



Resolution Approving Financing Terms and Documents For SCC Health Occupations Building Project

WHEREAS, Jackson County has previously determined to carry out a plan (the "Project") to acquire, construct and finance a new workforce training facility (the "Facility") for health occupations in western North Carolina in collaboration with Southwestern Community College. The County has also determined to finance Project costs through the use of an installment financing, as authorized under Section 160A-20 of the General Statutes. Sterling National Bank (the "Lender") has submitted a proposal to provide financing for the Project.

The County's Finance Officer has made available to this Board the draft agreements listed on Exhibit A (the "Agreements"), which relate to the County's carrying out the financing plan.

This resolution provides the County Board's final approval of the financing terms and documents for the Project.

BE IT THEREFORE RESOLVED by the Board of Commissioners of Jackson County, North Carolina, as follows:

1. Determination To Proceed with Financing – The County confirms its plans to undertake the Project. The County will carry out the Project with financing from Sterling National Bank substantially in accordance with a financing proposal dated December 7, 2018.

Under the financing plan, Sterling National Bank will make funds available to the County for use on Project costs. The County will repay the amount advanced, with interest, over time. The County will grant to the Lender a mortgage-type interest in the Facility (and its associated real property) to secure the County's repayment obligation.

2. Approval of Agreements; Direction To Execute Agreements -- The Board approves the forms of the Agreements submitted to this meeting. The Board authorizes the Board's Chairman and the County Manager, or either of them, to execute and deliver the

Agreements in their final forms. The Agreements in their respective final forms must be in substantially the forms presented, with such changes as the Chairman or the County Manager may approve. The execution and delivery of any Agreement by an authorized County officer will be conclusive evidence of that officer's approval of any changes.

The Agreements in final form, however, must be consistent with the financing plan described in this resolution and must provide (a) for the amount financed by the County not to exceed \$10,000,000, (b) for an annual interest rate not to exceed 3.81% (in the absence of default, or a change in tax status), and (c) for a financing term not to extend beyond March 1, 2039.

3. Officers To Complete Closing – The Board authorizes the County Manager, the Finance Officer and all other County officers and employees to take all proper steps to complete the financing in cooperation with the Lender and in accordance with this resolution.

The Board authorizes the Finance Officer to hold executed copies of all financing documents authorized or permitted by this resolution in escrow on the County's behalf until the conditions for their delivery have been completed to that officer's satisfaction, and then to release the executed copies of the documents for delivery to the appropriate persons or organizations.

Without limiting the generality of the foregoing, the Board specifically authorizes the Finance Officer (a) to approve and enter into additional agreements to carry out the financing contemplated by this resolution, and (b) to approve changes to any documents previously signed by County officers or employees, provided that the changes do not conflict with this resolution or substantially alter the intent from that expressed in the form originally signed. The Finance Officer's authorization of the release of any document for delivery will constitute conclusive evidence of that officer's approval of any changes.

In addition, the Board authorizes the Finance Officer to take all appropriate steps for the efficient and convenient carrying out of the County's on-going responsibilities with respect to the financing of the Project. This authorization includes, without limitation, contracting with third parties for reports and calculations that may be required under this resolution or otherwise with respect to the Agreements.

4. Resolutions as to Tax Matters -- The County will not take or omit to take any action the taking or omission of which will cause its obligations to pay principal and interest (the "Obligations") to be "arbitrage bonds," within the meaning of Section 148 of the "Code" (as defined below), or "private activity bonds" within the meaning of Code Section 141, or otherwise cause interest components of the installment payments to be includable in gross

income for federal income tax purposes. Without limiting the generality of the foregoing, the County will comply with any Code provision that may require the County at any time to pay to the United States any part of the earnings derived from the investment of the financing proceeds. In this resolution, "Code" means the United States Internal Revenue Code of 1986, as amended, and includes applicable Treasury regulations.

5. Obligations are "Bank-Qualified" - The County designates its payment Obligations as "qualified tax-exempt obligations" for the purpose of Code Section 265(b)(3), which provides certain tax advantages for financial institutions providing financing to the County.

6. Lender May Act through Affiliates -- The Finance Officer may approve entering into the Agreements with an affiliate of the Lender if the Lender requests a change.

7. Acceptance of Property Transfer - The County agrees to accept title to the property that will be the site of the Facility to facilitate the financing arrangements contemplated by the Agreements.

8. Miscellaneous Provisions -- The Board authorizes all County officers and employees to take all further action as they may consider necessary or desirable in furtherance of the purposes of this resolution. The Board ratifies all prior actions of County officers and employees to this end. Upon the absence, unavailability or refusal to act of the County Manager, the Chairman or the Finance Officer, any other of those officers may assume any responsibility or carry out any function assigned in this resolution. The Board authorizes the Clerk to apply the County's seal, and to attest to the seal, on any document related to the purposes of this resolution. In addition, the Vice Chairman or any Deputy or Assistant Clerk to the Board may in any event assume any responsibility or carry out any function assigned to the Chairman or the Clerk, respectively, in this resolution. All other Board proceedings, or parts thereof, in conflict with this resolution are repealed, to the extent of the conflict. This resolution takes effect immediately.

* * * * *

Adopted, this the 22nd day of January, 2019.

ATTEST:

Angela M. Winchester
Clerk to the Board

Brian Thomas McMahan
Chairman, Board of Commissioners

Exhibit A -- Draft Agreements

- (a) A draft dated January 14, 2019, of an Installment Financing Contract to be dated on or about January 29, 2019 (the "Financing Contract"), between the County and the Lender. The Financing Contract provides for the advance of funds to the County for the County's use on the project, sets out the County's repayment obligation, and sets out the County's obligations regarding care for the collateral and other matters.
- (b) A draft dated January 14, 2019, of a Deed of Trust and Security Agreement to be dated on or about January 29, 2019, from the County to a deed of trust trustee for The Lender's benefit. The Deed of Trust provides for a security interest in the proposed new Facility and its associated real property to the Lender to secure the County's repayment obligation.
- (c) A draft dated November 26, 2018, of a Lease to be dated on or about January 29, 2019, between the County, as lessor, and The Trustees of Southwestern Community College, as lessee, providing for the Community College's use of the Facility through the financing term
- (d) A draft dated January 14, 2019, of an Agency Agreement to be dated on or about January 29, 2019
- (e) A draft dated January 2, 2019, of an escrow agreement to be dated on or about January 29, 2019, between the County, the Lender, and the Lender in the capacity of an escrow agent

s☆h draft of January 14

JACKSON COUNTY, NORTH CAROLINA

and

STERLING NATIONAL BANK

INSTALLMENT FINANCING CONTRACT

Installment Financing Contract

THIS INSTALLMENT FINANCING CONTRACT (the "Contract") is dated as of January xx, 2019, and is between **JACKSON COUNTY, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the "County"), and **STERLING NATIONAL BANK** (the "Lender").

RECITALS:

The County has previously determined to carry out a plan (the "Project") to acquire, construct and finance a new workforce training facility (the "Facility") for health occupations in western North Carolina in collaboration with Southwestern Community College. The Lender has agreed to advance funds to the County for this purpose.

This Contract provides for the Lender's advance of funds, and the County's obligation to repay the funds with interest. In accordance with the County's authority under Section 160A-20 of the North Carolina General Statutes, the County will secure its obligations under this Contract by granting to the Lender a security interest in the Pledged Facilities and the Pledged Site.

Unless the context clearly requires otherwise, capitalized terms used in this Contract and not otherwise defined have the meanings set forth in Exhibit A.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Contract, the parties agree as follows:

ARTICLE I **ADVANCE**

1.1. Advance. The Lender advances \$10,000,000 (the "Amount Advanced") to the County, and the County accepts the Amount Advanced.

1.2. Form of Advance. The Lender will make this advance, as directed by the County, by depositing the full amount of \$10,000,000 to an Escrow Fund (the

"Escrow Fund") as provided in an Escrow Agreement of even date (the "Escrow Agreement") among the County, the Lender, and Sterling National Bank (in the capacity of an escrow agent, and in that capacity the "Escrow Agent"). The Escrow Agent will disburse funds from the Escrow Fund to the County as provided in the Escrow Agreement.

ARTICLE II

CONTRACT PAYMENTS

2.1. Installment Payments. The County will repay the Amount Advanced by making Installment Payments at the times and in the amounts set forth in Exhibit B. As indicated in Exhibit B, the Installment Payments include designated interest components. The County will make its payments either by check or draft or by Federal Reserve wire transfer, or other transfer of immediately available United States funds, in any case sent on the payable date directly to the Lender to any address or bank account in the United States as the Lender may designate from time to time.

2.2. Additional Payments. The County will pay all Additional Payments on a timely basis directly to the person or entity to which it owes the payment. If the County fails to pay any Additional Payment when due, the Lender may (but is not required to) pay the Additional Payment. The County then agrees to reimburse the Lender for any Additional Payment paid by the Lender, together with interest at an annual rate of 7.00%. All Installment Payments and Additional Payments will be made in lawful money of the United States.

2.3. Late Charges. Should the County fail to pay any Installment Payment, or any other sum required to be paid to the Lender, within 15 days after the due date, the County shall pay a late payment charge equal to 4% of the delinquent payment. The acceptance or assessment of a late charge shall not constitute a waiver of a default or of an Event of Default, or impair any other rights or remedies of the Lender.

2.4. Prepayment. The County may prepay the outstanding principal component of the Amount Advanced only as provided in this Section. The County must give the Lender 30 days' advance written notice of the proposed date and amount of any prepayment.

(a) *From excess proceeds* –The County may prepay the outstanding principal component of the Amount Advanced, at its option on any date, in whole or in part without penalty, from any funds remaining in the Escrow Fund upon the County's delivery of the Completion Certificate provided for in Section 5(c) of the Escrow Agreement. These funds will be applied (i) first to all Additional Payments then due and payable, (ii) then to interest accrued and unpaid to the prepayment date, and (iii) then to the outstanding principal component of the Amount Advanced, in inverse order of installments.

The County must exercise this option prior to June 30, 2020. The Amount Advanced is not otherwise subject to prepayment prior to February 1, 2024.

(b) *Ordinary optional prepayment* -- The County may prepay the outstanding principal component of the Amount Advanced, at its option on any regularly scheduled Payment Date that occurs on or after February 1, 2024, in whole but not in part, by paying (i) all Additional Payments then due and payable, (ii) all interest accrued and unpaid to the prepayment date, and (iii) 100.5% of the outstanding principal component of the Amount Advanced, if the prepayment occurs before January 1, 2027, and 100% thereafter.

2.5. No Reduction or Abatement. The County remains liable for full performance of all its covenants under this Contract and the Deed of Trust (subject to the limitations described in Article XII), notwithstanding the occurrence of any event or circumstances whatsoever, including any of the following:

(a) Any act or omission by the Lender, or the Lender's waiver of any right granted or remedy available to it;

(b) The forbearance or extension of time for payment or performance of any obligation under this Contract or the Deed of Trust, whether granted to the County or any other person;

(c) The sale or release of all or part of the Mortgaged Property or the release of any party who assumes all or any part of such performance; or

(d) Another party's assumption of any of the County's obligations under the Contract or this Deed of Trust.

There will be no abatement or reduction of the Installment Payments or Additional Payments by the County for any reason, including, but not limited to, any defense, recoupment, setoff, counterclaim, or any claim arising out of or related to the Pledged Sites or the Pledged Facilities. The County assumes and will bear the entire risk of completion, loss and damage to the Mortgaged Property from any cause whatsoever, it being the parties' intention that the Installment Payments will be made in all events unless the County's obligation to make Installment Payments is terminated as provided in this Contract.

2.6. Appropriations.

(a) The County will cause the officer who prepares the draft County budget initially submitted for County Board consideration to include in the initial proposal each year the amount of all Installment Payments and estimated Additional Payments coming due during the Fiscal Year to which the budget applies. Notwithstanding that the initial proposed budget includes an appropriation for Contract Payments, the County Board may determine not to include the appropriation (in whole or in part) in the final County budget for any Fiscal Year, or may amend an adopted budget to reduce or delete an approved appropriation.

(b) (i) If for any Fiscal Year the County adopts an annual budget that does not appropriate (for that purpose) an amount equal to the Installment Payments and estimated Additional Payments coming due during that Fiscal Year, then the County will send notice of this failure to the Lender and the LGC within ten days after the adoption of that budget.

(ii) If for any Fiscal Year the County has not adopted an annual budget that appropriates (for that purpose) an amount equal to the Installment Payments and estimated Additional Payments coming due during that Fiscal Year within 15 days after the beginning of any Fiscal Year, then the County will send notice of this failure to the Lender and the LGC within an additional ten days.

(iii) Similarly, if at any time the County amends the annual budget to reduce the amounts appropriated for Contract Payments below the amounts expected to be required for the remainder of that Fiscal Year, then the County will send notice of this amendment to the Lender and the LGC within ten days.

(iv) The County shall send notices intended for the LGC to the attention of its Secretary, at 3200 Atlantic Avenue, Longleaf Building, Raleigh NC 27604.

ARTICLE III
COUNTY'S RESPONSIBILITIES

3.1. Care and Use. The County will use and care for the Mortgaged Property in a careful and proper manner. The County must keep the Mortgaged Property in good condition, repair, appearance and working order for the purposes intended.

3.2. Utilities. The County will pay all charges for utility services furnished to or used on or in connection with the Pledged Site and the Pledged Facilities.

3.3. Risk of Loss. The County bears all risk of loss to and condemnation of the Mortgaged Property.

3.4. Lender's Performance of County's Responsibilities. The Lender may, but is in no event required to, (a) undertake any performance required of the County or (b) make any payments required to be made by the County, in either case for the insurance, maintenance or preservation of the Mortgaged Property that the County fails to make or pay. The County will then reimburse the Lender for any payments and for any associated costs and expenses, legal or otherwise, together with interest at the annual rate of 7.00%.

3.5. Compliance with Requirements. The County will promptly and faithfully comply with all requirements of governmental authorities relating to the use or condition of the Mortgaged Property (or be diligently and in good faith contesting the requirements), if the violation of the requirement would adversely affect the use, value or condition of the Mortgaged Property. This compliance (or contest) is required of the County whether or not any requirement necessitates structural changes or improvements or interferes with the County's use or enjoyment of the Mortgaged Property. Unless required by applicable law or unless the Lender has otherwise agreed in writing, the County will not use the Mortgaged Property for any purposes other than those for which the property was intended as of the Closing Date.

The County will in no event use the Mortgaged Property, or any portion, nor allow it to be used, (a) for any unlawful purpose, (b) in violation of any certificate of occupancy or other permit or certificate, or (c) in violation of any law, ordinance or regulation.

