

# FORSYTH COUNTY

## BOARD OF COMMISSIONERS

MEETING DATE: JANUARY 21, 2021 AGENDA ITEM NUMBER: 14

**SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF A SUBLEASE AGREEMENT BETWEEN FORSYTH COUNTY AND WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION FOR USE OF PROPERTY UNDER A LEASE LOCATED AT 4897 LANSING DRIVE**

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:** Recommend Approval

**SUMMARY OF INFORMATION:** See Attached

ATTACHMENTS:  YES  NO

SIGNATURE: *J. Dudley Watts, Jr. /AMS* COUNTY MANAGER DATE: January 19, 2021

**RESOLUTION AUTHORIZING EXECUTION OF A SUBLEASE AGREEMENT  
BETWEEN FORSYTH COUNTY AND WINSTON-SALEM/FORSYTH COUNTY  
BOARD OF EDUCATION FOR SUBLEASE OF PROPERTY  
LOCATED AT 4897 LANSING DRIVE IN WINSTON-SALEM**

**WHEREAS** on November 12, 2020, the Forsyth County Board of Commissioners authorized the sale of Forsyth County property located at 4897 Lansing Drive in Winston-Salem (Property) with a leaseback option for a portion of the property (Sublease Property) from Front Street – Garner, LLC (Landlord), and sublease of the Sublease Property to Winston-Salem/Forsyth County Board of Education (WSFCS); and

**WHEREAS** WSFCS has used this Sublease Property for many years for vehicle maintenance, storage, and associated office space, and desires to execute a Sublease Agreement with Forsyth County to continue such use for a term of two years following the issuance of a temporary or final certificate of occupancy for a building to be constructed on the Property by the Landlord, at an annual rental amount of \$1.00 and annual payment of a pro rata share of property taxes incurred by the Landlord;

**NOW, THEREFORE, BE IT RESOLVED**, by the Forsyth County Board of Commissioners that, upon the closing of the sale of the Property, the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, the attached Sublease Agreement, which is incorporated herein by reference, with the Winston-Salem/Forsyth County Board of Education, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney; and

**BE IT FURTHER RESOLVED**, that this resolution ratifying interlocal cooperation between Forsyth County and The Winston-Salem/Forsyth County Board of Education is hereby spread upon the minutes of the Forsyth County Board of Commissioners.

Adopted this 21<sup>st</sup> day of January 2021.

## SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT (the "Sublease") is made and entered into as of the \_\_\_\_\_, 20\_\_ by and between Forsyth County ("Sublessor") a political subdivision of the State of North Carolina, and Winston-Salem / Forsyth County Board of Education ("Sublessee"), Sublessor and Sublessee will hereinafter be collectively referred to as the "Parties".

WHEREAS, Landlord and Sublessor are parties to that certain Lease Agreement dated as of \_\_\_\_\_ (the "Lease"), which Lease is attached hereto and incorporated herein as Attachment A; and

WHEREAS, pursuant to the terms of the Lease, Sublessor is leasing from Front Street – Garner, LLC ("Landlord") certain real property and improvements located at 4897 Lansing Drive, Winston-Salem, as shown in Exhibit B of the Lease, and is more particularly described in the Lease; and

WHEREAS, for the purposes and subject to the terms and conditions hereinafter set forth, the parties agree that Sublessor shall lease to Sublessee the property hereinafter set forth; and

WHEREAS, all terms, covenants, provisions, conditions, rights, remedies, and definitions of the Lease, attached hereto as Attachment A and incorporated herein by reference, are hereby incorporated in and made a part of this Sublease with the same force and effect as though set forth at length herein.

### 1. PREMISES

Sublessor, for and in consideration of the rents, conditions, and consideration hereinafter mentioned, provided for and covenanted to be paid, kept and performed by Sublessee, leases to Sublessee real property and improvements located at 4897 Lansing Drive, Winston-Salem, North Carolina as shown in Exhibit B, attached hereto and incorporated herein by reference (hereinafter called the "Premises").

