (the "Lease Property"), to continue the storage and

maintenance of Winston-Salem Forsyth County School System's school buses and vehicles and related office space on the Lease Property after Closing for a period not to exceed two (2) years from issuance of Buyer's certificate of occupancy for the first phase of its development of the Property. Buyer agrees to lease the Lease Property back to the Seller pursuant to a lease for the purpose set forth above, the form of which is attached hereto as **Exhibit D** (the "Lease").

6. Option. At Closing, Buyer shall grant to Seller a Contingent Option ("**Option**") to purchase the Property back from Buyer at 100% of the then fair market value of the Property (based on an appraisal from a commercial appraiser mutually acceptable to Buyer and Seller), if during the first ten (10) years after Closing, (i) the Buyer ever offers the Property for sale, other than a sale to its affiliate, provided that said sale is made subject to this Option, or (ii) the buildings constructed on the Property are abandoned or vacated for a period exceeding a full year following completion of construction and the third party lease affecting the Property is terminated. This Option shall be included as a deed restriction on the Deed.

7. Deliveries At Closing.

7.1. Seller's Deliveries at Closing. Seller shall deliver to Buyer or Title Company the following documents executed by the Buyer:

- (a) The Deed and Option;
- (b) Evidence reasonably satisfactory to Buyer and Title Company of the authority of Seller or anyone executing documents on behalf of Seller to consummate the transactions contemplated herein;
- (c) A certificate stating that Seller's representations and warranties set forth herein are true and correct as of the Closing Date;
- (d) An owner's affidavit or lien waiver form as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens for a period of one hundred and twenty (120) days;
- (e) A general assignment conveying any personalty agreed to between Buyer and Seller, in its "as-is, where is" condition at time of Closing and assigning to Buyer any intangible property rights related to the Property; and
- (f) The Lease approved by both Buyer and Seller;
- (g) Any other documents as may reasonably be agreed between the parties.

7.2. Buyer's Deliveries at Closing. At the Closing, Buyer shall deliver to Seller:

- (a) The Purchase Price less the Deposit;
- (b) A Closing Statement;
- (c) Proof of all Required Approvals;
- (d) Any other documents as may reasonably be agreed between the parties.

8. **Closing Expenses and Costs.**

8.1. **Buyer's Costs.** Buyer shall pay the following:

(a) The Deed recording fee and recording fees incidental to Buyer's title and financing of the Property; (b) the costs of obtaining the Survey, the Commitment and title policy and other due diligence reports of Buyer; (b) All taxes and assessments; (c) closing fees charged by the Title Company; and (d) any costs related to Buyer's financing of its purchase of the Property.

8.2. **Other Expenses.** Except as set forth herein, each party shall bear its own expenses.

9. **FAA Approval.** Based on FAA requirements for the sale of airport property, Buyer shall obtain approval from the Federal Aviation Administration with respect to the Intended Use and development of the Property. Buyer and Seller will work in good faith to secure all necessary approvals from the Federal Aviation Administration, provided that Buyer shall be responsible for securing all regulatory approvals from the Federal Aviation Administration and the North Carolina Department of Transportation.

10. **Assignment.** Buyer may assign the Agreement at any time, in whole or in part, to an affiliated entity to which the Buyer or its principals have a controlling ownership interest in or to the TW Garner Food Company, the Buyer's proposed tenant for the Property, with the prior written consent of Seller, not to be unreasonably withheld. Buyer may not otherwise assign this Agreement without the prior written consent of Seller. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Buyer and Seller and their respective legal representatives, successors and assigns.

11. **Representations and Warranties of Seller.** Seller hereby makes the following representations and warranties to Buyer to the best of Seller's knowledge, all of which shall be true and correct as of the date hereof and as of the Closing Date:

(a) **No Proceedings or Actions.** There are no pending or, to the best of Seller's knowledge, threatened actions or governmental proceedings concerning condemnation, eminent domain, zoning change, rent control, environmental proceedings, to which Seller or the Property is subject.

(b) **No Interest in Property.** Following the Effective Date, Seller shall not enter into any new leases, licenses, option agreements or other agreements to sell (oral or written) with respect to any of the Property and shall terminate all other leases, licenses or other agreements related to the occupancy of the Property, except for the Lease and the Option set forth in this Agreement.

(c) **Seller Authorizations.** Seller is a political subdivision of the State of North Carolina with the authority to do business in the State in which the Property is located. Seller owns the Property and has full power and authority to execute and deliver this Agreement and the documents contemplated hereby and to consummate the transactions contemplated hereby. Seller's performance of this Agreement and the transactions contemplated hereby have been duly authorized by all requisite action on the part of Seller and the individuals executing this Agreement and the documents contemplated hereby on behalf of Seller have full power and authority to legally bind Seller.

(d) **Suits, Actions, Etc.** There are no suits, actions or arbitrations, or legal, administrative, or other proceedings or governmental investigations, formal or informal, pending or, to the best of Seller's knowledge, threatened, which relate to the Property, or which would limit or restrict in any way Seller's right or ability to enter into this Agreement and consummate the transactions described herein.

(e) **No Conflict.** This Agreement has been duly and properly executed on behalf of Seller, and neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will result in a default (or an event that, with notice or the passage of time or both, would constitute a default) under, a violation or breach of, a conflict with, a right of termination of, or an agreement affecting the Seller or acceleration of indebtedness to which Seller is a party or by which Seller or Seller's property, including without limitation any of the Property, is bound.