3.6. Use and Operation of Pledged Facilities. The County will use and operate the Pledged Facilities for their intended public purposes. The County will be solely responsible for the operation of the Pledged Facilities, and will not contract with any other person or entity for that operation.

3.7. Modification of Pledged Facilities; Installation of Equipment and Machinery. The County has the right to remodel the Pledged Facilities or make substitutions, additions, modifications and improvements to the Pledged Facilities, at its own cost and expense. These changes, however, must not damage the Pledged Facilities or result in the use of the Pledged Facilities for purposes substantially different from those contemplated on the Closing Date. Further, the Pledged Facilities, upon completion of the changes, must be of a value not less than the value of the Pledged Facilities immediately prior to making the changes. All additions, modifications and improvements within the boundaries of the Pledged Site become a part of the Mortgaged Property and subject to the lien of the Deed of Trust.

The County may also, from time to time in its sole discretion and at its own expense, install machinery, equipment and other tangible property in or on the Pledged Facilities. Neither the Lender nor any assignee will have any interest in any property that is not a "Fixture" as defined in Section 1-4 of the Deed of Trust.

3.8. Taxes and Other Governmental Charges. If the Mortgaged Property (or any portion) is, for any reason, deemed subject to taxation, assessments or charges lawfully made by any government, the County will, during the Contract term, pay the amount of all those taxes, assessments and governmental charges as Additional Payments. With respect to special assessments or other charges which may be lawfully paid in installments over a period of years, the County is obligated under this Contract only to provide for the installments that are required to be paid during the Contract term. The County must not allow any liens for taxes, assessments or governmental charges with respect to the Mortgaged Property (or any portion) to become delinquent, including any taxes levied upon the Lender's interest in

the Mortgaged Property, or on any rentals or other revenues derived from the Mortgaged Property.

The County may, at its own expense and in its own name, in good faith contest any taxes, assessments and other charges. In the event of a contest, the County may permit the charges to remain unpaid during the period of the contest and any appeal. If, however, the Lender notifies the County that, in the opinion of independent counsel selected by the Lender, the security afforded pursuant to this Contract or the Deed of Trust will be materially endangered by nonpayment of any items, then the County must promptly pay those items (but the payment will not in itself constitute a waiver of the right to continue to contest the charges).

3.9. County's Insurance.

(a) Property Damage Insurance – From and after substantial completion of each principal portion of the Pledged Facilities, the County shall, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to the Pledged Facilities in an amount equal to the estimated replacement cost. This insurance must include standard mortgagee coverage in favor of the Lender. The County shall provide evidence of such coverage to the Lender promptly upon substantial completion. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 6.2.

(b) General Liability Insurance – To the extent permitted by law, the County agrees that it will, at its own expense, acquire, carry and maintain comprehensive general liability insurance in an amount not less than \$2,000,000 for personal injury or death and \$2,000,000 for property damage, and that it will include the Lender as an additional insured with respect to occurrences related to the Pledged Facilities.

(c) Worker's Compensation Insurance – The County will, at its own expense, acquire, carry and maintain worker's compensation insurance in the manner required by law.

(d) Additional Provisions --

(i) The County must maintain the insurance required by this Section with generally recognized responsible insurers. The insurance may carry reasonable de-

ductible or risk-retention amounts. The County must provide copies of all such policies to the Lender upon request.

(ii) In the alternative, the County may maintain the insurance required by subsections (a) and (b) above (A) by one or more blanket or umbrella insurance policies or (B) by means of an adequate self-insurance fund or risk-retention program, or by participation in a group risk pool or similar program.

(iii) If the County obtains blanket or umbrella coverage, the County must provide to the Lender, upon the Lender's request, a certificate or certificates of the respective insurers evidencing the coverage and, with respect to property insurance, stating the amount of coverage provided with respect to the Pledged Facilities (or any covered portion). If the County provides for any alternative risk management programs, the County's risk manager or an independent insurance consultant must review the programs annually for sufficiency. The County must provide to the Lender evidence as to the sufficiency of any alternative program as the Lender may reasonably request.

(iv) The County may settle or adjust insurance claims in its discretion, except that no County agent or employee will have the power to adjust or settle any property damage loss greater than \$1,000,000 with respect to the Mortgaged Property, whether or not covered by insurance, without the Lender's prior written consent. The Lender and the County will cooperate fully with each other in filing any claim or proof of loss with respect to any insurance policy described in this Contract.

(v) The Lender will not be responsible for the sufficiency or adequacy of any required insurance.

3.10. Title Insurance. The County agrees to obtain, at its own cost and expense, an American Land Title Association policy of title insurance, in form satisfactory to the Lender, effective as of the Closing Date, in an amount not less than the amount financed, and naming the Lender as insured mortgagee. The policy must insure the County's fee title to the Mortgaged Property, subject only to Permitted Encumbrances, and must be issued by a title insurance company qualified to do business in the State of North Carolina and reasonably acceptable to the Lender. On or before the Closing Date, the County must provide the Lender with a copy of an insurer's commitment to issue such a policy and, promptly after the Closing Date the County must provide the Lender with a copy of the final policy.

ARTICLE IV
CONSTRUCTION

4.1. Construction; Changes. (a) The County will comply with the provisions of the North Carolina General Statutes and enter into the Construction Contracts. The County will cause the construction of the Pledged Facilities to be carried on continuously in accordance with the Construction Contracts and all applicable State and local laws and regulations.

(b) The County will provide for the Pledged Facilities to be constructed on the Pledged Site and will insure (i) that no portion of the Pledged Facilities encroaches upon nor overhangs any easement or right-of-way, (ii) that the Pledged Facilities will be wholly within any applicable building restriction lines, however established, and (iii) that the Pledged Facilities will not violate applicable use or other restrictions, whether imposed by law or rule or by prior conveyances.

(c) The County may approve changes to the Construction Contracts in its discretion except that the County may not, without the Lender's consent, approve any changes which (i) increase total estimated Project Costs above the amounts previously identified and designated therefor, or (ii) result in the use of the Mortgaged Property for purposes substantially different from the use intended as of the Closing Date.

4.2. Contractors' Performance and Payment Bonds. The County shall require each contractor entering into a Construction Contract to furnish a performance bond and a separate labor and material payment bond as required by State law, insured by a surety company rated "A" or better by A.M. Best, and naming the Lender and its successors and assigns as a dual obligee. The County shall provide copies of all such bonds to the Lender at the Lender's request. The County shall provide copies of all such bonds to the Lender at the Lender's request.

Upon any material default by a contractor under any Construction Contract, or upon any material breach of warranty with respect to any materials, workmanship or performance, the County shall promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against the contractor or against the surety of any bond securing the performance of the applicable Construction Contract.

4.3. Contractors' General Public Liability and Property Damage Insurance. The County shall require each contractor entering into a Construction Agreement to procure and maintain standard form (a) comprehensive general public liability and property damage insurance, at such contractor's own cost and expense, during the duration of such contractor's construction contract, in the amount of at least \$2,000,000, and (b) comprehensive automobile liability insurance on owned, hired and non-owned vehicles for not less than \$2,000,000. Such policies shall include the Lender as an additional named insured. The County shall provide to the Lender a certificate of insurance in a form acceptable to the Lender with respect to each contractor. Such insurance shall provide protection from all claims for bodily injury, including death, property damage and contractual liability, products/completed operations, broad form property damage and XCU (explosive, collapse and underground damage), where applicable.

4.4. Contractors' Builder's Risk Completed Value Insurance. The County shall require each contractor entering into a Construction Agreement to purchase and maintain property insurance (builder's risk) upon all construction, acquisition, installation and equipping of the Pledged Facilities (excluding contractor's tools and equipment) at the Pledged Site thereof at the full insurable value thereof. This insurance shall include a lender's loss payable endorsement in favor of the Lender, and shall insure against "all risk" subject to standard policy conditions and exclusions. The contractor shall purchase and maintain similar property insurance for portions of the work stored off the Pledged Site or in transit when such portions of the work are to be included in an application for payment. The contractor shall be responsible for the payment of any deductible amounts associated with this insurance.

4.5. Contractors' Workers' Compensation Insurance. The County shall require each contractor entering into a Construction Agreement to procure and maintain workers' compensation insurance during the term of such Construction Agreement, covering his or her employees working thereunder. A certificate of insurance evidencing such coverage, in form acceptable to the Lender, shall be provided to the County with respect to each contractor entering into a Construction Agreement. Each Construction Agreement shall also provide that each subcontractor of any contractor who is a party to such Construction Agreement shall be required to furnish similar workers' compensation insurance.

4.6. Right of Entry and Inspection. The Lender and its representatives and agents, upon reasonable notice to the County, have the right to enter upon the Pledged Site and inspect the Pledged Facilities from time to time during construction and at any other time during the Contract term. The County will cause any contractor or subcontractor to cooperate with any of those parties and agents during any inspection. Any inspection under this Section is made only for the Lender's benefit.

4.7. Completion of Construction. When the construction of the Pledged Facilities has been substantially completed to the County's satisfaction, the County will promptly prepare and deliver a certificate to that effect to the Lender. The County may then use any remaining portion of the Amount Advanced not needed to pay remaining Project Costs for any lawful purpose not in conflict with the County's obligations under Section 7.1(k) or may be used for prepayment as provided in Section 2.4(a).

4.8. Cooperation. The Lender and the County will cooperate fully with each other in filing any claim or proof of loss with respect to any bond or insurance policy described in this Contract. So long as no Event of Default has occurred and is continuing under this Contract, neither the Lender or the County may voluntarily settle, or consent to the settlement of, any proceeding arising out of any claim with respect to the Project or the Pledged Facilities without the other's written consent.

ARTICLE V
TITLE; LIENS

5.1. Title. Title to the Mortgaged Property and any and all additions, repairs, replacements or modifications thereto will at all times be in the County, subject to the lien of the Deed of Trust and to the Permitted Encumbrances. Simultaneously with the execution and delivery of this Contract, the County will deliver to the Lender the Deed of Trust in form mutually satisfactory to the Lender and the County, and will cause the Deed of Trust to be recorded in the Office of the Register of Deeds of Jackson County, North Carolina.

5.2. Encumbrance, Mortgage or Pledge of Mortgaged Property.

(a) The County will not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Mortgaged Property (or any portion), except Permitted Encumbrances. The County will promptly, at its own expense, take such action as may be appropriate to discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it has created, incurred or suffered to exist.

(b) The County may, at its own expense and in its own name, in good faith contest any lien or claim as described in (a) above. In the event of a contest, the County may permit the lien or claim to remain unpaid during the period of the contest and any appeal. If, however, the Lender notifies the County that, in the opinion of independent counsel selected by the Lender, the security afforded pursuant to this Contract or the Deed of Trust will be materially endangered by nonpayment of the lien or claim, then the County must promptly pay those items (but the payment will not in itself constitute a waiver of the right to continue to contest the charges). The Lender will cooperate fully with the County in any contest, upon the request and at the expense of the County.

(c) The County will reimburse the Lender for any expense incurred by it in order to discharge or remove any lien or claim, together with interest thereon at the annual rate of 7.00%.

ARTICLE VI
CONDEMNATION OR LOSS OF TITLE;
USE OF NET PROCEEDS

6.1. Damage, Destruction or Condemnation. The County will promptly notify the Lender in writing if

(a) the Mortgaged Property (or any portion) is destroyed or damaged by fire or other casualty;

(b) any governmental authority takes, or notifies the County of any intent to take, title to, or the temporary or permanent use of the Mortgaged Property (or

any portion), or the estate of the County or the Lender in the Mortgaged Property (or any portion), under the power of eminent domain;

(c) a material defect in the construction of the Pledged Facility becomes apparent; or

(d) title to or the use of all or any portion of the Mortgaged Property is lost by reason of a defect in title;

and if the County estimates that any loss or casualty as described in this Section will either cost \$100,000 or more to remedy or will result in a remedial payment to the County of \$100,000 or more, as the case may be.

Each notice must describe generally the nature and extent of such damage, destruction or taking. The County will provide any additional information concerning such matter as the Lender may reasonably request.

The County will file its claims under insurance coverages and claims for awards or payments in the nature of condemnation awards resulting from any such damage, destruction or taking. The County will prosecute all such claims for such awards or payments in good faith and with due diligence. Any Net Proceeds received by the County will be used as provided in Section 6.2.

6.2. Security Interest in Net Proceeds; Deposit and Disbursement.

(a) If the Net Proceeds arising from any single event, or any single series of related events, is not more than \$100,000, then the County has no obligation to account to the Lender or any other person or entity with respect to the use of those Net Proceeds. The County, however, acknowledges that its use of such funds may be constrained by the requirements of the Code and the County's obligations under Section 7.1(k).

(b) If the amount of Net Proceeds received by the County from any single event or any single series of related events is more than \$100,000, then the County grants a security interest in the Net Proceeds to the Lender to secure the County's obligations under this Contract, subject to the further provisions of this Section. This Contract is intended as and constitutes a security agreement with respect to this se-

curity interest. All Net Proceeds remain subject to the security interest provided for in this subsection until expended in compliance with this Contract.

(c) If the amount of Net Proceeds received by the County from any single event or any single series of related events is more than \$100,000 but less than \$1,000,000, the County will retain the Net Proceeds and promptly apply those amounts toward the repair or restoration of the Mortgaged Property, to the extent that can be accomplished with those amounts.

(d) If the amount of Net Proceeds received by the County from any single event or any single series of related events is at least \$1,000,000, the County will cause those Net Proceeds to be paid to an escrow agent (which must be a bank, trust company or similar entity exercising fiduciary responsibilities and reasonably acceptable to the Lender) for deposit in a special escrow fund to be held by the escrow agent and disbursed by the escrow agent pursuant to requisitions in form and substance reasonably acceptable to the Lender. The County will then promptly apply those amounts toward the repair or restoration of the Mortgaged Property, to the extent that can be accomplished with those amounts.

(e) In the case of any use of Net Proceeds for repair or restoration, the County must act with due diligence and in a commercially reasonable manner to provide for the repair and restoration. After the County has finished applying Net Proceeds to repair or restoration, the County will promptly provide the Lender a written accounting of the use of those Net Proceeds. provide an accounting in writing to the Lender regarding the use of those Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair or restoration of the Mortgaged Property, subject to the appropriation of funds, the County will complete the work and pay any cost in excess of the amount of Net Proceeds, in all events subject to the limitations of Article XII. The County agrees that if by reason of any such insufficiency of Net Proceeds the County makes any payments pursuant to the provisions of this Section 6.2, the County is not entitled to any reimbursement therefor from the Lender or to any reduction in Installment Payments then due or thereafter coming due.