### 2. TERM

The Sublessee shall have and hold the Premises beginning on the effective date of the Lease and shall continue for a period of two (2) years following the issuance of a temporary or final certificate of occupancy to the Landlord. Notwithstanding anything to the contrary herein, Sublessor may terminate the Agreement, for any reason or for no reason, by providing written notice of at least 90 days to the other party. Further notwithstanding, this Sublease shall terminate automatically upon the termination of the Lease or Sublessee's right to occupy the Premise.

### 3. RENTAL

Sublessee agrees to pay Sublessor without demand, deduction or set off, an annual rental for the Premises of one dollar (\$1) due upon the first day of the Term.

In lieu of a base rental paid to the Landlord, the Sublessor shall pay to the 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. Sublessee shall pay the Landlord directly for its share of such property taxes and insurance, payable annually within thirty (30) days of Landlord's payment of the same. Sublessee's payments under this agreement shall not exceed \$7,000.00 in any fiscal year during the Term. Sublessor will forward Landlord's monthly invoice to Sublessee for expenses incurred during the preceding 30 days. The Sublessee shall pay all such bills to the Landlord directly within the following 15 days provided all elements of the Agreement are satisfactorily met.

### 4. UTILITIES

Sublessee shall be responsible for providing all utilities to the Premises, including but not limited to electric, water, stormwater, sewer, gas, telephone, alarm, and internet service. Sublessor shall have no responsibility for utilities during the Term.

### 5. USE OF PREMISES

The Premises shall be used solely for the purpose of vehicle maintenance, storage, associated office purposes, and for the benefit of the Winston-Salem/Forsyth County Schools, but for no other purpose without the prior written consent of Landlord. The Premises shall not be used for any illegal purposes, or in any manner to create any nuisance or trespass, nor in any manner to vitiate the insurance or increase the rate of insurance on the Premises. This Sublease shall be terminated immediately if the Premises are no longer used for the purpose set forth herein.

### 6. THE LEASE

A. Sublessee Rights and Obligations. All the rights and obligations conferred and imposed by the Lease upon Sublessor, as lessee under the Lease, are hereby conferred and imposed upon Sublessee and accepted and assumed by Sublessee with respect to the Premises, except as otherwise expressly set forth in this Sublease. Sublessee shall, duly, fully and strictly keep, observe and perform each and every term and covenant on Sublessor's part to be observed and performed as lessee under the Lease, except as such terms and covenants are expressly modified by the terms of this Sublease. Notwithstanding the anything to the contrary in this Sublease, Sublessee shall not: (i) take any action or fail to take

any action which is or would be inconsistent with the terms of the Lease, (ii) do or permit to be done anything prohibited to Sublessor as the Lessee under the Lease, or which would constitute, with or without the giving of notice or the passage of time, or both, a default under the Lease, or (iii) take any action, fail to take any action, or do or permit anything which would result in any additional cost or liability to Sublessor as Lessee under the Lease. Also notwithstanding anything to the contrary in this Sublease, Sublessor shall have no liability for the acts or failure to act of the Sublessor under the Lease, but Sublessor shall use its commercially reasonable efforts to require the Sublessor to fully perform and discharge its obligations set forth in the Lease, Any inconsistency between the Lease and this Sublease which relates to obligations of, or restrictions on, Sublessee shall be resolved in favor of that obligation which is more onerous to Sublessee or that restriction which is more restrictive of Sublessee, as the case may be, and such obligations and restrictions contained in the Sublease and Lease shall be read as cumulative except to the extent inconsistent, in the event of any other inconsistency between the Lease and this Sublease, the terms of this Sublease shall control between Sublessor and Sublessee.