(f) **No Violations.** To the best of Seller's knowledge, there are no material violations of state or federal law, municipal or county ordinances, or other legal requirements with respect to the Property. Seller has received no notice (oral or written) that any municipality or governmental or quasi-governmental authority has determined that there are such violations. Notwithstanding the forgoing, Seller has disclosed the existence of storage tanks and underground storage tanks, and Buyer.

(g) **Mechanics and Materialmen.** On the Closing Date, Seller will not be indebted to any contractor, laborer, mechanic, materialmen, architect or engineer for work, labor or services rendered on, or for materials furnished to, in connection with the Property for which any person could claim a lien against the Property and no labor or services have rendered on, or for materials furnished to the Property within one hundred eighty (180) days prior to the Closing Date unless such work has been fully paid for by the Seller and all necessary lien waivers are received at Closing.

(h) **Hazardous Materials.** Seller hereby discloses those matters identified in that certain Phase I and Phase II Environmental Assessments by Pilot Environmental, Inc. (collectively, the "**Environmental Report**").

(i) .

12. **Environmental Clean-Up.** Buyer and Seller acknowledge and agree that some environmental remediation and clean-up will be required on the Property ("**Remediation**") as a result of the Seller's past operations and use of the Property as specifically set forth in the Environmental Report. Buyer has agreed to take title to the Property and perform the necessary Remediation pursuant to the remediation plan as set forth in that certain Proposal for Environmental Services prepared by Pilot Environmental, Inc. dated August 14, 2020. Buyer shall be solely responsible to perform the Remediation on the Property and hereby releases, agrees to hold harmless and indemnify Seller from any liability, costs or damages arising from the Remediation. Seller acknowledges that Buyer may be required to submit a remediation plan relating to fuel tanks on the Property to State and Federal Agencies in order to secure a required approval. Buyer shall release, indemnify, and agree to hold harmless the County from costs arising from the fuel tanks or related to remediation, mitigation, or removal of the fuel tanks, without regard to whether the remediation is necessary as a result of Seller's negligence, and this release, indemnification, and hold harmless shall survive the termination of this Agreement or the failure to close on the purchase of the Property set forth herein.

13. **Covenants and Interim Responsibilities of Seller.** Seller agrees that during the period between the Effective Date and the Closing Date:

(a) Seller will manage or cause to be managed the Property and shall not undertake any substantial changes to the Property, except as contemplated herein, and will insure all risks with respect thereto under policies and procedures substantially similar to those existing immediately prior to the Effective Date;

(b) As and when Seller receives or discovers any material action, information or documentation required to be delivered to Buyer under this Agreement, it will deliver same to Buyer within three (3) business days of receipt;

(c) Seller shall not further encumber the Property or any part thereof, or transfer or agree to transfer any interest therein (or permit the encumbrance, conveyance, or transfer thereof), and Seller shall not make, renew or enter into any lease or other agreement for the use, occupancy or possession of all or any part of the Property without Buyer's written consent;

(d) Seller shall not enter into any agreement which may bind or obligate the Property (or any real property interest affected by the Property), Buyer or Buyer's successors and assigns; and

14. Reserved.

15. Brokerage Commissions. Each party hereto represents to the other that it has not contacted or entered into any agreement with any real estate broker or agent in connection with the purchase and sale of the Property and that it has not taken any action which might result in any real estate brokers, finders or commissions being due or payable in connection with this transaction.

16. Prorations.

17. Possession. Seller shall deliver complete and exclusive possession of the Property (free of all tenancies and occupants, except for use as a vehicle maintenance and storage and office space area as set forth in the Lease) to Buyer at Closing, subject only to the Permitted Exceptions and the Lease. Permitted Exceptions shall include the continued use for vehicle maintenance, storage, and office space as set forth in the Lease.

18. Risk of Loss. All risk of loss with respect to the Property shall remain with Seller until the Closing occurs. Seller agrees to give Buyer prompt notice of any fire or other casualty affecting the Property between the date hereof and the Closing Date. If, prior to the Closing Date, there shall occur damage to the Property caused by fire or other casualty then Buyer may at its option terminate this Agreement by written notice to Seller. If Buyer does not elect to terminate this Agreement Buyer shall purchase the Property subject to such damage.

19. Condemnation. In the event that condemnation or eminent domain proceedings (or condemnation or eminent domain negotiations between Seller and any authority having the right of eminent domain) affecting all or any part of the Property are initiated prior to the Closing Date, whether for a temporary or a permanent condemnation or eminent domain, Buyer may, at its option, (a) terminate this Agreement by notifying Seller in writing, in which case the Deposit shall be returned to Buyer; or (b) elect to consummate the transaction provided for herein, in which event Seller shall, at the Closing, assign to Buyer all of its right, title and interest in and to any award or other benefits made or to be made in connection with such condemnation or eminent domain proceeding. In the event Buyer elects to consummate the transactions provided for herein, Buyer shall be entitled to participate with Seller in all negotiations and dealings with the condemning authority in respect of such matter; provided, however, that Buyer shall have the right to finally approve any agreement with the condemning authority. Seller shall give Buyer immediate written notice in the event that any authority having the right of eminent domain shall commence negotiations with Seller, or commence legal action for temporary or permanent taking or acquiring of all or any part of the Property.