(f) In any event, the County may apply any Net Proceeds toward the prepayment of the Amount Advanced subject to the terms of Section 2.4(b),

(g) The County is not entitled to any reimbursement of any supplemental funds it provides under this subsection, nor is the County entitled to any postpone-

ment or diminution of its obligation to make Contract Payments as a result of any contribution. Any repair or replacement paid for in whole or in part out of Net Proceeds will be the County's property and will be part of the Mortgaged Property.

ARTICLE VII
COUNTY'S WARRANTIES, REPRESENTATIONS AND COVENANTS

7.1. By the County, Generally. The County makes the following statements of fact, with the understanding and intent that the Lender will rely on these statements in making its decision to enter into this Contract:

(a) The County is a duly organized and validly existing political subdivision of the State. The County has all powers necessary to enter into the transactions contemplated by this Contract and the Deed of Trust, and to carry out its obligations under those instruments.

(b) The County will take no action that would adversely affect its existence as a political subdivision in good standing in the State.

(c) The County has duly and validly authorized, executed and delivered this Contract and the Deed of Trust. Assuming due authorization, execution and delivery thereof by the other parties, this Contract and the Deed of Trust constitute valid, legal and binding obligations of the County, enforceable (in the case of the Deed of Trust, by the Deed of Trust Trustee and the Lender) in accordance with their respective terms, subject to bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and such principals of equity as a court having jurisdiction may impose.

(d) The County requires no further approval or consent from any governmental authority with respect to the County's entering into or performing under this Contract or the Deed of Trust.

(e) No County representation, covenant or warranty in this Contract is false or misleading in any material respect.

(f) The County Board resolutions relating to the County's authorization and performance of this Contract, the Deed of Trust, and the transactions contemplated in those documents have been duly adopted, are in full force and effect, and have not been in any material respect modified, revoked or rescinded.

(g) The County reasonably expects that the Project can be completed for a total price within the total amount of funds to be available from the Amount Advanced, income anticipated to be derived from the investment of those funds, and other funds expected to be available for the intended purpose. The County will pay any excess costs, with no resulting reduction or offset in the amounts otherwise payable by the County.

(h) The County reasonably believes funds will be available to satisfy all its obligations under this Contract.

(i) The Pledged Facilities have been designed and constructed so as to comply with all applicable subdivision, building and zoning ordinances and regulations, if any, and any and all applicable federal and State standards and requirements relating to the Pledged Facilities. The County has complied with all required public bidding and related procedures regarding the acquisition and construction of the Pledged Facilities.

(j) The Pledged Facilities have not been and will not be used in any private business or put to any private business use.

(k) The County will not take or permit, or omit to take or cause to be taken, any action that would cause its obligations under this Contract to be "arbitrage bonds" or "private activity bonds" within the meaning of the Code, or otherwise adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments to which those components would otherwise be entitled and, if it should take or permit, or omit to take or cause to be taken, any such action, the County will take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(l) The County has determined to undertake the Project after extensive consideration of the County's needs and responsibilities, and consideration of alternative means of carrying out those responsibilities.

(m) The County will furnish to the Lender (a) current audited financial statements in reasonable detail, with supporting schedules (the "Audit") as soon as practicable after County's acceptance thereof and in any case within 360 days after the end of each fiscal year, which may be in electronic .PDF format. To satisfy this

requirement, the County may email to the Lender a link to the posted Audit as it appears on the MSRB's "EMMA" website. The County shall send the electronic Audit copy or EMMA link to the following email address (or such other address as the Lender supplies to the County in writing): Public_Finance_Servicing@snbcloud.onmicrosoft.com, and (b) at the request of the Lender, the County's annual budget as submitted or approved. The County further agrees that it will permit the Lender or its agents and representatives to inspect the County's books and records and make extracts therefrom at the Lender's own expense during regular business hours and in a manner that will not disrupt the County's normal business routine. The County shall furnish to the Lender such other financial information as the Lender may reasonably request. If the Audit is not available within 360 days of fiscal year end, the County will furnish unaudited financial statements to the Lender in the manner described in this paragraph within such period, and will then supply the Audit immediately upon its availability. The County represents and warrants to and covenants with the Lender that, to the best of its knowledge, all financial statements which have been or may be delivered to the Lender fairly and accurately reflect the County's financial condition and there has been and will be no material adverse change in the County's financial condition as reflected in the financial statements since the date of the most recent information supplied.

(n) The County is the owner in fee of title to the Pledged Facilities. No lien or encumbrance on the Pledged Facilities materially impairs the County's use of the Pledged Facilities for the purposes for which it is, or may reasonably be expected to be, held. Title to the Pledged Facilities is and shall remain in the County, subject to the rights of the Lender hereunder and under the Deed of Trust and the other Permitted Encumbrances.

(o) The County will obtain or cause to be obtained all licenses, permits and other approvals of any other governmental entity having jurisdiction over the County or the Pledged Facilities that are necessary for the construction and operation of the Pledged Facilities.

(p) The Facility will be a structurally sound building which will be in compliance with all applicable building and design codes and the County's requirements.

(q) The Pledged Site is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance

which would prohibit or materially interfere with the construction of the Project on the Pledged Facilities, as contemplated by this Contract.

(r) All taxes, assessments or impositions of any kind with respect to the Pledged Site and the Pledged Facilities, except current taxes, have been paid in full.

(s) The Pledged Site is properly zoned for the purposes of the Project to be constructed on the Pledged Site.

(t) The County has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby the County's interests in the Pledged Facilities and in any property now or hereafter included in the Project constructed on the Pledged Site shall be or may be impaired, changed or encumbered in any manner whatsoever except as permitted by this Contract.

7.2. County's Undertakings as to Environmental Matters.

The County makes the following statements of fact, with the understanding and intent that the Lender will rely on these statements in making its decision to enter into this Contract.

(a) The County has no knowledge (A) that any industrial use has been made of the Mortgaged Property, (B) that the Mortgaged Property has been used for the storage, treatment or disposal of chemicals or any wastes or materials that are classified by federal, State or local laws as hazardous or toxic substances, (C) that any manufacturing, landfilling or chemical production has occurred on the Mortgaged Property, or (D) that there is any asbestos or other contaminant on, in or under the Mortgaged Property.

(b) To the County's knowledge, the Mortgaged Property is in compliance with all federal, State and local environmental laws and regulations. The County will keep the Mortgaged Property, and the activities at the Mortgaged Property, in compliance with all environmental laws, rules, and regulations. The County will, in a timely manner, take all lawful action necessary to maintain such compliance or to remedy any lack of compliance.

(c) The County will use and maintain hazardous materials or substances on the Mortgaged Property only for the routine maintenance and operation of the

Mortgaged Property. The County will maintain these materials or substances only in appropriate quantities for these purposes, and will use them only in substantial compliance with label instructions and all State and federal environmental laws, rules and regulations. The County will not use the Mortgaged Property (A) for the manufacture, transport, process, storage, treatment or disposal of chemicals or any wastes or materials that are classified by federal, State or local laws as hazardous or toxic substances, or (B) for any industrial, manufacturing or landfilling use or for any chemical production.

(d) The County will promptly notify the Lender of any change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Mortgaged Property or used in connection therewith. The County will promptly send to the Lender copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Mortgaged Property.

ARTICLE VIII **INDEMNIFICATION**

To the extent permitted by law, the County will indemnify, protect and save

- (a) the LGC and its members and employees,
- (b) the Lender and its officers and employees, and
- (d) the Deed of Trust Trustee,

in all cases harmless from all liability and losses, including expenses and legal fees, expenses and costs, arising out of, connected with, or resulting directly or indirectly

(A) from actions by the County and its representatives and relating to the Mortgaged Property or the transactions contemplated by this Agreement, including without limitation the possession, condition, installation, construction or use of the Mortgaged Property.

(B) as a result of any warranty or representation made by the County in Section 7.2 being false or untrue in any material respect, or any requirement under any law or regulation which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by the Lender, the County or any transferee or assignee of the County or the Lender.

The County has no obligation to indemnify any indemnified party for the gross negligence or intentional misconduct of the indemnified party or any of its employees or representatives. The County's obligation to provide indemnification under this Article continues even after there is no longer any outstanding principal balance of the Amount Advanced and extends to any successor to the Lender. The parties intend that the LGC is a third-party beneficiary of the County's obligations under this Article VII.

ARTICLE IX
DISCLAIMER OF WARRANTIES

The County acknowledges as follows:

- (a) that the Lender has not designed the Pledged Facilities;
- (b) that the Lender has not supplied any plans or specifications with respect to the Pledged Facilities;
- (c) that the Lender is not a manufacturer of, nor a dealer in, any of the component parts of the Pledged Facilities or similar facilities;
- (d) that the Lender has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Pledged Facilities or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Pledged Facilities or any component part thereof or any property or rights relating thereto at any stage of the construction thereof;
- (e) that the Lender has not at any time had physical possession of the Pledged Facilities or any component part thereof or made any inspection thereof or any property or rights relating thereto;
- (f) that the Lender has not made any warranty or other representation, express or implied, that the Pledged Facilities or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the County intends therefor, or (iii) is safe in any manner or respect.

THE LENDER MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE MORTGAGED PROPERTY OR THE PLEDGED FACILITIES OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE, and further including the design or condition thereof; the safe-

ty, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the ability of the Pledged Facilities to perform any function; that the Amount Advanced will be sufficient to pay all Project Costs; or any other characteristic of the Pledged Facilities; it being agreed that the County is to bear all risks relating to the Pledged Facilities, the completion thereof or the transactions contemplated by this Contract or by the Deed of Trust, and the County waives the benefits of any and all implied warranties and representations of the Lender.

The provisions of this Article will survive the Contract's termination.

ARTICLE X
DEFAULT AND REMEDIES

10.1. Events of Default. An "Event of Default" is any of the following:

- (a) The County fails to make any Installment Payment when due.
- (b) The occurrence of an Event of Nonappropriation.
- (c) The County's failure to maintain insurance as required under Section 3.9 for a period of 10 days.
- (d) The County breaches or fails to perform or observe any term, condition or covenant of this Contract or the Deed of Trust on its part to be observed or performed, other than as referred to in subsections (a), (b) or (c) above, including payment of any Additional Payment, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the County (by any person or entity), unless the Lender agrees in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot reasonably be corrected within the applicable period and the County institutes corrective action within the applicable period, no Event of Default will be deemed to have occurred so long as the County diligently pursues the corrective action.

(e) Proceedings under any bankruptcy, insolvency, reorganization or similar law are instituted by or against the County as a debtor, or a receiver, custodian or similar officer is appointed for the County or any of its property.

(f) Any lien, charge or encumbrance (other than Permitted Encumbrances) prior to or affecting the validity of the Deed of Trust is found to exist, or proceedings are instituted to enforce any lien, charge or encumbrance against the Mortgaged Property and such lien, charge or encumbrance would be prior to the lien of the Deed of Trust.

10.2. Remedies on Default. Upon the occurrence and during the continuation of any Event of Default, the Lender may, without any further demand or notice, exercise any one or more of the following remedies:

(a) Declare the unpaid principal components of the Installment Payments, and the accrued interest thereon, immediately due and payable;

(b) Proceed by appropriate court action to enforce performance by the County of the applicable covenants of this Contract or the Deed of Trust or to recover for the breach thereof; and

(c) Avail itself of all available remedies under the Deed of Trust, including foreclosure on the Mortgaged Property and recovery of legal fees and other expenses, and of all other remedies available at law or in equity.

The Lender's exercise of remedies is subject to the limitations set forth in Article X.

10.3. No Remedy Exclusive; Delay Not Waiver. All remedies under this Contract are cumulative and may be exercised concurrently or separately. The exercise of any one remedy will not be deemed an election of such remedy or preclude the exercise of any other remedy. If any Event of Default occurs and is thereafter waived, such waiver will be limited to the particular breach so waived and will not be deemed a waiver of any other breach under this Contract.

ARTICLE XI
ASSIGNMENTS

11.1. County's Assignments. The County may not sell or assign any interest in this Contract without the Lender's prior written consent.

11.2. Lender's Assignment. The Lender may, at any time and from time to time, assign all or any part of its interest in the Mortgaged Property or this Contract, including, without limitation, the Lender's rights to receive Installment Payments. Any assignment made by the Lender or any subsequent assignee must not purport to convey any greater interest or rights than those held by the Lender pursuant to this Contract.

The County agrees that this Contract may become part of a pool of obligations at the Lender's or its assignee's option. The Lender or its assignees may assign or re-assign all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract. Any assignment by the Lender may be only to a bank, insurance company, or similar financial institution or any other entity approved by the LGC. Notwithstanding the foregoing, no assignment or reassignment of the Lender's interest in the Mortgaged Property or this Contract will be effective unless and until the County receives a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each such assignee. No one may offer or sell any interests in the County's obligation pursuant to an offering statement or similar disclosure document unless the County has approved the document and its use for offering and sale.

The County agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the County, and the County will keep a complete and accurate record of all assignments as required by the Code. After the giving of any notice, the County will thereafter make all payments in accordance with the notice to the assignee named therein and will, if so requested, acknowledge the assignment in writing, but the acknowledgment will in no way be deemed necessary to make the assignment effective.

Notwithstanding any of the foregoing, in no event will the County ever be required to make Installment Payments to more than one person or entity on any payment date.

ARTICLE XII

COUNTY'S LIMITED OBLIGATION

Notwithstanding any other provision of this Contract, the parties intend that this transaction comply with North Carolina General Statutes Section 160A-20. No deficiency judgment may be entered against the County in violation of such Section 160A-20.

No provision of this Contract should be construed or interpreted as creating a pledge of the County's faith and credit within the meaning of any constitutional debt limitation. No provision of this Contract should be construed or interpreted as an illegal delegation of governmental powers or as an improper donation or lending of the County's credit within the meaning of the North Carolina constitution. The County's taxing power is not and may not be pledged directly or indirectly or contingently to secure any moneys due under this Contract.

No provision of this Contract will be construed to pledge or to create a lien on any class or source of the County's moneys (other than the Amount Advanced and any Net Proceeds), nor will any provision of this Contract restrict the County's future issuance of any of its bonds or other obligations payable from any class or source of the County's moneys (except to the extent the this Contract and the Deed of Trust restrict the incurrence of additional obligations secured by the Mortgaged Property).

To the extent of any conflict between this Article and any other provision of this Contract, this Article takes priority. Nothing in this Article is intended to impair or prohibit foreclosure of the Deed of Trust upon occurrence of an Event of Default under this Contract or the Deed of Trust.

ARTICLE XIII **MISCELLANEOUS**

13.1. Notices.

(a) Any communication provided for in this Contract must be in writing (not including facsimile transmission or 29 mail).