**B. Sublessor Obligations.** Sublessor shall not be obligated to perform and shall not be liable for the performance by the Sublessor of any of the obligations of the Sublessor under the Lease, Without limiting the generality of the foregoing, Sublessor shall have no obligation to render any services to Sublessee in or to the Premises, to construct any improvements or make any alterations on the Premises, nor shall Sublessor have any obligation to repair or restore the Premises following a casualty or condemnation. Sublessor shall not be liable with respect to any representations or warranties of the Sublessor contained in the Lease, nor shall Sublessor be deemed to have made any representations or warranties to Sublessee by virtue of the incorporation of the Lease into this Sublease, Sublessee shall have no claim against Sublessor by reason of any default on the part of the Sublessor, and Sublessee hereby waives and relinquishes any and all such claims Sublessee might have, whether known or unknown, matured or contingent, foreseeable or unforeseeable. In furtherance of the foregoing, Sublessee shall not make any claim against Sublessor for any damages which may arise by reason of any actor omission, whether intentional or negligent, of the Sublessor. Nothing in this Sublease shall be deemed to authorize Sublessee to represent Sublessor in connection with any suit or claim by or against the Sublessor, Sublessee agrees to look solely to the Sublessor for the furnishing of any services to which Sublessee may be entitled under the Lease. Provided Sublessee is not in default under this Sublease, Sublessor agrees to cooperate with Sublessee and to use reasonable efforts (without, however, incurring any liabilities or expenses, other than those liabilities or expenses which Sublessee unconditionally agrees in writing to reimburse) to enforce, for the benefit of Sublessee, the obligations of the Sublessor to Sublessor under the Lease insofar as they relate to the Premises, All reasonable out-of-pocket expenses of Sublessor arising from Sublessor's action taken pursuant to this subsection shall be reimbursed by Sublessee as Additional Rent, which shall be due within ten (10) days after receipt of written demand

therefor in reasonable detail. The foregoing covenant shall not be deemed to require that Sublessor commence legal action to enforce the obligations of the Sublessor. The Sublessor is a Party to this Sublease for the limited purposes stated in this Sublease.

7. INDEMNITY; INSURANCE. Sublessee agrees to and hereby does indemnify and hold Sublessor harmless against all claims for damages to persons or property by reason of Sublessee's use or occupancy of the Premises, and all expenses incurred by Sublessor because thereof, including attorney's fees and court costs. Supplementing the foregoing and in addition thereto, Sublessee shall during the term of this Lease and any extension or renewal thereof, and at Sublessee's expense, maintain in full force the following insurance coverage:
- a) Commercial General Liability Insurance. The Sublessee shall maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than three times the occurrence limit. Such insurance shall:
    - 1. **Include the Sublessor, its officials, officers, and employees as additional insureds** with respect to performance of the Services. The coverage shall contain no special limitations on the scope of protection afforded to the above listed insureds.
    - 2. Be primary with respect to any insurance or self-insured retention programs covering the Sublessor, its officials, officers, and employees.
  - b) Commercial Property Insurance. The Sublessee is responsible for maintaining real property insurance for the Premises located at 4897 Lansing Drive, Winston-Salem, North Carolina. The Sublessee is solely responsible for maintaining insurance coverage for any improvements made to the Premises by the Sublessee and any business personal property of the Sublessee. In no event will the Sublessor be required to repair or replace any improvements or personal property owned by the Tenant, its employees, or contractors.
  - c) Workers Compensation Insurance and Business Automobile Liability Insurance. To the extent required by North Carolina law, or by any other applicable federal, state, or local law or rule, Sublessee shall

maintain workers compensation insurance and business automobile liability insurance.

d) Other Insurance Requirements. The Sublessee shall:

1. Furnish the Sublessor with properly executed certificates of insurance which shall clearly evidence all insurance required in this section.
2. Provide certified copies of endorsements and policies, if requested by the Sublessor, in lieu of or in addition to certificates of insurance.
3. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of the services.
4. Maintain such insurance from the time the lease commences until the lease is terminated.
5. Place such insurance with insurers authorized to do business in North Carolina and having A. M. Best Company ratings of not less than A:VII. Any alternatives to this requirement shall require written approval of the Sublessor's Risk Manager.

The Sublessee understands and acknowledges that these insurance coverage requirements are minimums and that they do not restrict or limit the hold harmless provisions of this agreement.

#### 8. SERVICES BY SUBLESSOR

Sublessor shall not be responsible for any services, repairs, or replacements to the Premises during the Term.