20. Termination, Default and Remedies.

20.1. Permitted Termination. If this Agreement is terminated by Buyer as a result of a Default by Seller or pursuant to any other right given it to do so hereunder (herein referred to as a “**Permitted Termination**”) this Agreement shall thereafter be null and void, except those provisions relating to remediation of the matters identified in the Phase I and Phase II environmental reports, and the Parties shall have no further obligations hereunder except those which expressly survive the termination of this Agreement.

20.2. Default by Seller.

(a) Seller shall be in default hereunder if any of Seller’s warranties or representations set forth herein are untrue or inaccurate in any material respect when made or at the Closing, or if Seller shall fail or refuse to meet, comply with or perform any covenant, agreement, or obligation within the time limits and in the manner required under this Agreement.

(b) In the event of a default by Seller hereunder, Buyer’s sole and exclusive remedy shall be to terminate this agreement and receive the Deposit.

20.3. Default by Buyer. Buyer shall be in default hereunder if Buyer shall fail to deliver at the Closing any of the items required of Buyer, for any reason other than a default by Seller hereunder or a Permitted Termination, or if Buyer fails to fulfill any obligations imposed upon Buyer by this Agreement. If Buyer is in default hereunder, Seller shall be entitled to terminate this Agreement by notice to Buyer and receive from the retain the Deposit, previously paid, and all interest earned. Notwithstanding anything to the contrary herein, Buyer shall be liable for any damages to the Property, including but not limited to any damages related to its remediation efforts.

21. Miscellaneous.

(a) **Notices.** All notices, demands, requests, consents, approvals or other communications (the “**Notices**”) required or permitted to be given by this Agreement shall be in writing and shall be either personally delivered, or sent via electronic mail (email), Federal Express or other regularly scheduled overnight courier or sent by United States mail, registered or certified with return receipt requested, properly addressed and with the full postage prepaid. Said Notices shall be deemed received and effective on the earlier of (i) the date actually received (which, in the case of Notices sent by electronic mail shall be deemed to be the date and time such email is sent, or if overnight courier, shall be deemed to be the day following delivery of such Notices to such overnight courier), or (ii) three (3) business days after being placed in the United States Mail as aforesaid. Said Notices shall be sent to the parties hereto at the following addresses, unless otherwise notified in writing:

Buyer: Front Street – Garner, LLC
450 N Patterson Ave, Suite 300
Winston-Salem, NC 27101
Attn: Coleman Team
Email: coleman@frontstreetcapitalnc.com

With a copy to: _____
(which shall not _____
constitute notice) _____
Attn: _____
Email: _____

Seller: Forsyth County

201 N. Chestnut Street____
Winston-Salem NC 27101
Attn: Kirby Robinson
Email: _____robinskj@forsyth.cc

With a copy to: _____
(which shall not _____
constitute notice) _____
Email: _____

(b) **Attorneys' Fees, Entire Agreement; Amendment.** This Agreement, together with all exhibits hereto and documents referred to herein, if any, constitutes the entire understanding among the parties hereto, and supersedes any and all prior agreements, arrangements and understandings among the parties hereto. This Agreement may not be amended or modified, nor may any obligations hereunder be waived, except by a writing signed by the party to be charged.

(c) **Choice of Law.** This Agreement and each and every related document is to be governed by, and construed in accordance with, the laws of the State of North Carolina, provided that provisions related to conflicts of laws shall not apply. The States and Federal Court of Forsyth County shall be the exclusive venue for any dispute.

(d) **Successors.** Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, representatives, successors and permitted assigns of the parties hereto.

(e) **Waiver.** No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be made against any party hereto except on the basis of a written instrument executed by or on behalf of such party. However, the party for whose unilateral benefit a condition is herein inserted shall have the right to waive such condition provided such waiver is in writing.

(f) **Further Actions.** Buyer and Seller agree to execute such additional documents, and take such further actions, as may reasonably be required to carry out the provisions and intent of this Agreement.

(g) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument. This Agreement may be executed by the parties via facsimile.

(h) **Survival.** The representations, warranties and agreements set forth in this Agreement shall survive the Closing, and the same shall not be merged into the Deed or instruments of conveyance or any of the other documents or instruments executed or delivered at or after the time of Closing pursuant to or by any reason of this Agreement.

(i)

(j) **Rule of Construction.** Seller and Buyer have experience with the subject matter of this Agreement, have been represented by counsel and have each fully participated in the negotiation and drafting of this Agreement. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the drafter. The captions or paragraph headings are for the convenience and ease of reference only and shall not be construed to limit or alter the terms of this Agreement.

(k) **Dates.** If any date or deadline hereunder falls on a Saturday, Sunday, federal holiday, or a day on which the national banks in Winston-Salem, North Carolina are closed, the date or deadline shall be

postponed until the next business day which is not a Saturday, Sunday, federal holiday or other day on which the national banks in Winston-Salem, North Carolina are closed.