(b) Any communication under this Contract will be sufficiently given and deemed given on the delivery date shown on a certified mail receipt, or a delivery receipt from a national commercial package delivery service, if addressed as follows:

(i) if to the County, to County Manager, Jackson County, Attention: Notice under 2019 Financing Deed of Trust, 401 Grindstaff Cove Road, STE A-207, Sylva, NC 28779

(ii) if to the Lender, to Sterling National Bank, 500 Seventh Avenue, 3rd Floor, New York, NY 10018, Attention: NYC Team 114

(c) Any addressee may designate additional or different addresses for communications by notice given under this Section to the other.

13.2. Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right is not a Business Day, such payment may be made or act performed or right exercised on or before the next succeeding Business Day. For this Contract and the Deed of Trust, a "Business Day" is any day on which banks in the State are not by law authorized or required to remain closed.

13.3. Governing Law. The parties intend that North Carolina law will govern this Contract and all matters of its interpretation. To the extent permitted by law, the parties agree that any action brought with respect to this Contract must be brought in the North Carolina General Court of Justice in Jackson County, North Carolina.

13.4. Severability. If any provision of this Contract is determined to be unenforceable, that will not affect any other provision of this Contract.

13.5. Amendments. This Contract may not be modified or amended unless the amendment is in writing and signed by the County and the Lender and approved by the LGC.

13.6. Binding Effect. Subject to the specific provisions of this Contract, this Contract will be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

13.7. Third-Party Beneficiaries. The Deed of Trust Trustee and the LGC are the only parties intended as third-party beneficiaries of this Contract.

13.8. Time. Time is of the essence of this Contract and each and all of its provisions.

13.9. Limitation on Liability of Officers and Agents. No officer, agent or employee of the County, of the LGC or the Lender will be subject to any personal liability or accountability because of the execution of this Contract or any other documents related to the transactions contemplated by this Contract. Such officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section will not relieve any officer, agent or employee from the performance of any official duty provided by law.

13.10. Counterparts. This Contract may be executed in several counterparts, including separate counterparts. Each will be an original, but all of them together constitute the same instrument.

13.11. 29 Transaction. The parties agree that the transaction described herein may be conducted and related documents may be received, sent and stored by 29 means. Copies, telecopies, facsimiles, 29 files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

13.12. Role of Lender. The Lender has not acted and will not act as a fiduciary for the County or as the County's agent or municipal advisor. The Lender has not and will not provide financial, legal, tax, accounting or other advice to the County or to any financial advisor or placement agent engaged by the County with respect to this Contract. The County, its financial advisor, placement agent or municipal advisor, if any, shall each seek and obtain its own financial, legal, tax, accounting and other advice with respect to this Contract from its own advisors (including as it relates to structure, timing, terms and similar matters).

13.13. Participation of Contract from the Lender to SNFC. The Lender hereby notifies the County, and the County hereby acknowledges such notification,

that simultaneously with the execution and delivery of this Contract, the Lender will enter into a participation agreement with Sterling National Funding Corp., a New York corporation and a wholly-owned subsidiary of the Lender ("SNFC"), whereby the Lender will assign to SNFC a 100% participation interest in this Contract at par. The Lender will continue to service this Contract and collect all Installment Payments and payment of any prepayment hereunder.

13.14. Definitions. Unless the context clearly requires otherwise, capitalized terms used in this Contract and not otherwise defined have the meanings set forth in Exhibit A.

13.15. Entire Agreement. This Contract, together with the Deed of Trust, constitutes the County's entire agreement with the Lender with respect to its general subject matter.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the County and the Lender have caused this instrument to be executed as of the day and year first above written by duly authorized officers.

(SEAL)

ATTEST:

**JACKSON COUNTY,
NORTH CAROLINA**

Angie Winchester
Clerk, Board of Commissioners

By: _____
Don Adams
County Manager

STERLING NATIONAL BANK

By: _____
Kevin C. King
Senior Vice President, Senior Managing Director

This contract has been approved under the provisions of Article 8, Chapter 159 of the General Statutes of North Carolina.

Greg C. Gaskins
Secretary, North Carolina
Local Government Commission

By _____
[Greg C. Gaskins or
Designated Assistant]

[Installment Financing Contract dated as of January xx, 2019]

Exhibits -
A - Definitions

B - Payment schedule

EXHIBIT A - Definitions

For all purposes of this Contract, unless the context requires otherwise, the following terms have the following meanings:

"Additional Payments" means any amounts payable by the County as a result of its obligations under this Contract or the Deed of Trust (other than the County's obligation to pay Installment Payments). This includes any of the Lender's expenses (including attorneys' fees) in prosecuting or defending any action or proceeding in connection with this Contract and any taxes or any other expenses, including, but not limited to, the Lender's administrative or legal costs, licenses, permits, state and local sales and use or ownership taxes or property taxes that the Lender is required to pay as a result of this Contract (together with interest that may accrue on any of the above if the County fails to pay the same, as set forth in this Contract).

"Amount Advanced" has the meaning assigned in Article I.

"Closing Date" means the date on which this Contract is first executed and delivered by the parties, which the parties expect to be on or about January xx, 2019.

"Code" means the Internal Revenue Code of 1986, as amended, including regulations, rulings and revenue procedures promulgated thereunder or under the Internal Revenue Code of 1954, as amended, as applicable to the County's obligations under this Contract. Reference to any specific Code provision will be deemed to include any successor provisions thereto.

"Construction Agreement" means any agreement between the County and any other person or entity related to any part of the construction of the Pledged Facilities, including contracts for site preparation and related work.

"Contract Payments" means Installment Payments and Additional Payments.

"County Board" means the County's Board of Commissioners, or any successor to its functions, as from time to time constituted.

"County Certificate" means any written document (in whatever form, however designated) executed and delivered by a County Representative.

"County Representative" means the County Manager, County finance officer or any other person or persons at the time designated, by a written certificate furnished to the Lender and signed on the County's behalf by the County Manager or the Chairman of the County Board, to act on the County's behalf for the purpose of performing any act (or any specified act) under this Contract.

"Deed of Trust" means the Deed of Trust and Security Agreement, dated as of January xx, 2019, from the County to a deed of trust trustee for the benefit of the Lender and its assigns, as it may be duly amended or supplemented.

"Event of Default" means one or more events of default as defined in Section 10.1.

"Event of Nonappropriation" means a failure or refusal by the County Board to include funds for Contract Payments in the County's budget for any Fiscal Year, or any reduction or elimination of an appropriation for Contract Payments, all as further described in Section 2.6.

"Fiscal Year" means the County's fiscal year beginning July 1, or such other fiscal year as the County may later lawfully establish, and also includes the period between the Closing Date and June 30, 2019.

"Installment Payments" means the payments payable by the County pursuant to Section 2.1.

"LGC" means the North Carolina Local Government Commission, or any successor to its functions.

"Mortgaged Property" has the meaning assigned in the Deed of Trust, and generally includes the Pledged Site and the Pledged Facilities.

"Net Proceeds" a) claims made on account of insurance coverages required under this Contract, (b) any exercise of condemnation or eminent domain authority related to all or any portion of the Mortgaged Property,

"Net Proceeds" means all payments and proceeds derived from claims made on account of insurance coverages required under this Agreement, any condemnation award arising out of the condemnation of all or any portion of the Mortgaged Property, payments on any bonds required by Section 4.2, any amounts recovered from any contractor on an action for default or breach, as described in Section 4.2, proceeds of title insurance related to the Mortgaged Property, or any sale of the Facilities, or any amounts received in lieu or in settlement of any of the foregoing, in any case reduced by the sum of all amounts expended by the County, the Company or the Trustee (including legal fees and costs) (i) to collect the gross proceeds or (ii) to remedy the event giving rise to the proceeds, all of which amounts will be paid or reimbursed from the gross proceeds.

"Permitted Encumbrances" means, as of any particular time, (a) the encumbrances on the County's title to the Mortgaged Property that are stated on Exhibit B to the Deed of Trust, (b) any lease for the Pledged Facility between the County and The Trustees of Southwestern Community College, (c) any contract or instrument stating the lien of the United States of America – Department of Commerce - Economic Development Agency (d) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pursuant to Section 3.8, (e) the Deed of Trust, (f) any lien or encumbrance which is made by its terms expressly subordinate to the lien of the Deed of Trust, and (g) easements and rights-of-way granted by the County pursuant to Section 1-6 of the Deed of Trust.

"Pledged Facility" has the meaning ascribed to that term in the Deed of Trust, and generally includes the planned new health occupations facility.

"Pledged Site" has the meaning ascribed to that term in the Deed of Trust, and generally includes the real property upon which the Pledged Facilities are located.

"Prime Rate" means the interest rate so denominated and set by Sterling National Bank (whether or not that Bank, or any of its affiliates, is at any time the counterparty under this Agreement) as its "Prime Rate," as in effect from time to time.

"Project" has the meaning ascribed to that term in the recitals to this Contract.

"Project Costs" means all capital costs of the Project as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of

the designated interest component of Installment Payments payable under this Contract, including (a) sums required to reimburse the County or its agents for advances made for any such costs, and (b) all costs related to the financing of the Project through this Contract and all related transactions.

"State" means the State of North Carolina.

All references in this Contract to designated "Sections" and other subdivisions are to the designated sections and other subdivisions of this Contract. The words "hereof" and "hereunder" and other words of similar import refer to this Contract as a whole and not to any particular Section or other subdivision unless the context indicates otherwise. Words importing the singular number will include the plural number and vice versa. The use of the term "including" should be understood to mean "including, but not limited to."

EXHIBIT B – Schedule of Installment Payments

Principal is payable in the amounts and on the dates as shown below, subject to prepayment as provided in this Contract. Interest is payable on each February 1 and August 1, beginning August 1, 2019.

Each portion of the Amount Advanced will bear interest from the Closing Date until paid. Interest is calculated at the annual rate of 3.81%. Interest will be calculated based on a 360-day year consisting of twelve 30-day months. The schedule below shows the expected interest payment amounts.

[To come.]

s★h draft of January 14

Prepared by and return after recording to:

Robert M. Jessup Jr.
Sanford Holshouser LLP
209 Lloyd St., Suite 350
Carrboro, NC 27510

Brief description: New health occupations building for Southwestern Community College, College Drive, 0.885 acres

Jackson County PINs: _____

STATE OF NORTH CAROLINA)	The collateral is or includes fixtures.
)	
JACKSON COUNTY)	This Deed of Trust secures future advances.
)	

THIS DEED OF TRUST AND SECURITY AGREEMENT (this "Deed of Trust") is dated as of January 29, 2019, and is granted by **JACKSON COUNTY, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the "County"), to **Benjamin C. Hirsh**, as trustee (the "Deed of Trust Trustee"), for the benefit of **STERLING NATIONAL BANK**, and its successors and assigns (the "Lender"),

RECITALS:

The Lender is advancing \$10,000,000 to the County pursuant to an Installment Financing Contract dated as of January 29, 2019 (the "Financing Contract"), between the County and the Lender. The County will use these funds, together with other available funds, to carry out a plan to design, construct and finance a new workforce training facility (the "Facility") for health occupations in western North Carolina in collaboration with Southwestern Community College.

As a condition to entering into the Financing Contract, the Lender requires that the County secure its obligations under the Financing Contract by this conveyance of the Facility and its related real property, as described in Exhibit A, and the other "Mortgaged Property," as defined below.

The Mortgaged Property includes the property described in Exhibit A. The County is the record owner of the property described in Exhibit A.

This Deed of Trust is given to secure current advances under the Financing Contract of \$10,000,000. The current scheduled date for final repayment is on or about February 1, 2039.

NOW, THEREFORE,

(1) in consideration of the execution and delivery of the Financing Contract and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge,

(2) to secure the County's performance of all its covenants under this Deed of Trust and under the Financing Contract, including the repayment of amounts advanced under the Financing Contract, and

(3) to charge the Mortgaged Property with this payment and performance,

the County sells, grants and conveys to the Deed of Trust Trustee, his successors and assigns forever, in trust, with power of sale, the following (collectively, the "Mortgaged Property"):

(a) the property described in Exhibit A and any real property later acquired by the County in exchange for, or in consideration of the exchange of, or with the proceeds from any disposition of, all or any part of any property described in this paragraph, and in all cases together with all easements, rights, rights-of-way and appurtenances belonging to any of that property (collectively, the "Pledged Site"); and

(b) all buildings and other improvements and fixtures (including any "Fixtures," as defined in Section 1-4) now or later attached to or used in or on those improvements or the Pledged Site, including (i) all renewals, replacements, and additions, (ii) all articles in substitution, (iii) all building materials for construction, improvement, modification or repair of improvements upon their delivery to the Pledged Site, and (iv) all proceeds of all the foregoing in whatever form resulting from the loss or disposition of the foregoing, including all proceeds of and unearned premiums for any insurance policies covering the Pledged Site and the improvements, proceeds of title insurance and payments related to the exercise of condemnation or eminent domain authority, and all judgments or settlements in lieu of any of the foregoing (collectively, the "Pledged Facilities");

TO HAVE AND TO HOLD the Mortgaged Property with all privileges and appurtenances belonging thereto, to the Deed of Trust Trustee, his successors and assigns forever, upon the trusts, terms and conditions and for the purposes set out below, in fee simple in trust;

SUBJECT, HOWEVER, to the existing encumbrances described in Exhibit B;

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST: if the County pays its "Obligations," as defined below, in full in accordance with the Financing Contract and this Deed of Trust, and the County complies with all of the terms, covenants and conditions of the Financing Contract and this Deed of Trust, this conveyance will be null and void and will be canceled of record at the County's request and cost, and title will revert as provided by law;

BUT IF, HOWEVER, THERE OCCURS AN EVENT OF DEFAULT UNDER THE FINANCING CONTRACT, then the Lender will have the remedies provided for in this Deed of Trust, including directing the Deed of Trust Trustee to sell the Mortgaged Property under power of sale.

THE COUNTY COVENANTS AND AGREES with the Deed of Trust Trustee and the Lender (and their respective heirs, successors and assigns), in consideration of the foregoing, as follows:

1. Warranties of Title; Security Provided by this Deed of Trust

1-1 Warranties of Title. The County covenants with the Deed of Trust Trustee and the Lender that the County is seized of and has the right to convey the Mortgaged Property in fee simple, that the Mortgaged Property is free and clear of all liens and encumbrances other than Permitted Encumbrances (as defined in the Financing Contract), that title to the Mortgaged Property is marketable, and that the County will forever warrant and defend title to the Mortgaged Property (subject to the Permitted Encumbrances) against the claims of all persons.

1-2 Security for Payment and Performance. This Deed of Trust secures the County's payment, as and when the same become due and payable, of all amounts payable by the County under the Financing Contract and this Deed of Trust (the "Obligations") and the County's timely compliance with all terms, covenants and conditions of the Financing Contract and this Deed of Trust.