#### 9. SERVICES AND REPAIRS BY SUBLESSEE

Sublessee accepts the Premises in their present condition and as suited for the intended purposed of the Sublessee.

Sublessee shall be solely responsible for the following expenses and services: (a) any and all Sublessee improvements, repairs, or alterations; (b) construction changes to the Premises; (c) costs of purchase and installation of any and all trade

fixtures; (d) maintenance to the exterior and interior of the Premises; (e) janitorial services rendered to the Premises; (f) grounds maintenance; and (g) security services to the Premises.

## 10. ALTERATIONS

Except as permitted in the incorporated Lease, Sublessee shall not make any alterations, additions, or improvements to the Premises without Sublessor's prior written consent. Sublessee shall promptly remove any alterations, additions, or improvements constructed in violation of this Paragraph upon Sublessor's written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Sublessor, free of any liens or encumbrances. Sublessor may require Sublessee to remove any alterations, additions or improvements (whether or not made with Sublessor's consent) at the termination of the Lease and to restore the Premises to its prior condition, all at Sublessee's expense. All alterations, additions and improvements which Sublessor has not required Sublessee to remove shall become Sublessor's property and shall be surrendered to Sublessor's upon the termination of this Lease, except that Sublessee may remove any of Sublessee's machinery or equipment which can be removed without material damage to the Premises. Sublessee shall repair, at Sublessee's expense, any damage to the Premises caused by the removal of any such machinery or equipment.

In the event Sublessor gives its approval to Sublessee to make alterations, additions, or improvements to the Premises, Sublessee shall require any third party vendor or contractor performing work on the Premises to carry and maintain at no expense to Sublessor insurance of types and amounts reasonably acceptable to Sublessor, in its sole discretion. Sublessee shall obtain a Certificate of Insurance prior to commencement of work and Sublessor and Sublessee are to be additional named insureds.

## 11. REMOVAL OF FIXTURES

Sublessee shall (if not in default hereunder) prior to the expiration of this Lease, or any extension or renewal thereof, remove all fixtures and equipment which it has placed in the Premises. Sublessee shall repair all damage to the Premises caused by such removal.

## 12. DESTRUCTION OF OR DAMAGE TO PREMISES

If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, this sublease shall terminate as of the date of such destruction. Sublessee is responsible for insuring its personal property stored on the Premises, and neither Landlord nor Sublessor shall be responsible for any damage or loss to Sublessee's property.



### 13. GOVERNMENTAL ORDERS

Sublessee agrees, at its own expense, to comply promptly with all requirements of any legally constituted public authority made necessary by reason of Sublessee's occupancy of the Premises. Sublessor agrees to comply promptly with any such requirements if not made necessary by reason of Sublessee's occupancy.

### 14. CONDEMNATION

If the whole of the Premises, or such portion thereof as will make the Premises unusable for the purposes herein subleased, is condemned by any legally constituted authority for any public use or purpose, then in either of said events the term hereby granted shall cease from the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Sublessor and Sublessee as of said date. Such termination, however, shall be without prejudice to the rights of either Sublessor or Sublessee to recover compensation and damage caused by condemnation from the condemner. It is further understood and agreed that Sublessee shall not have any rights in any award made to Sublessor by any condemnation authority.

### 15. ASSIGNMENT AND SUBLETTING

Sublessee shall not, without the prior written consent of Sublessor, assign this Lease or any interest hereunder, or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than the Sublessee. Consent to any assignment or subleases shall not impair this provision and all later assignment or subleases shall be made likewise only on the prior written consent of the Sublessor. The Assignee of Sublessee, at the sole option of Sublessor which option may be exercised only by written notice of Sublessor to Sublessee, may become directly liable to Sublessor for all obligations of Sublessee hereunder, but no sublease or assignment by Sublessee shall relieve Sublessee of any liability hereunder. Any assignee or Sublessee of the Premises must comply with the use provisions set forth in Section 5 herein.