[REMAINDER OF PAGE BLANK. SIGNATURE PAGES FOLLOWS.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

BUYER:

FRONT STREET – GARNER, LLC,
a North Carolina limited liability company

By: _____
Name: A. Coleman Team
Its: Manager

SELLER:

FORSYTH COUNTY,
a North Carolina political subdivision

By: _____
Name: _____
Title: _____

EXHIBIT A

(Property)



EXHIBIT B
(Form of Deed)

Exhibit C
(Lease Property)

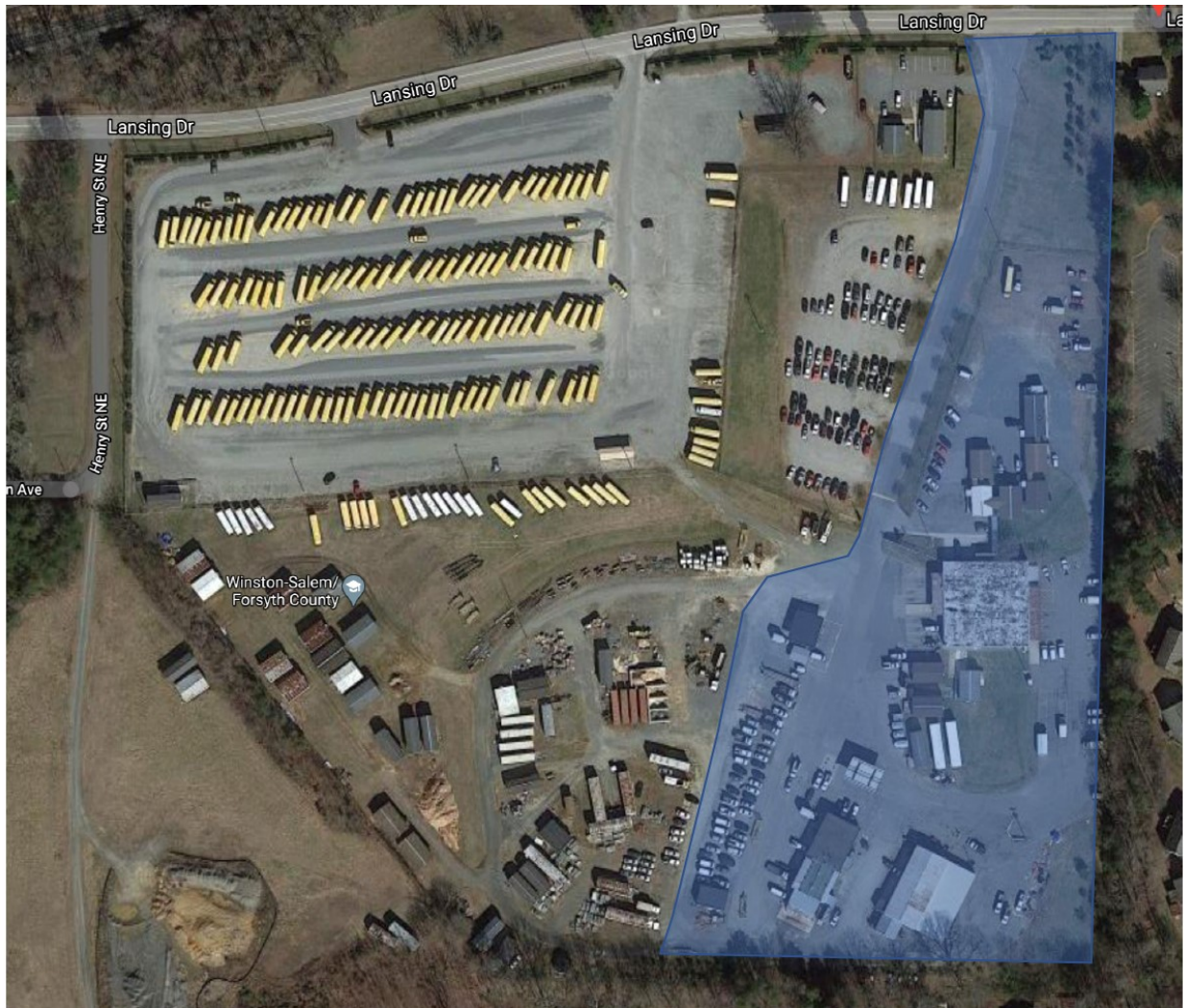


Exhibit D
(Form of Lease)

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into on this ___ day of _____, 2020 (the "Effective Date"), between **FRONT STREET - GARNER, LLC**, a North Carolina limited liability company ("Landlord") and **FORSYTH COUNTY**, a political subdivision of North Carolina ("Tenant").

WHEREAS, Landlord owns the real property located at 4897 Lansing Drive, Winston-Salem, North Carolina (the "Property") as shown on **Exhibit A**, attached hereto and incorporated herein by reference;

WHEREAS, Landlord has acquired the Property from Tenant, and Tenant desires to lease back from Landlord a portion of the Property, as shown on **Exhibit B**, attached hereto and incorporated herein by reference (the "Premises");

WHEREAS, the remaining portion of the Property (except for the Premises) (the "Adjacent Property") is to be occupied by TW Garner Food Company, a North Carolina corporation ("Garner"), and Landlord intends to develop buildings and improvements on the Adjacent Property for and on behalf of Garner (the "Garner Project"); and

WHEREAS, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I - PREMISES

1.1 Premises. Landlord, in consideration of the terms and conditions hereinafter contained, does hereby lease to Tenant, and Tenant does hereby lease from Landlord the land, the buildings and other improvements (the "Improvements") located at the Premises.