1-3 Amount Advanced. This Deed of Trust is executed to secure all the County's obligations to the Lender related to the Mortgaged Property. The amount of the obligations secured by this Deed of Trust is \$10,000,000.

1-4 Security Interest in Fixtures. This Deed of Trust is intended to be a security agreement pursuant to the Uniform Commercial Code as in effect in North Carolina for the "Fixtures," as defined below. The County grants to the Lender and the Deed of Trust Trustee a security interest in the Fixtures to secure the Obligations.

Upon the occurrence of an Event of Default under this Deed of Trust or the Financing Contract, the Lender or the Deed of Trust Trustee is entitled to exercise all rights and remedies of a secured party under the Uniform Commercial Code as in effect in North Carolina and may proceed as to the Fixtures in the same manner as provided in this Deed of Trust for the real property.

The "Fixtures" are all items of personal property attached or affixed to the Pledged Facilities in such a manner that removing the items would cause damage to the Pledged Facilities. The Fixtures may include plumbing, heating, lighting, electrical, laundry, ventilating, refrigerating, incinerating, air-conditioning, fire and theft protection and sprinkler equipment, including all renewals and replacements

thereof and all additions thereto, and all articles in substitution thereof, and all proceeds of all the foregoing in whatever form.

The County is not obliged to renew, repair or replace any undesirable or unnecessary Fixture. If the County determines that any Fixture has become undesirable or unnecessary, the County may remove that Fixture from the Pledged Facilities and sell, trade-in, exchange or otherwise dispose of it (as a whole or in part), with an amount equivalent to the fair market value of the Fixture as removed becoming Net Proceeds and subject to the provisions of Section 6.2 of the Financing Contract.

With respect to those items of the Mortgaged Property that are or are to become Fixtures, this Deed of Trust constitutes a financing statement filed as a fixture filing. The County agrees that the security interest in the Fixtures granted in this Section 1-4 is in addition to, and not in lieu of, any security interest in the Fixtures acquired by real property law. The fixtures are located on the land described on Exhibit A, and the County is the record owner of that land. The name and address of the County, as debtor, and the Lender, as secured party, are set forth in Section 5-1. The County agrees to execute, deliver and file, or cause to be filed, in such place or places as may be requested by the Lender or the Deed of Trust Trustee, financing statements (including any continuation statements) in whatever form either party may reasonably request to evidence the security interest provided for in this Section.

1-5 County's Obligation Limited. Notwithstanding any other provision of this Deed of Trust, the parties intend that this transaction will comply with North Carolina General Statutes Section 160A-20. No deficiency judgment may be entered against the County in violation of Section 160A-20.

No provision of this Deed of Trust is to be construed or interpreted as creating a pledge of the County's faith and credit within the meaning of any constitutional debt limitation. No provision of this Deed of Trust should be construed or interpreted as an illegal delegation of governmental powers, nor as an improper donation or lending of the County's credit within the meaning of the North Carolina constitution. The County's taxing power is not and may not be pledged, directly or indirectly contingently, to secure any moneys due under this Deed of Trust.

No provision of this Deed of Trust restricts the County's future issuance of any of its bonds or other obligations payable from any class or source of the County's moneys (except to the extent the Financing Contract and this Deed of Trust restrict the incurrence of additional obligations secured by the Mortgaged Property).

Nothing in this Section is intended to impair or prohibit foreclosure on this Deed of Trust if the Obligations are not paid when due or otherwise upon the occurrence of an Event of Default under this Deed of Trust or the Financing Contract.

To the extent of any conflict between this Section and any other provision of this Deed of Trust, this Section takes priority.

1-6 No Transfers; Releases; Grants of Easements and Similar Interests

(a) The County shall not sell, transfer or encumber any interest in any Mortgaged Property, except as otherwise permitted by the Financing Contract or this Deed of Trust. This prohibition applies whether the sale, transfer, or encumbrance is of a legal or an equitable interest, is voluntary, involuntary, by operation of law, or otherwise, and includes any encumbrance that is not a Permitted Encumbrance. The Lender may take any action at law or in equity to prevent or rescind any unauthorized sale, transfer or encumbrance.

(b) The Lender is required, upon the County's direction and at any time, to execute and deliver all documents necessary to effect the release of all or any portion of the Mortgaged Property from the lien of this Deed of Trust upon the County's compliance with the requirements of this Section. No consent or acknowledgment by the Deed of Trust Trustee is required for any release under this Section.

(c) To obtain a release, the County must file with the Lender a County Certificate (i) stating that (A) no Event of Default is continuing, (B) the grant or release will not materially impair the intended use of the property remaining subject to this Deed of Trust, and (C) the release complies with the requirements of this Section, (ii) providing a copy of the proposed instrument of grant or release, (iii) directing the execution and delivery of the instrument, and (iv) providing evidence of compliance with (d) or (e) below. The Lender need not release any

property pursuant to this subsection (c) during the continuation of an Event of Default.

(d) In the case of a release of all the Mortgaged Property, the County must pay to some fiduciary reasonably acceptable to the Lender an amount (i) that is sufficient to provide for the payment in full of the entire outstanding balance of the Amount Advanced and (ii) that is required to be used for that payment.

(e) In connection with the release of a portion (but less than all) of the Mortgaged Property, the County must file with the Lender evidence that the appraised or insured value of that portion of the Mortgaged Property that is proposed to remain subject to the lien of this Deed of Trust (and the County may provide different evidence for different portions) will not be less than 75% of the aggregate principal component of the Amount Advanced outstanding at the time the release is effected.

(f) The County may make the following grants and dispositions, so long as the grant or disposition will not materially impair the intended use of the Pledged Facilities, and without regard to subsection (c) above.

(i) The County may from time to time grant easements, licenses, rights-of-way and other similar rights with respect to any part of the Mortgaged Property, and the County may release similar interests, with or without consideration. The County must send to the Lender, promptly after making such a grant or release, a County Certificate notifying the Lender of the grant or release and certifying that the grant or release will not materially impair the intended use of the Pledged Facilities.

(ii) The County may dispose of any undesirable or unnecessary Fixture as provided in Section 1-4.

1-7 Construction Mortgage. The security interest evidenced by this Deed of Trust is intended by the parties as a "construction mortgage" with respect to the Pledged Facilities within the meaning of Section 25-9-334 of the North Carolina General Statutes.

2. County's Payment Obligation; Lender's Advances

2-1 Payment of Obligations; Compliance with Covenants. The County will pay the Obligations as and when the same become due and payable in the manner set forth in this Deed of Trust and in the Financing Contract, and will comply in all respects with all of the terms of this Deed of Trust and the Financing Contract.

2-2 Payment of Costs and Legal Fees. (a) If the Deed of Trust Trustee or the Lender employs an attorney to assist in the enforcement or collection of any Obligations, or if the Deed of Trust Trustee or the Lender voluntarily or otherwise becomes a party to any suit or legal proceeding (including a proceeding conducted under any state or federal bankruptcy or insolvency statute) to protect the Mortgaged Property, to protect the lien of this Deed of Trust, to enforce collection of the Obligations, or to enforce compliance by the County with any of the provisions of this Deed of Trust or the Financing Contract, then the County will pay reasonable legal fees and all costs that may reasonably be incurred (whether or not any suit or proceeding is commenced). The County's repayment of all amounts paid for such purpose (together with interest at the annual rate of 4.00%) is secured as Obligations under this Deed of Trust.

(b) If any suit or proceeding described in subsection (a) is adverse to the County, however, then the County has this liability only if the Deed of Trust Trustee or the Lender, as the case may be, is a prevailing party in the suit or proceeding.

2-3 Advances for Performance of County's Obligations. If the County fails to perform any of its obligations under the Financing Contract or this Deed of Trust, then the Deed of Trust Trustee and the Lender are authorized, but not obligated, to perform the obligation or cause it to be performed. The County must repay any amounts paid for any such purpose. The County's repayment of all amounts paid for such purpose (together with interest at the annual rate of 4.00%) is secured as Obligations under this Deed of Trust.

3. The Deed of Trust Trustee

3-1 No Liability for Deed of Trust Trustee. The Deed of Trust Trustee will suffer no liability by virtue of his acceptance of this trust except as may be incurred as a result of any failure on his part to account for the proceeds of any sale under this Deed of Trust.

3-2 Substitute Trustees. If any Deed of Trust Trustee dies, becomes incapable of acting or renounces the trust, or if for any reason the Lender desires to replace any Deed of Trust Trustee, then the Lender has the unqualified right to appoint one or more substitute or successor Deed of Trust Trustees by instruments filed for registration in the office of the Register of Deeds where this Deed of Trust is recorded. The Lender may make any removal or appointment at any time without notice, without specifying any reason, and without any court approval. Any appointee becomes vested with title to the Mortgaged Property and with all rights, powers, and duties conferred upon the Deed of Trust Trustee by this Deed of Trust in the same manner and to the same effect as if that Deed of Trust Trustee had been named as the original Deed of Trust Trustee.

4. Defaults and Remedies; Foreclosure

4-1 Defaults and Remedies. During the continuation of an Event of Default under the Financing Contract, the Lender may pursue its rights and remedies as provided under the Financing Contract and this Deed of Trust.

4-2 Foreclosure; Sale under Power of Sale.

(a) *Right to foreclosure or sale.* During the continuation of an Event of Default, at the Lender's request, the Deed of Trust Trustee must foreclose this Deed of Trust by judicial proceedings or, at the Lender's option, the Deed of Trust Trustee must sell (and is empowered to sell) all or any part of the Mortgaged Property at public sale to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, curtesy or other exemption, all of which the County expressly waives to the extent permitted by law) after compliance with applicable State laws relating to foreclosure sales under power of sale. The Deed of Trust Trustee will execute and deliver a proper deed or deeds to the successful purchaser at the sale. If only a part of the Mortgaged Property is sold, the partial sale in no way adversely affects the lien created by this Deed of Trust against the remainder.

(b) *Lender's Bid.* The Lender may bid and become the purchaser at any sale under this Deed of Trust. Instead of paying cash, the Lender may make settlement for the purchase price by crediting against the Obligations the bid price net of sale expenses, including the Deed of Trust Trustee's commission, and after payment of any taxes and assessments as may be a lien on the Mortgaged Property

superior to the lien of this Deed of Trust (unless the Mortgaged Property is sold subject to those liens and assessments, as provided by law).

(c) *County's Bid.* The County may bid for all or any part or parts of the Mortgaged Property at any foreclosure sale. The County, however, may not bid less than an amount sufficient to provide for full payment of the Obligations, unless the Lender consents in writing.

(d) *Successful bidder's deposit.* At any sale the Deed of Trust Trustee may, at his option, require any successful bidder (other than the Lender) immediately to make a deposit with the Deed of Trust Trustee against the successful bid in the form of cash or a certified check in an amount of up to 5% of the sale price. The advertised notice of sale need not include notice of this requirement.

(e) *Application of sale proceeds.* The Deed of Trust Trustee must apply the proceeds of any foreclosure sale in the manner and in the order prescribed by State law. The parties agree (i) that the sale expenses will include a commission to the Deed of Trust Trustee equal to one-half of one percent of the gross sales price (but not exceeding a total of \$25,000) for all services performed by the Deed of Trust Trustee under this Deed of Trust, and (ii) that any sale proceeds remaining after the payment of all obligations and the prior application of the proceeds in accordance with State law will be paid to the County.

4-3 Possession of Mortgaged Property. During the continuation of an Event of Default, upon the Lender's demand the County must deliver possession of the Mortgaged Property to the Lender. In addition, the County must surrender possession of the Mortgaged Property to the purchaser of the Mortgaged Property at any judicial or foreclosure sale under this Deed of Trust.

During the continuation of an Event of Default, the Lender, to the extent permitted by law, is also authorized to (a) take possession of the Mortgaged Property, with or without legal action, (b) lease the Mortgaged Property, (c) collect all rents and profits from the Mortgaged Property, with or without taking possession of the Mortgaged Property, and (d) after deducting all costs of collection and administration expenses, apply the net rents and profits to the payment of necessary maintenance and insurance costs, and then apply all remaining amounts to the County's account and in reduction of the Obligations. The Lender will be liable to account only for rents and profits it actually receives.

4-4 No Remedy Exclusive; Delay not Waiver. All remedies under this Deed of Trust are cumulative and may be exercised concurrently or separately. The exercise of any one remedy is not an election of that remedy as an exclusive remedy, nor does the exercise of one remedy preclude the exercise of any other remedy. If any Event of Default occurs and is later waived by the other party or parties, that waiver is limited to the particular default waived and does not constitute a waiver of any other default. Every power or remedy given by this Deed of Trust to the Deed of Trust Trustee or the Lender may be exercised from time to time as often as may be deemed expedient by the Deed of Trust Trustee or the Lender.

5. Miscellaneous

5-1 Notices.

(a) Any communication provided for in this Deed of Trust must be in writing (not to include facsimile transmission or electronic mail).

(b) Any communication under this Deed of Trust will be deemed given on the delivery date shown on a United States Postal Service certified mail receipt, or a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

(i) if to the County, to County Manager, Jackson County, Attention: Notice under 2019 Financing Deed of Trust, 401 Grindstaff Cove Road, STE A-207, Sylva, NC 28779

(ii) if to the Deed of Trust Trustee, to Benjamin C. Hirsh, 400 Rella Boulevard, Montebello, NY 10901

(iii) if to the Lender, to Sterling National Bank, 500 Seventh Avenue, 3rd Floor, New York, NY 10018, Attention: NYC Team 114

(c) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others. The County must send copies of any notices it sends to the Deed of Trust Trustee also to the Lender.

5-2 Successors. This Deed of Trust is binding upon, will inure to the benefit of, and is enforceable by the County, the Deed of Trust Trustee and the Lender, and their respective successors and assigns.

5-3 No Marshalling. The County waives any and all rights to require marshalling of assets in connection with the exercise of any remedies provided in this Deed of Trust or as permitted by law.

5-4 Definitions. All capitalized terms used in this Deed of Trust and not otherwise defined have the meanings ascribed to them in the Financing Contract.

5-5 Governing Law; Forum. The County, the Lender and the Deed of Trust Trustee intend that North Carolina law will govern this Deed of Trust and all matters of its interpretation. To the extent permitted by law, the County, the Lender and the Deed of Trust Trustee agree that any action brought with respect to this Deed of Trust must be brought in the North Carolina General Court of Justice in Jackson County, North Carolina.

5-6 Limitation of Liability of Officers and Agents. No officer, agent or employee of the County, the Lender or the Deed of Trust Trustee will be subject to any personal liability or accountability by reason of the execution of this Deed of Trust or any other documents related to the transactions contemplated by this Deed of Trust. Those officers or agents are deemed to execute documents in their official capacities only, and not in their individual capacities. This Section does not relieve any officer, agent or employee from the performance of any official duty provided by law.