### 16. EVENTS OF DEFAULT

To the extent allowed by law, the happening of any one or more of the following events (hereinafter any one of which may be referred to as an "Event of Default") during the term of this Lease or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Sublessee: (a) Sublessee fails to pay the rental as provided for herein; (b) Sublessee abandons the Premises; (c) Sublessee fails to comply with or abide by and perform any other obligation imposed upon Sublessee under this Lease; (d) Sublessee is adjudicated bankrupt; (e) A permanent receiver is appointed for Sublessee's property and such receiver is not removed within sixty (60) days after written notice from Sublessor to Sublessee to obtain such removal; (f) Sublessee, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the rent or any part thereof is,

or is proposed to be reduced or payment thereof deferred; (g) Sublessee makes an assignment for benefit of creditors; (h) Sublessee's effects are levied upon or attached under process against Sublessee, which is not satisfied or dissolved within thirty (30) days after written notice from Sublessor to Sublessee to obtain satisfaction thereof.

#### 17. REMEDIES UPON DEFAULT

Upon the occurrence of Event of Default, Sublessor may pursue any one or more of the following remedies separately or concurrently, without prejudice to any other remedy herein provided or provided by law; (a) if the Event of Default involves nonpayment of rental and Sublessee fails to cure such default with five (5) days after receipt of written notice thereof from Landlord, or if the Event of Default involves a default in performing any of the terms or provisions of this Lease other than the payment of rental and Sublessee fails to cure such default within thirty (30) days after receipt of written notice of default from Sublessor, Sublessor may terminate this Lease by giving written notice to Sublessee and upon such termination shall be entitled to recover from Sublessee damages as may be permitted under applicable law; or (b) if the Event of Default involves any matter other than those set forth in item (a) of this paragraph, Sublessor may terminate this Lease by giving written notice to Sublessee and, upon such termination, shall be entitled to recover from the Sublessee damages in an amount equal to all rental which is due and all rental which would otherwise have become due throughout the remaining term of this Lease, or any renewal or extension thereof (as if this Lease had not been terminated); or (c) upon any Event of Default (if Sublessee has failed to cure such default after 30 days written notice), Sublessor may, without terminating this Lease, re-let the Premises, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Sublessor deems proper, with Sublessee being liable to Sublessors for the deficiency, if any, between Sublessee's rent hereunder and the price obtained by Sublessee on reletting, provided however, that Sublessor shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Sublessee's default. In the event Sublessor hires an attorney to enforce its rights upon default, Sublessee shall in addition be liable for reasonable attorney's fees and all costs of collection.

#### 18. EXTERIOR SIGNS

Sublessee shall place no signs upon the outside walls or roof of the Premises, except with the express written consent of the Sublessor. Any and all signs placed on the Premises by Sublessee shall be maintained in compliance with governmental rules and regulations governing such signs and Sublessee shall be responsible to Sublessor for any damage caused by installation, use or maintenance of said signs, and all damage incident to removal thereof.

#### 19. PARKING

Sublessee shall be entitled to use parking spaces as available and as assigned by Sublessor in the lots serving the Premises.

## 20. SUBLESSOR'S ENTRY OF PREMISES.

Sublessor may access the Premises at any time necessary to exhibit the Premises to prospective purchasers or sublessees.

## 21. EFFECT OF TERMINATION OF LEASE

No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Sublessor's right to collect rent for the period prior to termination thereof.

## 22. MORTGAGEE'S RIGHTS

Sublessee's rights shall be subject to any bona fide mortgage, deed of trust or other security interest which is now or may hereafter be placed upon the Premises by Sublessor. Sublessee shall, if requested by Sublessor, execute a separate agreement reflecting such subordination, and shall be obligated to execute such documentation as may facilitate Sublessor's sale or refinancing of the Premises, including, but not limited to estoppel certificates, subordination or attornment agreements.

## 23. NO WARRANTIES

Prior to the date hereof, Sublessee has occupied the entire Property, and therefore, Sublessee accepts the Improvements and Premises in their "as is" condition as of the execution of this sublease with no representations or warranties whatsoever, including no warranty for merchantability or fitness for particular purpose.

## 24. HOLDING OVER

Sublessee shall release, indemnify, and hold harmless the Sublessor for any damages arising to the Sublessor by reason of Sublessee's holding over past the term of this Agreement.