1.2 Condition of Premises. Prior to the date hereof, Tenant has occupied the entire Property (including without limitation the Premises and the Improvements), and therefore, Tenant accepts the Improvements and Premises in their "as is" condition as of the execution of this Lease with no representations or warranties whatsoever, including no warranty for merchantability or fitness for particular purpose. Tenant acknowledges that neither Landlord, any employee of Landlord, Landlord's property manager, nor any agent of Landlord has made any representation as to the condition of the Premises or the suitability of the Premises for Tenant's intended use. The taking of possession of the Premises by Tenant shall be conclusive evidence that the Premises were in good and satisfactory condition and suitable for the use intended by Tenant at the time such possession was taken.

ARTICLE II - TERM/RENT

2.1 Term. This Lease shall commence on the Effective Date (the "Commencement Date") and shall continue for a period of two (2) years following the issuance of a temporary or final certificate of occupancy for the Garner Project (the "Term").

2.2 Rent. Tenant shall not be required to pay to Landlord a base rent amount during the term of the Lease. Provided, however, as consideration for Landlord leasing the Premises to Tenant, Tenant

shall pay to Landlord its pro rata share of property taxes incurred by Landlord with respect to the Property, including without limitation ad valorem taxes, personal property taxes and any assessments against the Property. Tenant shall reimburse Landlord directly for its share of such property taxes and insurance, payable annually within thirty (30) days of Landlord's payment of the same. Tenant's payments under this agreement shall not exceed \$7,000 in any fiscal year during the Term. Landlord shall invoice Tenant monthly for expenses incurred during the preceding 30 days. The County shall pay all such bills within the following 15 days provided all elements of the Agreement are satisfactorily met.

ARTICLE III - USE

3.1 Use. Tenant shall use the Premises for vehicle maintenance, storage, and associated office purposes, and for no other purpose without the prior written consent of Landlord (the "Intended Use"). Tenant may operate the property for the benefit of the Winston-Salem/Forsyth County Schools (WSFCS), and may store equipment from WSFCS ("Third Party Equipment"). Tenant will not use or occupy the Premises for any unlawful purpose, and will comply with all present and future laws, ordinances, regulations and orders of the United States of America, the state of North Carolina and all other governmental units or agencies having jurisdiction over the Premises. Tenant shall not cause, maintain or permit any outside storage on or about the Property, except for the storage of County school buses and vehicles. No use shall be made or permitted to be made of the Premises, nor acts done, which will increase the existing rate of insurance upon the Improvements or cause the cancellation of any insurance policy covering the Improvements or any part thereof. The Parties agree that WSFCS shall be considered a subtenant, and Tenant may assign this lease to WSFCS in whole or in part.

3.2 ADA. Tenant shall be responsible for at its expense make any improvements or alterations to the Improvements and Premises required to conform with the Americans With Disabilities Act of 1990 ("ADA") and any other laws, ordinances, orders or regulations of any governmental body or authority presently required or hereinafter enacted and necessary for the Intended Use, but not future uses of the Premises. Tenant represents and warrants that the use and occupancy of the Premises as contemplated by this Lease comply or will comply fully with all such laws, ordinances and other governmental requirements.

ARTICLE IV - OPERATIONS; UTILITIES; SERVICES

4.1 Utilities. Electric, gas and water services and all other utility charges for the Premises shall be paid directly by Tenant. Landlord shall not be liable to Tenant for interruption in or curtailment of any utility service, nor shall any such interruption or curtailment constitute a constructive eviction or grounds for rental abatement in whole or in part.

4.2 No Interference. Without Landlord's prior review and written consent, Tenant shall not install or operate any electrical, internet, satellite, microwave or other systems that will or may necessitate any changes, replacements or additions to, or changes in the use of, the water system, heating system, plumbing system, air-conditioning system or electrical system of the Premises or the Improvements. Any changes, replacements or additions to those systems or increased cost at operating such systems made necessary by Tenant's installation or operation of any such utility systems shall be made at Tenant's expense and shall be approved by Landlord.

ARTICLE V - REPAIRS AND MAINTENANCE

5.1 Landlord's Obligations. Landlord shall only be responsible for any maintenance, repairs or replacements to the Improvements and Premises that are required as a result of the gross negligence or intentional misconduct of the Landlord. Except as set forth in the preceding sentence,

Tenant shall be responsible to maintain in good repair and working order the roof, foundations and structural walls of the Improvements, all lighting, electrical, mechanical, plumbing systems and all loading docks and doors and all maintenance and repair of all exterior portion of the Premises, including without limitation all landscaping, parking lots, outside lighting and snow removal as set forth in Section 5.2. Notwithstanding the foregoing, Tenant shall not be required to repair the Premises or Improvements. Landlord shall not be liable for any damage or loss occasioned by Landlord's failure to repair the Premises unless it was grossly negligent in its failure to make such repairs within a reasonable time following written notice from Tenant of the need for such repair.