5-7 Covenants Run with the Land. All covenants contained in this Deed of Trust run with the real estate encumbered by this Deed of Trust.

5-8 Further Instruments. Upon the request of the Lender or the Deed of Trust Trustee, the County will execute, acknowledge and deliver any further instruments reasonably necessary or desired by the Lender or the Deed of Trust Trustee to carry out more effectively the purposes of this Deed of Trust or any other document related to the transactions contemplated by this Deed of Trust, and to subject to the liens and security interests of this Deed of Trust all or any part of the

Mortgaged Property intended to be given or conveyed, whether now given or conveyed or acquired and conveyed subsequent to the date of this Deed of Trust.

5-9 Severability. If any provision of this Deed of Trust is determined to be unenforceable, that will not affect any other provision of this Deed of Trust.

5-10 Non-Business Days. If the date for making any payment, or the last day for performance of any act or the exercising of any right, is not a Business Day, that payment may be made, or act performed or right exercised, on or before the next succeeding Business Day.

5-11 Electronic Transaction. The parties agree that the transaction described in this Deed of Trust may be conducted and related documents may be received, sent and stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

5-12 Entire Agreement; Amendments. This Deed of Trust, together with the Financing Contract, constitutes the County's entire agreement with the Lender and the Deed of Trust Trustee with respect to its general subject matter. This Deed of Trust may not be changed without the written consent of the County and the Lender, but the consent of the Deed of Trust Trustee is not required for any changes.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the County has caused this instrument to be signed, sealed and delivered by duly authorized officers, all as of January 29, 2019.

(SEAL)

ATTEST:

**JACKSON COUNTY,
NORTH CAROLINA**

Angie Winchester
Clerk, Board of Commissioners

By: _____
Don Adams
County Manager

* * * * *

**STATE OF NORTH CAROLINA;
JACKSON COUNTY**

I, a Notary Public of such County and State, certify that Don Adams and Angie Winchester personally came before me this day and acknowledged that they are the County Manager and the Clerk of the Board of Commissioners, respectively, of Jackson County, North Carolina, and that by authority duly given and as the act of such County, the foregoing instrument was signed in the County's name by such County Manager, sealed with its corporate seal and attested by such Clerk.

WITNESS my hand and official stamp or seal, this ___ day of January, 2019.

[SEAL]

Notary Public

My commission expires: _____

[Deed of Trust and Security Agreement
for the benefit of Sterling National Bank,
dated as of January 29, 2019]

EXHIBIT A - Pledged Site Description

EXHIBIT B -- Existing Encumbrances

evidenced by the Grant Agreement, as defined in Article XIII. The Grant Agreement imposes a lien on the Facility and its site to secure the performance of the County and the Community College under the Grant Agreement.

The County will enter into an installment financing contract (the "Financing Contract") with a lender to be determined in the future (the "Lender") to provide additional financing for the Project. The County will grant a deed of trust (the "Deed of Trust") to secure the County's repayment obligations under the Financing Contract. An intercreditor agreement (the "Intercreditor Agreement") will set out the relationship between EDA and the Lender.

The County proposes to lease the Facility and its associated real property, as described on Exhibit A (the "Site"), to the Community College, so that the Community College can operate the Facility. The Community College has determined to accept this lease.

The County is the record owner of the Site.

NOW THEREFORE, for and in consideration of the mutual promises contained in this Lease, the parties agree as follows:

ARTICLE I

REPRESENTATIONS, COVENANTS AND WARRANTIES

The County and the Community College each makes the following statements of fact, with the understanding and intent that the other party will rely on these statements in choosing to enter into this Lease:

(a) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Lease, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either is now a party or by which either is bound, or constitutes a default under any of the foregoing. The Lease is a valid and binding obligation of the respective party.

(b) To the knowledge of each party, there is no litigation or other court or administrative proceeding pending or threatened against that party (or against any other person) affecting that party's rights to execute or deliver this Lease or to comply with its

obligations under this Lease. Neither the party's execution and delivery of this Lease, nor its compliance with its obligations under this Lease, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

ARTICLE II

DEMISE; PRIORITY OF OTHER AGREEMENTS

2.1. **Demise.** The County hereby leases the Leased Property to the Community College, and the Community College hereby leases the Leased Property from the County, in accordance with the provisions of this Lease, to have and to hold for the Lease Term.

2.2. **Priority of Deed of Trust and Grant Agreement.** Notwithstanding anything in this Lease to the contrary, the Community College's rights to possession of the Leased Property and all its other rights under this Lease are subordinate to the rights of the respective beneficiaries under the Deed of Trust and the Grant Agreement. Any judicial sale of, or foreclosure on, the Leased Property pursuant to the Deed of Trust or the Grant Agreement terminates all the Community College's rights under this Lease.

ARTICLE III

LEASE TERM

3.1. **Commencement.** The Lease Term commences on the date of the initial execution and delivery of this Lease.

3.2. **Termination.** The Lease Term terminates upon the earliest of the following:

(a) Judicial sale of or foreclosure on the Leased Property under the Deed of Trust or the Grant Agreement;

(b) The occurrence of an Event of Default under this Lease and subsequent termination by the County pursuant to Section 11.2; or

(c) The date that is 30 days after the final payment that may be due under the Financing Contract, but no later than December 31, 2040, except that the Lease Term ends

immediately upon the termination of the Financing Contract if the Financing Contract is terminated following an event of default by the County under the Financing Contract.

Termination of the Lease Term terminates all the County's obligations under this Lease, and terminates the Community College's rights of possession under this Lease; but all other provisions of this Lease, including the receipt and disbursement of funds, shall continue until the Financing Contract is discharged as may be provided therein.

ARTICLE IV

QUIET ENJOYMENT; RECONVEYANCE

4.1. Quiet Enjoyment. The County covenants that the Community College will during the Lease Term peaceably and quietly have and hold and enjoy the Leased Property without suit, trouble or hindrance from the County, except as expressly required or permitted by this Lease. The County will not interfere with the Community College's quiet use and enjoyment of the Leased Property during the Lease Term. The County will, at the Community College's request and the County's cost, join and cooperate fully in any legal action in which the Community College asserts its right to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the Leased Property. In addition, the Community College may at its own expense join in any legal action affecting its possession and enjoyment of the Leased Property and will be joined (to the extent legally possible, and at the Community College's expense) in any action affecting its liabilities under this Lease.

The provisions of this Article are subject to rights to inspect the Leased Property granted to parties as may be provided in the Financing Contract.

4.2. Conveyance at End of Term. The County covenants that it will convey the Leased Property to the Community College within 30 days after the date of the County's final payment on the Financing Contract, subject to the priority of the Deed of Trust and the Grant Agreement as described in Section 3.2. The County will make this conveyance pursuant to a deed in form and substance reasonably acceptable to each party, and free and clear of all encumbrances other than (a) any encumbrances existing at the time of the original conveyance of the Leased Property from the Community College to the County, (b) any encumbrances that arise by operation of law without regard to action or inaction by the Community College or the County (such as regulatory encumbrances or encumbrances related to condemnation by another governmental entity), (c) encumbrances

created by the Community College's action, or (d) encumbrances to which the Community College consents or has consented.

ARTICLE V

CONSIDERATION FOR LEASE

5.1. Community College's Use of Facility. In partial consideration for its acquisition of rights to use the Leased Property during the Lease Term, the Community College agrees to use the Leased Property in the conduct of its educational functions to the full extent practicable for the Community College and as may be required under the Grant Agreement.

5.2. Community College's Payments. In partial consideration for its acquisition of rights to use the Leased Property during the Lease Term and its right to acquire the Leased Property, the Community College hereby agrees to pay to the County total rent for the Lease Term in the amount of Ten Dollars, payable in advance on the Closing Date, receipt of which the County hereby acknowledges.

ARTICLE VI

COMMUNITY COLLEGE'S OBLIGATIONS

6.1. Community College's Obligations. The Community College agrees to operate the Facility in such a way as to preserve it as collateral for the financing and to comply with legal restrictions.

6.2. Utilities. The Community College will pay all charges for utility services furnished to or used on or in connection with the Leased Property and the Facility.

6.3. Care and Use. The Community College will care for the Leased Property in a careful and proper manner. The Community College must keep the Leased Property in good condition, repair, appearance and working order for the purposes intended.

6.4. Compliance with Requirements. The Community College will promptly and faithfully comply with all requirements of governmental authorities relating to the use or condition of the Leased Property (or be diligently and in good contesting the

requirements), if the violation of the requirement would adversely affect the use, value or condition of the Leased Property. This compliance is required of the Community College whether or not any requirement necessitates structural changes or improvements or interferes with the Community College's use or enjoyment of the Leased Property.

6.5. Use and Operation of the Facility. The Community College will use and operate the Facility for its intended public purposes. The Community College will in no event use the Leased Property, or any portion, nor allow it to be used, (a) for any unlawful purpose, (b) in violation of any certificate of occupancy or other permit or certificate, or (c) in violation of any law, ordinance or regulation.

6.6. Taxes and Other Governmental Charges. If the Leased Property (or any portion) is, for any reason, deemed subject to taxation, assessments or charges lawfully made by any government, the Community College will, during the Lease Term, pay the amount of all those taxes, assessments and governmental charges.

6.7. Community College's Insurance.

(a) Property Damage Insurance – From and after substantial completion of each principal portion of the Facility, the Community College shall, at its own expense, acquire, carry, and maintain broad-form extended coverage property damage insurance with respect to the Facility in an amount equal to the estimated replacement cost.

(b) General Liability Insurance – To the extent permitted by law, the Community College agrees that it will, at its own expense, acquire, carry, and maintain comprehensive general liability insurance in an amount not less than \$2,000,000 for personal injury or death and \$2,000,000 for property damage.

(c) Personal Property Insurance – The Community College acknowledges that it is solely responsible for insuring the personal property owned by the Community College that at any time or from time to time may be located at the Leased Property.

(d) Other Insurance – The Community Colleges agrees that it will maintain any other insurance as may be required by the Financing Contract.

(e) Notwithstanding the foregoing, the County retains its rights to direct the use of any proceeds paid out by any type of insurance policy as a result of a claim. All payments of insurance proceeds are to be made to the County.

6.8. Transfer of Rights. In order to allow the Community College to carry out its obligations, the County transfers its rights regarding maintenance, repairs and modifications of and to the Leased Property.

6.9. County's Cooperation. (a) The County will cooperate fully with the Community College in filing any proof of loss or taking any other action under this Lease. Except as and to the extent provided in subsection (b), in no event will the County or the Community College voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Leased Property without the other's written consent.

(b) In the case of a proceeding as to which amounts are to be paid out by the County or the Community College, either party may settle or consent to settlement without the other's consent if the amount of the settlement (i) is less than \$50,000 or (ii) is to be paid entirely by insurance providers or other third parties.

6.10. Advances; Performance of Obligations. If the Community College fails to pay any amount required to be paid by it under this Lease, or fails to take any other action required of it under this Lease, the County may (but is under no obligation to) pay such amounts or perform such other obligations. The Community College agrees to reimburse the County for any such payments or for its costs incurred in connection with performing such other obligations, together with interest thereon at the annual rate of 4.00%.

ARTICLE VII

DISCLAIMER OF WARRANTIES; OTHER COVENANTS

7.1. Disclaimer of Warranties. THE COUNTY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR A PARTICULAR USE OF THE LEASED PROPERTY OR ANY PART THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PART THEREOF. In no event will the County be liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or use by any of them of any item, product or service provided for herein.

7.2. Further Assurances; Corrective Instruments. (a) The Community College and the County agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased, or intended so to be, or for otherwise carrying out the intention of this Lease.

(b) In particular, the Community College agrees to execute all documents the County may reasonably request to evidence that the Community College's rights under this Lease are subordinate as described in Section 3.2.

7.3. Covenant against Financing Contract and Grant Agreement Defaults. The Community College covenants not to take or omit to take any action the taking or omission of which would cause the County to be in default, technical or otherwise, under the Grant Agreement or the Financing Contract. In particular, the Community College covenants not to make any use of the Facility that would cause the County's obligations to make payments under the Financing Contract to be "private activity bonds" within the meaning of the Code, such as entering into any leases of any part of the Leased Property or entering into any contracts for the use, management or operation of any part of the Leased Property without the County's consent. If the Community College takes or omits to take any such action, then, to the extent permitted by law, the Community College will proceed with all due diligence to take such actions as may be necessary to cure such default.

7.4. Compliance with Requirements. The Community College and the County must observe and comply promptly with all current and future orders of all courts having jurisdiction over the Leased Property or any portion thereof (or be diligently and in good faith contesting such orders), and all current and future requirements of all insurance companies writing policies covering the Leased Property or any portion thereof.

7.5. Permits and Other Authorizations. The Community College covenants and represents to the County that the Community College has obtained all permits, consents, approvals or authorizations of all governmental entities and regulatory bodies required as a condition to the Community College's entering into this Lease. The Community College further covenants and warrants that prior to the use of the Facility for educational purposes, the Community College will obtain, and will thereafter maintain through the duration of this Lease, all further permits, consents, approval or authorizations of all governmental entities and regulatory bodies necessary to operate the Facility.

ARTICLE VIII

TITLE TO LEASED PROPERTY

Except for personal property purchased by the Community College at its own expense, title to the Leased Property and any and all additions and modifications to or replacements of any portion of the Leased Property will be held in the County's name, subject only to Permitted Encumbrances, until foreclosed upon or conveyed as may be provided in the Financing Contract, Deed of Trust, or the Grant Agreement, notwithstanding (a) the occurrence of one or more events of default as may be defined in the Financing Contract; (b) the occurrence of any event of damage, destruction, condemnation or construction or title defect; or (c) the County's violation of any provision of this Lease.

The Community College has no right, title or interest in the Leased Property or any additions and modifications to or replacements of any portion of the Leased Property, except as expressly set forth in this Lease, or the deed by which the Community College conveyed title to the Leased Property to the County.

ARTICLE IX

SUBLEASING, ASSIGNMENT, AND INDEMNIFICATION

9.1. Community College's Subleasing and Assignment. (a) Except as provided in subsection (b), the Community College may not sublease the Leased Property, in whole or in part, enter into other agreements for the use of any part of the Leased Property or assign any of its rights or obligations under this Lease, without the County's prior written consent.

(b) The Community College may enter into agreements for the use of portions of the Leased Property with state and local (but not federal) government entities, and may allow for the occasional use of portions of the Leased Property by federal or non-government entities, in each case without the necessity of obtaining the County's prior consent. The Community College must certify to the County, by September 15 of each year, that the total use of the Leased Property by entities other than the Community College did not exceed 8% of the total use of the Leased Property. The Community College shall

provide the County with such additional information as the County may request to document compliance with the County's covenants as may be required under the Financing Contract related to the use of the property and the continuing general exemption from federal income tax of the County's payments of interest as may be provided for in the Financing Contract.