## 25. RIGHTS CUMULATIVE

All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law.

## 26. WAIVER OF RIGHTS

No failure of Sublessor or Sublessee to exercise any power given hereunder or to insist upon strict compliance of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Sublessor's or Sublessee's right to demand exact compliance with the terms hereof.

## 27. ENVIRONMENTAL LAWS

Sublessee shall be liable for all environmental damage, liability or cost, including reasonable attorney's fees, arising out of Sublessee's use of the Premises and shall defend and hold Sublessor harmless from any claims or actions relating to environmental damage, spills, exposure or other effects caused by Sublessee within the Premises. Sublessee shall comply with all federal, state, and local laws, ordinances, and regulations. Tenant shall not bring unto the Premises any Hazardous Materials without the prior written approval by Sublessor. Any approval must be preceded by submission to Sublessor of appropriate Material Safety Data Sheets (MSDS Sheets). In the event of approval by Sublessor, Sublessee covenants that it comply with all requirements of any constituted public authority and all federal, state, and local codes, statutes, rules and regulations, and laws, whether now in force or hereafter adopted relating to Sublessee's use of the Premises, or relating to the storage, use, disposal, processing, distribution, shipping or sales of any hazardous, flammable, toxic or dangerous materials, waste or substance, the presence of which is regulated by a federal, state, or local law, ruling, rule or regulation (hereafter collectively referred to as "Hazardous Materials"); (2) comply with any reasonable recommendations by the insurance carrier of either Sublessor or Sublessee relating to the use by Sublessee on the Premises of such Hazardous Materials; (3) refrain from unlawfully disposing of or allowing the disposal of any Hazardous Materials upon, within, about or under the Premises; and (4) remove all Hazardous Materials from the Premises placed upon, released into or introduced to the Premises by Sublessee, its agents, contractors, employees, clients, or invitees, either after their use by Sublessee or upon the expiration or earlier termination of this Lease, in compliance with all applicable laws.

## 28. TIME OF ESSENCE

Time is of the essence in this Lease.

## 29. ABANDONMENT

Sublessee shall not abandon the Premises at any time during the Lease term. If Sublessee shall abandon the Premises or be dispossessed by process of law, any personal property belonging to Sublessee and left on the Premises shall, at the option of Sublessor, be deemed abandoned, and available to Sublessor to use or sell to offset any rent due or any expenses incurred by removing same and restoring the Premises.

## 30. DEFINITIONS

" Sublessor" as used in this Lease shall include the undersigned, its representatives, assigns, and successors in title to the Premises. " Sublessee" shall include the undersigned and its representatives, assigns and successors, and if this lease shall be validly assigned or sublet, shall include also Sublessee's assignees or sublease as to

the Premises covered by such assignment or sublease. "Sublessor" and "Sublessee" include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

### 31. NOTICES

All notices required or permitted under this Sublease shall be in writing and shall be personally delivered or sent by U.S. certified mail, return receipt requested, postage prepaid. Notices to Sublessee shall be delivered or sent to the following address:

Superintendent  
Winston-Salem / Forsyth County Board of Education  
PO Box 2513  
Winston-Salem, NC 27102

Notice to Sublessor shall be delivered or sent to the following address:

Dudley Watts  
County Manager  
Forsyth County Government Center  
201 N. Chestnut St.  
Winston-Salem, NC 27101

With copies to:

B. Gordon Watkins, III  
County Attorney  
Forsyth County Government Center  
201 N. Chestnut St.  
Winston-Salem, NC 27101

&

Property Manager  
Forsyth County Government Center  
201 N. Chestnut St.  
Winston-Salem, NC 27101

All notices shall be effective upon delivery. Any party may change its notice address upon written notice to the other parties, given as provided herein.

### 32. ENTIRE AGREEMENT

This Lease contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein shall be of any force or effect. This Lease may not be modified except by a writing signed by all the parties hereto.

### 33. AUTHORIZED LEASE EXECUTION

Each individual executing this Lease as director, officer, partner, member or agent of a corporation, limited liability company, or partnership represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of such corporation, limited liability company, or partnership.