5.2 Tenant's Obligations. Tenant, at its sole cost and expense, shall keep and maintain the Premises in as good repair, condition and working order as it was on the Effective Date of the Lease. Tenant shall be responsible to maintain in as good repair and working order as it was on the Effective Date, the roof, foundations and structural walls of the Improvements, all lighting, electrical, mechanical, plumbing systems and all loading docks and doors and all maintenance and repair of all exterior portion of the Premises, including without limitation all landscaping, parking lots, outside lighting and snow removal and any and all other maintenance on the Premises. Maintenance and repairs of all improvements made by Tenant shall be the sole responsibility of Tenant. Tenant shall keep the Premises and adjacent grounds, including loading docks and parking lots, alongside of and in the vicinity of same in a good, clean and sanitary condition and appearance. Tenant shall be responsible for ADA compliance for its Intended Use with respect to the Premises and Tenant work performed.

ARTICLE VI - ALTERATIONS; TENANT'S PROPERTY

6.1 Alterations by Tenant. Tenant shall make no alterations, additions, replacements or improvements to the Premises without the express written consent of Landlord, such consent not to be unreasonably withheld. All alterations, additions or improvements to the Premises made by Tenant will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, by a contractor approved by Landlord, and shall, if fixtures, become the property of the Landlord at the expiration of the Term. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work on the Premises.

6.2 Contractors' Insurance Requirements. In the event Landlord gives its approval to Tenant pursuant to Section 6.1, Tenant shall require any third party vendor or contractor performing work on the Premises to carry and maintain at no expense to Landlord insurance of types and amounts reasonably acceptable to Landlord in its sole discretion. Tenant shall obtain a Certificate of Insurance prior to commencement of work and Landlord and Tenant are to be additional named insureds ATIMA.

6.3 Tenant's Property. Tenant, at its expense and at any time and from time to time, may install in and remove from the Premises its equipment and Third Party equipment, furniture and furnishings, provided such installation or removal is accomplished without damage to the Premises or the Improvements and the installation does not interfere with the other tenants and their guests' use of the Property. On or prior to the expiration of the Term, Tenant shall remove all of Tenant's property from the Premises and repair any damage to the Premises caused by such removal.

ARTICLE VII - HAZARDOUS MATERIALS

7.1 Use of Hazardous Materials

(a) Tenant's Obligations and Liabilities. Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises or the Property by Tenant, its agents, employees, contractors or invitees, except as necessary for its Intended Use. If Hazardous Material is

necessary for Tenant's Intended Use, Tenant shall comply with all applicable laws associated with such Hazardous Marterial. **Definition.** As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, including, but not limited to those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 261) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law.

(b) Inspection. Landlord and its property manager or agents shall have the right, but not the duty, to inspect the Premises at any time to determine whether Tenant is complying with the terms of this Lease. If Tenant is not in compliance with this Lease, Landlord shall have the right to immediately enter upon the Premises to remedy any contamination caused by Tenant's failure to comply, notwithstanding any other provisions of this Lease. Landlord shall use its best efforts to minimize interference with Tenant's business but shall not be liable for interference caused thereby.

ARTICLE VIII - ASSIGNMENT AND SUBLETTING

8.1 Assignment, Subletting and Encumbering. Tenant shall not assign, sublet, transfer or encumber the Premises or this Lease ("Transfer") without the Landlord's express written consent, which may be withheld by the Landlord in its sole discretion. Landlord acknowledges that the Tenant may operate the Premises for the benefit of WSFCSS.

ARTICLE IX - INSURANCE

9.1 Tenant's Insurance. Tenant will maintain Commercial General Liability insurance with respect to the Premises naming Landlord as additional insured ATIMA, with a combined single limit of not less than \$1,000,000 bodily injury and property damage per occurrence and \$2,000,000 aggregate limit applicable to this location, Auto Liability insurance with a combined single limit of not less than \$1,000,000. Tenant shall obtain and keep in force during the term of this Lease a policy or policies in the name of Tenant insuring against loss or damage to the Premises and Improvements, in an amount not less than the full replacement value of the Improvements. Tenant shall deliver to Landlord a Certificate of Insurance ("Certificate") on the Commencement Date and a renewal certificate upon expiration. The Certificate must provide thirty (30) days prior notice to Landlord in the event of material change or cancellation. Tenant also agrees to maintain broad form Commercial Property insurance coverage under ISO form CP1030 or like coverage under a non-ISO form covering all Tenant's personal property, improvements and betterments to their full replacement value and Worker's Compensation insurance in accordance with applicable state law and Employer's Liability insurance with limits of not less than \$100,000/\$100,000/\$500,000. Tenant agrees to comply with all reasonable recommendations from any insurer of the property that result as a direct result of the Tenant's use of the Premises. Notwithstanding the foregoing, Tenant may opt to self-insure.

9.2 Landlord's Insurance. Landlord may obtain and keep in force during the Term of this Lease a policy or policies in the name of Landlord Commercial General Liability insurance with respect to the Premises naming Tenant as additional named insured ATIMA, with a combined single limit of \$1,000,000 bodily injury and property damage per occurrence and \$2,000,000 aggregate limit applicable to this location. This insurance coverage shall extend to any liability of Landlord arising out of the indemnities provided for in this Lease. . Tenant shall reimburse Landlord for any insurance premiums paid by the Landlord related to the Premises, within thirty (30) days written notice from the Landlord.