(c) The Community College's obligations under Section 8.3 take priority over the Community College's rights under this Section 9.1. The Community College's allowing use of the Leased Property pursuant to this Section 9.1 will not constitute a violation of the Community College's obligations under Section 5.1 or otherwise to use the Leased Property for public education purposes.

9.2. Indemnification. To the extent permitted by law, the Community College will indemnify and save the County harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity, arising from the operation or management of the Leased Property during the Lease Term, including any arising from: (a) any condition of the Leased Property; or (b) any negligent act of the Community College or of any of its agents, contractors or employees or any violation of law by the Community College or breach of any covenant or warranty by the Community College under this Lease. The Community College will, upon notice from the County, defend or pay the cost of defending the County in any action or proceeding brought in connection with any claims arising out of circumstances described in (a) or (b) above.

ARTICLE IX

EVENTS OF DEFAULT

10.1. Events of Default. The following will be "Events of Default" under this Lease and the term "Default" shall mean, whenever it is used in this Lease, any one or more of the following events:

(a) The Community College's failure to observe and perform any covenant, condition or agreement on its part to be observed or performed for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Community College by the County, unless the County agrees in writing to an extension of such time prior to its expiration.

(b) The dissolution or liquidation of the Community College or the voluntary initiation by the Community College of any proceeding under any federal or State law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Community College of any such proceeding which remains undismissed for sixty days, or the entry by the Community College into an agreement of composition with creditors or the Community College's failure generally to pay its debts as they become due.

10.2. Remedies on Default. Whenever any Event of Default is continuing, the County may take one or any combination of the following remedial steps:

(a) Cure the default and seek reimbursement from the Community College for all expenses incurred in curing the default;

(b) Have reasonable access to and inspect, examine and make copies of the Community College's books and records and accounts during the Community College's regular business hours, if reasonably necessary in the County's opinion; or

(c) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Community College under this Lease; or

(d) If the County determines that the foregoing remedies are inadequate or inappropriate to cure the Event of Default or otherwise protect the County's interests, the County may terminate this Lease, evict the Community College from the Leased Property or any portion thereof and re-lease the Leased Property or any portion thereof.

10.3. No Remedy Exclusive. No remedy conferred upon or reserved to the County in this Lease is intended to be exclusive, and every such remedy will be cumulative and will be in addition to every other remedy given under this Lease and every remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power, and any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the County to exercise any remedy reserved in this Article X, it will not be necessary to give any notice, other than such notice as may be required in this Article X.

10.4. Waivers. If either party should breach any agreement contained in this Lease and thereafter the other party waives the breach, such waiver is limited to the

particular breach so waived and does not waive any other breach under this Lease. A waiver of an event of default as may be defined in the Financing Contract constitutes a waiver of any corresponding Event of Default under this Lease; provided that no such waiver extends to or affects any subsequent or other Event of Default under this Lease or otherwise impairs any right consequent thereon.

10.5. Agreement To Pay Attorneys' Fees and Expenses. If the Community College defaults under any Lease provision and the County employs attorneys or incurs other expenses for the collection of any payments due under this Lease, or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained in this Lease, the Community College agrees that, to the extent permitted by law, it will pay on demand therefor to the County the fees of such attorneys and such other expenses so incurred by the non-defaulting party, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction.

If the County defaults under any provision of the Lease, the Grant Agreement, or the Financing Contract and the Community College employs attorneys or incurs other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained in this Lease, the County agrees that, to the extent permitted by law, it will pay on demand therefor to the Community College the fees of such attorneys and such other expenses so incurred by the non-defaulting party, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction.

10.6. Waiver of Appraisal, Valuation, Stay, Extension, and Redemption Laws. The Community College and the County agree, to the extent permitted by law, that upon a termination of the Lease Term by reason of an Event of Default, neither the Community College nor the County nor any one claiming through or under either of them will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement of the Financing Contract or of any remedy provided under this Lease or as may be provided in the Financing Contract; and the Community College and the County, for themselves and all who may at any time claim through or under either of them, each hereby waives, to the full extent that it may lawfully do so, the benefit of such laws.

ARTICLE XI

MISCELLANEOUS

11.1. Notices. Any communication provided for in this Lease must be in writing. Any communication under this Lease will be deemed given when delivered by hand or on the date shown as the delivery date on a United States Postal Service certified mail receipt, or a delivery receipt from a national commercial package delivery service, if addressed as follows:

(a) If intended for the County, addressed to it at the following address: Jackson County, Attention: County Manager, Re: Southwestern Community College Health Sciences Building, 401 Grindstaff Cove Road, Suite A-207, Sylva, NC 28779.

(b) If intended for the Community College, to President, Southwestern Community College Attention: Southwestern Community College Health Sciences Building Re: Jackson County Lease, 447 College Drive, Sylva, NC 28779.

(c) If intended for the Lender, addressed to it at any address as may be provided in the Financing Contract.

11.2. Binding Effect. This Lease will inure to the benefit of and be binding upon the Community College and the County, and their respective successors and assigns, subject, however, to the limitations contained in Article IX.

11.3. Amendments, Changes and Modifications. This Lease may not be amended without the written consent of both parties.

11.4. Net Lease. This Lease will be deemed and construed to be a "net lease," and the Community College will pay absolutely net during the Lease Term all other payments required under this Lease, free of any deductions, and without abatement or set-off.

11.5. Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease, shall not be a Business Day, such payment must be made or act performed or right exercised on the next preceding day that is a Business Day. For this Lease, a "Business Day" is any day on which banks in North Carolina are not by law authorized or required to remain closed.

11.6. Severability. If any provision of this Lease, other than the requirement of the County to provide quiet enjoyment of the Leased Property, is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

11.7. Execution in Counterparts. This Lease may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

11.8. Applicable Law. The parties intend that North Carolina law will govern this Lease and all matters of its interpretation.

11.9. Community College and County Representatives. Whenever under the provisions hereof the approval of the Community College or the County is required to take some action at the request of the other, unless otherwise provided, such approval or such request must be given (a) for the County by the County Representative, and (b) for the Community College by its President or anyone designated in writing by the President or the County Manager to perform any act (or any specified act) under this Lease, and in any such case the Community College and the County will be authorized to act on any such approval or request.

11.10. Third-Party Beneficiaries. The Lender and the EDA under the Financing Contract are intended as third-party beneficiaries of this Lease. Any of these beneficiaries may independently assert the rights of the County or the Community College under this Lease. There are no other parties intended as third-party beneficiaries under this Lease.

11.11. Memorandum of Lease; Recording. At the request of either party, the County and the Community College will at any time execute a memorandum of this Lease legally sufficient to comply with the relevant provisions of the North Carolina General Statutes. Either party may provide for this Lease or a memorandum to be recorded in the real estate records of Jackson County.

ARTICLE XII

DEFINITIONS; RULES OF CONSTRUCTION

All capitalized terms used in this Lease have the meanings specified below, unless the context clearly requires otherwise:

"Event of Default" means one or more events of default as may be defined in the Financing Contract.

“Financing Contract” means the installment financing contract or similar agreement the County will enter into with the Lender to provide financing for the Project.

“Grant Agreement” means the Financial Assistance Award from the EDA dated September 4, 2018 that sets out the relationship between the County and the EDA and provides for the grant investment.

"Lease" means this Lease, as it may be duly amended.

"Lease Term" means the term of this Lease as determined pursuant to Article III.

"Lease Year" means, initially, the period from the Closing Date through June 30, 2019, and thereafter, means each twelve-month period commencing on July 1 and ending on the next June 30.

“Leased Property” means the Site and all improvements on the Site, including the Facility.

All references to articles or sections are references to articles or sections of this Lease, unless the context clearly indicates otherwise.

[The remainder of this page has been left blank intentionally.]

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

[SEAL]
ATTEST:

JACKSON COUNTY,
NORTH CAROLINA

Angie Winchester
Clerk, Board of Commissioners

By: _____
Don Adams
County Manager

[SEAL]
ATTEST:

THE TRUSTEES OF
SOUTHWESTERN COMMUNITY
COLLEGE

[Name]
Secretary

By: _____
[Name]
Chair

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

Darlene Fox
Finance Officer
Jackson County, North Carolina

[Lease dated as of _____, 2018]

STATE OF NORTH CAROLINA; JACKSON COUNTY

I, _____, a Notary Public of said State and County, do hereby certify that Don Adams and Angie Winchester personally came before me this day and acknowledged that they are the County Manager and the Clerk to the Board of Commissioners, respectively, of Jackson County, North Carolina, and that by authority duly given and as the act of such County, the foregoing instrument was signed in the County's name by such Manager, sealed with its corporate seal and attested by such Clerk.

Witness my hand and official seal this _____ day of _____, 2018.

Notary Public

My commission expires: _____

STATE OF NORTH CAROLINA; JACKSON COUNTY

I, _____, a Notary Public of said State and County, do hereby certify that _____, with whom I am personally acquainted, who, being by me duly sworn, says that he is the _____ of the Southwestern Community College and that _____ is the Chairman of that Board, the Board described in and which executed the foregoing instrument; that he knows the common seal of said Board; that the seal affixed to the foregoing instrument is said common seal, and the name of the Board was subscribed thereto by the said Chair, and that said Chair and Secretary subscribed their names thereto, and said common seal was affixed, all by order of the Board and that the said instrument is the act and deed of said Board.

Witness my hand and official seal this _____ day of _____, 2018.

Notary Public

My commission expires: _____

EXHIBIT A – Site Description

[Legal description of the Site to be inserted.]

s☆h draft of January 14

STATE OF NORTH CAROLINA

COUNTY OF JACKSON

MEMORANDUM OF UNDERSTANDING

AND AGENCY AGREEMENT

This **MEMORANDUM OF UNDERSTANDING AND AGENCY AGREEMENT** (hereinafter "Agreement") is dated as of January 29, 2019, and is by and between **Jackson County, North Carolina (the "County")**, and **The Trustees of Southwestern Community College (the "Board")**.

WHEREAS --

The County and the Board have agreed to collaborate to carry out a plan (the "Project") to acquire, construct and finance a new workforce training facility (the "Facility") for health occupations in western North Carolina.

As part of this plan, the County has executed and delivered an Installment Financing Contract (the "Financing Contract") providing for the financing of the Project. The financing plan requires that the County own the Facility for the duration of the financing term, but the County and the Board have agreed that the Board will be responsible for carrying out the Project for and on behalf of both itself and the County, under the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises set forth in this Agreement and for other valuable consideration, the parties agree as follows:

1. **APPOINTMENT; ACCEPTANCE.** The County and the Board agree that the Board assumes all rights, duties and responsibilities for carrying out the Project, except as limited in this Agreement, and the County appoints the Board as the County's agent to carry out such responsibilities. The Board accepts this appointment. The Board will appoint no further agent to assume these rights or carry out these duties and responsibilities without the County's prior written consent.

2. **CONTRACTS.** The Board, with the County's approval, may enter into any purchase order, contract or change order with respect to the Project in the Board's name without the County's prior approval, unless any contract or change (i) increases total estimated Project costs above the amounts previously designated for the Project or (ii) results in a use of the Facility for purposes substantially different from those intended as of the date of this Agreement. The County ratifies any such prior actions by the Board.

All contracts must comply with the public procurement laws and any other State laws applicable to either the Board or the County, as appropriate, with regard to entering into such contracts. The Board must provide that contractors provide bonds and insurance coverages that comply with the requirements of North Carolina law.

3. **RIGHTS AND RESPONSIBILITIES FOR THE PROJECT.** The Board will be responsible for carrying out the Project, and the Board will have all rights to supervise the Project.

The County and its representatives and agents have the right to enter upon the Project sites and inspect the Project work from time to time during construction and after the completion of construction. The Board will cause any vendor, contractor or sub-contractor to cooperate with the County and its representatives and agents during such inspections. No right of inspection or approval granted in this Section imposes upon the County any duty or obligation whatsoever to undertake any inspection or to make any approval. No inspection made or approval given by the County imposes upon the County any duty or obligation whatsoever to identify or correct any defects in the

Facility or to notify any person with respect thereto. The County makes no warranties to the Board (either express or implied) as to the quality or fitness of any improvement, any such inspection and approval being solely for the County's benefit.

4. **BOARD'S RIGHT TO ENFORCE CONTRACTS.** The Board has the right to enforce in its own name or in the County's name purchase orders or contracts entered in the County's name or the Board's name for the Project, including the approval of any change orders to any contracts; provided however, that if the Board is in default of any provisions of this Agreement for a period of thirty days after being notified by the County of such default without cure, the County will have the right to terminate this Agreement and assume all the Board's responsibilities for the Project.

Upon any such termination of this Agreement, the Board will assign to the County any and all right, title and interest to any and all contracts relating to the Project, including but not limited to any architect agreements, any and all engineering agreements, any and all construction agreements, and any and all plans, specifications and other drawings or documents prepared or to be prepared for the Project.

The Board agrees to reimburse the County for any and all costs, expenses, and damages incurred by the County in the assumption of the rights and responsibilities of the Board due to such event of default without cure, and to indemnify and hold the County harmless for any and all claims for damages by others related to such event of default without cure. Any assignment by the County of any of its rights under the Financing Contract will not prevent the County from asserting such rights and powers in its own behalf.

6. **DISBURSEMENTS FOR PROJECT COSTS.** The Board will request funds from the County for the payment of Project Costs, and will provide the County with the necessary information supporting a requisition, such as an architect's payment certification. The County will have the right to obtain such additional evidence as it deems appropriate to determine the accuracy of the representations set forth in the form of requisition and the propriety of payment. The Board will provide the County with such information as the County may reasonably request.

7. APPLICATION OF CASUALTY INSURANCE PROCEEDS.

Notwithstanding any provision of this Agreement, the County retains the sole power to control and direct the application and distribution of proceeds of casualty insurance applicable to the Facility.

8. RESERVATION OF RIGHTS. This Agreement is not to be construed in any way as delegating or limiting the County's rights under the Financing Contract, except as expressly provided in this Agreement.

9. CONSIDERATION. The County and the Board are undertaking their mutual obligations under this Agreement in partial consideration for, and in partial fulfillment of, their agreement to carry out the Project.

10. AGREEMENT REVIEW. It is the desire of the Parties to work in a collaborative manner and the Parties shall review this Agreement as needed or as dictated by the situation. This Agreement may only be amended in writing by the prior approval of both the County and Board.