### 34. TRANSFER OF SUBLESSOR'S INTEREST

In the event of the sale, assignment or transfer by Sublessor of its interest in the Premises or in this Lease (other than a collateral assignment to secure a debt of Sublessor) to a successor in interest who expressly assumes the obligations of Sublessor under this Lease, Sublessor shall thereupon be released and discharged from all its covenants and obligations under this Lease, except those obligations that have accrued prior such sale, assignment or transfer. Sublessor's assignment of this Lease, or of any or all of its rights in this Lease, shall not affect Sublessee's obligations hereunder, and Sublessee shall attorn and look to the assignee as Sublessor, provided Sublessee has first received written notice of the assignment of Sublessor's interest.

### 35. MEMORANDUM OF LEASE

Upon request by either Sublessor or Sublessee, 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 Rent 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.

### 36. GOVERNING LAW

This Agreement is governed by the laws of North Carolina, except that provisions relating to conflict of laws shall not apply.

### 37. ATTACHMENT

Attachment A, the Lease, is incorporated herein by reference.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Sublessor and Sublessee have set their hands and seals as of the day and year first above written.

**SUBLESSOR  
FORSYTH COUNTY, NORTH CAROLINA**

By: \_\_\_\_\_  
J. Dudley Watts, Jr., County Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ashleigh M. Sloop, Clerk to the Board

(SEAL)

**SUBLESSEE  
WINSTON-SALEM / FORSYTH COUNTY  
BOARD OF EDUCATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# Attachment A

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into on this 2nd day of December, 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, as well as any insurance carried by Landlord or its agents with respect any insurance insuring the Premises or liability related to the use and operation of the Premises. 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 during the Term. 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, unless otherwise required by law or provided herein. 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 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, rules and regulations associated with such Hazardous Material. Tenant shall not be permitted and shall not allow others to install any underground storage tanks on the Premises. Tenant may be permitted to keep above ground storage tanks or fuel trucks on the Premises necessary for Tenant's Intended Use, provided the presence and use of the same shall be conducted in accordance with all applicable laws, rules and regulations and Tenant shall not permit the release of any Hazardous Material on or about the Premises in violation of all applicable

laws, rules and regulations and shall not permit any contamination of the Premises with Hazardous Materials in violation of all applicable laws, rules and regulations. On or before the expiration of the Term, Tenant shall deliver possession of the Premises to the Landlord free and clear of all Hazardous Materials brought on the Premises or permitted to be brought on the Premises by Tenant or its subtenant during the Term. On or before the expiration of the Term, Tenant shall remove in compliance with all applicable laws, rules and regulations any and all Hazardous Materials as well as any above ground storage tanks or fuel trucks (as permitted herein) from the Premises. **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 WSFCS. The Parties agree that WSFCS shall be considered a subtenant, and Tenant may assign this lease to WSFCS in whole or in part.

#### 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 shall 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, 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 agrees to reimburse Landlord for the costs and premiums of any such insurance Landlord carries with respect to the Premises, subject to the limitation set forth in Section 2.2. 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.** To the extent the liability of Landlord exceeds the limits of insurance required or allowed under this Agreement the obligations of Landlord under this Lease do not constitute personal obligations of the individual partners, joint venturers, directors, officers, shareholders or beneficial owners of the Landlord, and Tenant shall look solely to the Premises and insurance and to no other assets of the Landlord for satisfaction of any liability in respect to this Lease. As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Premises or the leasehold estate under a ground lease of the Premises at the time in question. Any Landlord who transfers its title or interest is relieved of all liability with respect to the obligations of Landlord under this Lease to be performed on or after the date of transfer.

**19.6 Recording.** Tenant may record a memorandum of lease outlining the key terms of this Lease. Within thirty (30) days of the expiration of the Term, the Tenant shall record a termination of memorandum of lease upon request of Landlord.

**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**



# Contract #2021-0320-00: Front Street- Garner LLC; ;

**Approved as to Form and Legality**

  
**Assistant Forsyth County Attorney**

12/15/2021