ARTICLE X - RIGHT OF ENTRY

10.1 Right of Entry. Landlord may, with the prior written consent of Tenant, not to be unreasonably withheld, enter the Premises and every part thereof, and Tenant shall permit access to the Premises to Landlord, Landlord’s property manager or Landlord’s agents or attorneys at all reasonable times for inspection and cleaning and from time to time to repair, maintain, alter and to improve and remodel each part thereof; Tenant shall not be entitled to any compensation or damages on account of any such repairs, maintenance, alterations, improvements or remodeling. Landlord reserves the right at any time and from time to time to enter, and be upon the Premises for the purpose of examining same. Landlord shall have the right, at reasonable hours, and upon notice to Tenant, to enter upon the Premises or exhibit the same to prospective tenants, lenders or insurers.

ARTICLE XI - PROPERTY LEFT ON PREMISES

11.1 Property Left on Premises. Upon the expiration of the Term or if the Premises should be vacated at any time, or abandoned by the Tenant, or this Lease should terminate for any cause, and at the time of such termination, vacation or abandonment, Tenant or Tenant’s agents, or any other person should leave any property of any kind or character on or in the Premises, after Landlord gives Tenant sixty (60) days advanced written notice to remove or cause to be removed such property, such property may be deemed abandoned. .

ARTICLE XII - SIGNS AND ADVERTISEMENTS

12.1 Signs and Advertisements. No exterior signs, advertisements, posters on windows, decorations or other fixtures shall be erected by Tenant without the prior written consent of Landlord, which shall not be unreasonably withheld.

ARTICLE XIII - NOTICES

13.1 Notice. Any notice, demand, request, consent, approval or communication under this Lease shall be in writing and shall be deemed to have been duly given and received at the time and on the date when personally delivered, or one (1) day after being delivered to a nationally recognized commercial carrier service for next-day delivery or three (3) days after deposit in the United States mail, certified or registered mail with a return receipt requested, with all postage prepaid, addressed to Landlord or Tenant (as the case may be) as follows:

If to Landlord:

Front Street - Garner, LLC
450 N. Patterson Avenue, Suite 300
Winston-Salem NC 27101
Attn: Coleman Team

If to Tenant:

Forsyth County
General Services
201 N. Chestnut Street
Winston-Salem North Carolina, 27101-4120_____

Attn: Kirby Robinson _____

ARTICLE XIV - MECHANIC'S LIENS

14.1 Mechanic's Liens. Tenant and any vendor, contractor or subcontractor performing work on behalf of Tenant shall keep the Improvements, the Premises and the improvements at all times during the Term free of mechanic's and materialmen's liens and other liens of like nature.

ARTICLE XV - COMPLIANCE WITH LAW AND RULES AND REGULATIONS

15.1 Compliance With Laws. Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities pertaining to Tenant's use of the Premises and with any recorded covenants, conditions and restrictions, regardless of when they became effective, including, without limitation, all applicable federal, state and local laws, regulations or ordinance pertaining to air and water quality, Hazardous Materials (as hereinafter defined), waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and utility availability and with any direction of any public officer or officers, pursuant to law, which shall impose any duty upon Landlord or Tenant with respect to the use or occupancy of the Premises.

ARTICLE XVI - ESTOPPEL CERTIFICATE

16.1 Estoppel Certificate. Tenant shall from time to time, upon not less than ten (10) days' prior written notice by Landlord, execute, acknowledge and deliver to Landlord a statement including the following certifications: (a) That this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications); (b) The dates to which any charges due hereunder have been paid by Tenant; (c) That, to the best knowledge of Tenant, Landlord is not in default in the performance of any covenant, agreement or condition contained in this Lease, and if Landlord is in default, specifying any such default of which Tenant may have knowledge; (d) The address to which notices to Tenant should be sent pursuant to Article XIII; and (e) Any other matter reasonably requested by Landlord. Any such Estoppel Certificate delivered pursuant hereto may be relied upon by any owner of the Improvements and/or the Premises, any prospective purchaser of the Improvements and/or Premises, any mortgagees or prospective mortgagee of the Improvements and/or Premises, any prospective assignee of any such mortgagee or any purchaser of Landlord, actual or prospective, of the underlying land upon which the Improvements and Premises are located.

ARTICLE XVII - TENANT'S STATUS

Both parties represent and warrant that:

17.1 Power and Authority. It has the right, power and authority to execute and deliver this Lease and to perform the provisions hereof, and is, to the extent required, qualified to transact business and in good standing under the laws of the State of North Carolina.

17.2 Authorization. The execution of the Lease by said party, or by the persons or other entities executing them on behalf of it, and the performance by it of its obligations under the Lease in accordance with the provisions hereof have been, to the extent required, duly authorized by all necessary action of said party.

ARTICLE XVIII - DEFAULTS AND REMEDIES

18.1 Default by Tenant. Tenant shall be in default under this Lease if:

(a) Tenant shall fail to pay within thirty(30) days of the date due any payment to be made by Tenant under this Lease.

(b) Tenant violates or breaches, or fails to fully and completely observe, keep, satisfy, perform and comply with, any material agreement, term, covenant, condition, requirement, restriction or provision of this Lease which violation or failure is not cured within ten (10) days after Tenant's receipt of written notice from Landlord; provided however, if Tenant's violation or failure cannot reasonably be cured within ten (10) days, Tenant shall be allowed additional time (not to exceed thirty (30) days) as is reasonably necessary to cure the violation or failure so long as Tenant begins the cure within ten (10) days and diligently pursues the cure to completion.

(c) Tenant fails to take possession of or ceases to do business in or abandons any the Premises in full for a period exceeding one year.

(d) Tenant becomes insolvent, or makes an assignment for the benefit of creditors, or any action is brought by Tenant seeking its dissolution or liquidation of its assets or seeking the appointment of a trustee, interim trustee, receiver or other custodian for any of its property.

(e) Tenant commences a voluntary proceeding under the Federal Bankruptcy Code, or any reorganization or arrangement proceeding is instituted by Tenant for the settlement, readjustment, composition or extension of any of its debts upon any terms; or any action or petition is otherwise brought by Tenant seeking similar relief or alleging that it is insolvent or unable to pay its debts as they mature; or if any action is brought against Tenant seeking its dissolution or liquidations of any of its assets, or seeking the appointment of a trustee, interim trustee, receiver or other custodian for any of its property, and any such action is consented to or acquiesced in by Tenant or is not dismissed within three (3) months after the date upon which it was instituted.

18.2 Landlord Remedies. On the occurrence of any default by Tenant, Landlord may, upon notice and 30 days' opportunity to cure, and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

(a) Elect to terminate the Lease. No such termination of this Lease shall affect Landlord's rights to collect any amounts due for the period prior to termination.

(b) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of North Carolina. Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy. No action taken by or on behalf of Landlord under this section shall be construed to be an acceptance of a surrender of this Lease.

18.3 Remedies Cumulative. The foregoing remedies are cumulative of, and in addition to, and not restrictive or in lieu of, the other remedies provided for herein or allowed by law or in equity, and may be exercised separately or concurrently, or in any combination, and pursuit of any one or more of such remedies shall not constitute an election of remedies which shall exclude any other remedy available to Landlord.

18.4 Non-Waiver. Neither Landlord's forbearance in pursuing or exercising one or more of its remedies nor Landlord's acceptance of any amounts due shall be deemed or construed to constitute a waiver of any default or any remedy, and no waiver by Landlord of any right or remedy on one occasion shall be construed as a waiver of that right or remedy on any subsequent occasion or as a waiver of any right or remedy then or thereafter existing. No failure of Landlord to pursue or exercise any of its rights

or remedies or to insist upon strict compliance by the Tenant with any term or provision of this Lease, and no custom or practice at variance with the terms of this Lease, shall constitute a waiver by Landlord of the right to demand strict compliance with the terms and provisions of this Lease.

ARTICLE XIX - MISCELLANEOUS

19.1 No Partnership. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Landlord and Tenant, or to create any other relationship between the parties hereto other than that of Landlord and Tenant.

19.2 No Representations by Landlord. Neither Landlord, Landlord's property manager or any agent or employee of Landlord has made any representations or promises with respect to the Premises or Improvements except as set forth in this Lease, and no rights, privileges, easements or licenses are acquired by Tenant except as herein expressly set forth.

19.3 Severability of Provisions. If any clause or provision of this Lease shall be determined to be illegal, invalid or unenforceable, it is the intention of the parties that the remainder of this Lease shall not be affected by the invalid clause and shall be enforceable to the fullest extent of the law, and it is also the intention of the parties to this Lease that in place of any such clause or provision that is illegal, invalid, or unenforceable there be added as a part of his Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

19.4 Benefits and Burdens. The provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and each of their respective representatives, permitted successors and permitted assigns. This Lease may not be assigned by Landlord without the prior written consent of Tenant, not to be unreasonably withheld.

19.5 Landlord's Liability.

19.6 Recording. Tenant may record a memorandum of lease outlining the key terms of this Lease.

19.7 Surrender of Premises. Upon termination of this Lease, by expiration of Term or otherwise, Tenant shall redeliver to Landlord the Premises in the same condition that it was in on the Effective Date, ordinary wear and tear excepted.

19.8 Force Majeure. Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, the party taking the action shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of such party; provided, however, in no event shall the foregoing apply to the financial obligations of Tenant to Landlord under this Lease, including Tenant's obligation to pay any amount payable to Landlord or Garner hereunder.

19.9 Submission of Lease. The Parties acknowledge that this Lease is being negotiated in connection with a Purchase and Sale Contract between Landlord and Tenant, and the finalization of this lease is a condition of closing of said Contract.

19.10 Interpretation. It is understood that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations,

arrangements, agreements and understanding, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none hereof shall be used to interpret or construe this Lease. All amendments to this Lease shall be in writing and signed by all parties. All waivers must be in writing and signed by the waiving party. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement. The laws of the State of North Carolina shall govern the validity, performance and enforcement of this Lease. Time is of the essence with respect to each of Tenant's obligations hereunder. The captions of the Sections and Articles of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the contents of this Lease, the singular shall include the plural and vice versa. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Premises with Tenant's expressed or implied permission. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on or in respect to any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder, Tenant's use of occupancy of the Premises and/or any claim of injury or damage.

[Signatures appear on following pages]

IN WITNESS WHEREOF, these presents have been executed under seal as of the day and year first above written.

Landlord:

FRONT STREET - GARNER, LLC,
a North Carolina limited liability company

By: _____ (SEAL)
Name: _____
Title: _____

Tenant:

FORSYTH COUNTY,
a political subdivision of North Carolina

By: _____ (SEAL)

Name: _____

Title: _____

EXHIBIT A



EXHIBIT B