11. TERMINATION. This Agreement may be terminated by either of the Parties at any time with sixty (60) calendar days' notice. Provided, however, that for consistency in contract administration, all existing contracts that are subject to this Agreement at the time of termination shall continue to be subject to the Agreement until the contracts have concluded or the Parties have mutually agreed to other terms.

12. MISCELLANEOUS.

A. This Agreement sets out the entire agreement between the Parties and supersedes any and all prior oral or written agreements or understandings between the Parties. The provisions contained herein are severable. If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

B. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina with proper venue being Jackson County, North Carolina. This Agreement is deemed to have been drafted by both Parties and no ambiguities contained herein shall be construed against either Party.

C. The individual signatories below have the expressed and implied authority on behalf of their respective Boards to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the parties have caused this Project Completion and Agency Agreement to be executed in their corporate names by their duly authorized officers, all as of January 29, 2019.

**JACKSON COUNTY,
NORTH CAROLINA**

By: _____
Don Adams
County Manager

**THE TRUSTEES OF SOUTHWESTERN
COMMUNITY COLLEGE**

By: _____
[name]
President

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

Darlene Fox
Finance Officer
Jackson County, North Carolina

[Memorandum of Understanding and Agency Agreement
dated as of January 29, 2019]

ESCROW AGREEMENT

LENDER:
Sterling National Bank
500 Seventh Avenue, 3rd Floor
New York, NY 10018
Attention: NYC Team 114

ESCROW AGENT:
Sterling National Bank
400 Rella Boulevard
Montebello, NY 10901
Attention: Commercial Loan Department

COUNTY:
Jackson County, North Carolina
401 Grindstaff Cove Road, Suite A-207
Sylva, NC 28779
Attention: County Manager
Re: Notice under 2019 Escrow Agreement

THIS ESCROW AGREEMENT (this “Escrow Agreement”) dated January __, 2019, is entered into by and among Sterling National Bank (in its capacity as lender, the “Lender”), Jackson County, North Carolina (the “County”), and Sterling National Bank (in its capacity as escrow agent, the “Escrow Agent”).

This Escrow Agreement relates to that certain Installment Financing Contract dated as of January __, 2019 (the “Contract”) between the Lender and the County. Except as otherwise defined herein, all terms defined in the Contract shall have the same meaning for the purposes of this Escrow Agreement as in the Contract.

The Lender, the County and the Escrow Agent agree that the Escrow Agent will act as sole Escrow Agent under the Contract and this Escrow Agreement, in accordance with the terms and conditions set forth herein. The Escrow Agent shall not be deemed to be a party to the Contract, and this Escrow Agreement shall be deemed to constitute the entire agreement among the Lender, the County and the Escrow Agent.

The parties desire to set forth the terms on which the Escrow Fund is to be created and to establish the rights and responsibilities of the parties hereto.

NOW, THEREFORE, the parties agree as follows:

1. Each of the Lender and the County hereby appoints, and the Escrow Agent hereby agrees, to serve as escrow agent upon the express terms and conditions set forth herein. The Escrow Agent agrees that the Escrow Fund shall be held irrevocably in trust for the account and benefit of the County and the Lender and all interest earned with respect to the Escrow Fund shall accrue to the benefit of the County and shall be applied as expressly set forth herein.

To the limited extent required to perfect the security interest granted by the County to the Lender in the deposit account comprising the Escrow Fund, the Lender hereby appoints the Escrow Agent as its security agent, and the Escrow Agent hereby accepts the appointment as security agent, and agrees to hold the Escrow Fund on behalf of the Lender.

2. On such day as determined to the mutual satisfaction of the parties (the “Closing Date”), the Lender shall deposit with the Escrow Agent cash in the amount of \$[Principal Amount], to be held by the Escrow Agent on the express terms and conditions set forth herein. Such deposit, together with all interest and additions received with respect thereto (hereinafter, the “Escrow Fund”), is to be applied from time to time (a) to pay certain costs of acquiring, constructing and installing certain public improvements and undertakings by the County as described in the Contract (the “Project”), and (b) if requested by the County, to pay certain costs of entering into the Contract.

The Escrow Agent agrees to accept the deposit of the Escrow Fund by the Lender, and further agrees to hold the amount so deposited together with all interest and other additions received with respect thereto in escrow on the express terms and conditions set forth herein.

3. The Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of the Escrow Agent as being held in its capacity as Escrow Agent. The Escrow Fund shall be held or registered in the name of the Escrow Agent (or its nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by the Lender).

4. The County hereby directs the Escrow Agent to deposit funds in an amount which shall be legal for the holding of public funds in the State of North Carolina. The Escrow Fund shall be held in Qualified Investments (as hereinafter defined). Interest or other amounts earned and received by the Escrow Agent with respect to the Escrow Fund shall be deposited in and comprise a part of the Escrow Fund. No investment shall be made that would cause the Contract to be deemed to be an arbitrage bond within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended (the "Code"). For purposes of this paragraph 4, the term "Qualified Investments" means moneys held in Money Market Fund # _____, or a demand deposit account created by the Escrow Agent, or such other investments as the County may specify in writing and such writing is actually received by Escrow Agent, to the extent the same are at the time legal for investment of the funds being invested.

5. The Lender and the County hereby authorize the Escrow Agent to take the following actions with respect to the Escrow Fund:

a. From time to time, the Escrow Agent shall pay such vendor, manufacturer, contractor or other payee as directed by the County, or the County, upon receipt of the following: (a) a duly executed Certificate of Acceptance and Payment Request in the form attached as **Exhibit A** to this Escrow Agreement approved for payment by the Lender, (b) the vendor, manufacturer, contractor or other payee's invoice(s) specifying the Project Cost described in the payment request, (c) in the event that certain costs of entering into the Contract are described in the payment request, invoice(s), budget(s), closing statement(s) or other additional documentation specifying the amount(s) of such costs, and (d) any additional documentation reasonably required by the Lender prior to the Lender's approval of such payment request. The Lender's approval on the Certificate of Acceptance and Payment Request in each case shall be conclusive evidence that all invoices, budgets, closing statements and any additional documentation requirements have been received by and are acceptable to the Lender for payment purposes. Without limiting the foregoing, the Lender shall not approve any such payment, unless and until the County shall have provided to the Lender certain documents related to the Project, as listed on **Exhibit B** attached hereto.

b. In the event that the Lender provides to the Escrow Agent and Escrow Agent actually receives written notice of the occurrence of an Event of Default or a nonappropriation by the County under the Contract, the Escrow Agent shall thereupon promptly remit to the Lender the entire balance of the Escrow Fund *after* application of the Escrow Fund to all reasonable fees and expenses incurred by the Escrow Agent in connection herewith as evidenced by its statement forwarded to the Lender and the County.

c. Upon actual receipt by the Escrow Agent of a duly executed Completion Certificate, a form of which is attached hereto as **Exhibit C**, the remaining monies in the Escrow Fund shall, *first* be applied to all reasonable fees and expenses incurred by the Escrow Agent in connection herewith as evidenced by its statement forwarded to the Lender and the County; and, *second* be paid to the Lender, for its application as set forth in **Section 2.4(b)** of the Contract.

d. The Lender and the County agree that the security procedures under this Section 5 are commercially reasonable.

e. In the event that the Escrow Agent makes any payment to any payee pursuant to this Escrow Agreement and for any reason such payment (or any portion thereof) is required to be returned to the Escrow Fund or is subsequently

invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a receiver, trustee or other party under any bankruptcy or insolvency law, other federal or state law, common law or equitable doctrine, then the party who benefited from the payment to the payee shall repay to the Escrow Agent upon written request the amount so paid to the payee. The Escrow Agent shall not be liable to any party or any other person by reason of such payment.

6. The reasonable fees and expenses of the Escrow Agent incurred in connection herewith shall be the responsibility of the Lender, so long as the Escrow Agent is the same entity as the Lender or any affiliate of the Lender, and are herein further described on **Schedule 1**.

7.

a. The Escrow Agent shall have no liability for acting upon any written instruction presented by the County and the Lender in connection with this Escrow Agreement which the Escrow Agent in good faith believes to be genuine. Furthermore, the Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own gross negligence or willful misconduct. The Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investment decisions made pursuant to Section 4. The Escrow Agent shall have only those duties and responsibilities as expressly set forth herein, and no other duty, obligation or covenant, fiduciary or otherwise, shall be implied or enforceable against the Escrow Agent by any person.

b. Without limiting the effect of Section 7(a) hereof, the Escrow Agent shall have no obligation or liability to any other party hereto (or any person claiming through any of them): (i) to review, examine, enforce, administer or take notice of any agreement, instrument or document other than this Escrow Agreement; (ii) to determine whether any conditions precedent to a disbursement of moneys in the Escrow Fund, other than as set forth in Section 5, have been or will be satisfied or otherwise to investigate any notice received by the Escrow Agent hereunder; (iii) to evaluate or determine the validity or legality of any action or omission of any third party, including any federal or state bank regulator; (iv) to make any payment to the other parties or other payees set forth in written instructions received under Section 5 from any source other than moneys from in Escrow Fund, and no such payment shall be made if the amount of moneys on deposit in the Escrow Fund is inadequate; (v) to communicate with any person other than as expressly provided for in this Escrow Agreement; (vi) for any action or omission of the Escrow Agent taken or made upon the written, joint instructions of the parties hereto; (vii) for any other action or omission of, or for errors in judgment by, the Escrow Agent under or in connection with this Escrow Agreement taken or made in good faith and without gross negligence or willful misconduct; and (viii) for special, incidental, consequential, indirect or punitive damages in any event, even if the Escrow Agent has been advised or was otherwise aware of the likelihood of such loss or damages and regardless of the form of action.

8. To the extent authorized by law, the County hereby agrees to indemnify and save the Escrow Agent harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder and which are not due to the Escrow Agent's gross negligence or willful misconduct. No indemnification will be made under this Section or elsewhere in this Escrow Agreement for damages arising solely out of gross negligence or willful misconduct by the Escrow Agent, its officers, agents, employees, successors or assigns.

9. The Escrow Agent may at any time resign by giving at least 30 days' prior written notice to the County and the Lender, but such resignation shall not take effect until the appointment of the successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of the Lender and the County. In addition, the Escrow Agent may be removed at any time, with or without cause, by instrument in writing executed by the Lender and the County. Such notice shall set forth the effective date of the removal. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by the Lender and the County. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to the Lender, the County and the predecessor Escrow Agent.

Upon the effective date of resignation or removal, the Escrow Agent will transfer the Escrow Fund then held by it to the successor Escrow Agent selected by the Lender and the County.

If the other parties are unable to agree upon a successor escrow agent within 30 days after such notice, the other parties hereby agree that either of them acting unilaterally shall apply to a court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief. The costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Escrow Agent in connection with such proceeding shall be paid in accordance with Section 6.

10. In the event of any dispute with respect to the Escrow Fund, the interpretation of this Escrow Agreement or the rights and obligations of the parties hereunder, or to the propriety of any action contemplated by the Escrow Agent hereunder, or if the Escrow Agent in good faith is in doubt as to what action should be taken hereunder, then in any such case the Escrow Agent shall not be obligated to resolve the dispute or disagreement or to make any disbursement of all or any portion of the Escrow Fund, but may commence an action in the nature of an interpleader and seek to deposit such funds with a court of competent jurisdiction, and thereby shall be discharged from any further duty or obligation with respect to the Escrow Fund. The costs of such interpleader action shall be borne by the County. In the event the County shall fail on demand to reimburse the Escrow Agent for such costs, then the County irrevocably authorizes the Escrow Agent to deduct any such amounts from the Escrow Fund without any further notice or demand to any person. The Escrow Agent may, in its sole discretion in lieu of filing such action in interpleader, elect to cease to perform under this Escrow Agreement and to ignore all instructions received in connection herewith until the Escrow Agent has received a written notice of resolution signed by the parties to such dispute or disagreement or an order of a court of competent jurisdiction over the matter directing a disposition of the Escrow Fund.

11. This Escrow Agreement and the Escrow Fund established hereunder shall terminate upon receipt by the Escrow Agent of the written notice from the Lender specified in Section 5(b) or Section 5(c) hereof.

12. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier addressed to the other parties at their respective addresses shown on page 1 of this Escrow Agreement or at such other address as each such party shall from time to time designate in writing to the other parties; and shall be effective on the date of receipt. In addition, all notices sent to the Escrow Agent shall also be sent as follows:

Sterling National Bank
21 Scarsdale Road
Yonkers, NY 10707
Attention: Office of the General Counsel

13. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of the Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of the Lender and the County.

14. Except as provided in the next sentence, this Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification or change of terms hereof shall bind any party unless in writing signed by all parties. This Escrow Agreement is in addition to any related account applications and other account opening and authorizing documents and/or resolutions on file with the Escrow Agent and such documents are hereby incorporated by reference into this Escrow Agreement (the "Account Agreements"). In the event that there are inconsistencies between this Escrow Agreement and any other Account Agreement, the terms of this Escrow Agreement shall control.

15. The Escrow Agent may employ agents, attorneys and accountants in connection with its duties hereunder (such costs to be paid as set forth in Section 6) and shall not be liable for any action taken or omitted in good faith in accordance with the advice of counsel, accountants or other skilled persons.

16. This Escrow Agreement shall be governed by and be construed and interpreted in accordance with the internal laws of the State of North Carolina (the "State").

17. This Escrow Agreement may be executed in several counterparts, and each counterpart so executed will be an original. In addition, the parties agree that the transaction described herein may be conducted and related documents may be received, sent or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

18. **[RESERVED]**.

19. The County represents, warrants and covenants for the benefit of the Escrow Agent as follows:

a. The County is authorized under the constitution and laws of the State to enter into this Escrow Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.

b. The County has been duly authorized to execute and deliver this Escrow Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.

c. This Escrow Agreement constitutes the legal, valid and binding obligation of the County enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

d. The County will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended, including without limitation Sections 103 and 148 thereof, and the applicable regulations of the Treasury Department. No part of the Escrow Fund shall be invested at the County's discretion in any securities, obligations or other investments or used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of execution and delivery of the Contract, would have caused any portion of the Contract to be or become an "arbitrage bond" within the meaning of Section 103(b)(2) or Section 148 of the Code and the applicable regulations of the Treasury Department.

20. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Escrow Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

21. With respect to the Contract, Sterling National Bank shall have the same rights and powers under the Contract as any other lender and may exercise the same as though it were not the Escrow Agent. The Lender may lend money to, invest in, and generally engage in any kind of business with the County, all as if Sterling National Bank were not the Escrow Agent. The County acknowledges the potential conflict of interest between Sterling National Bank as the Lender and Sterling National Bank as the Escrow Agent.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

LENDER: STERLING NATIONAL BANK

By: _____
Name: Kevin C. King
Title: Senior Vice President, Senior Managing Director

COUNTY: JACKSON COUNTY, NORTH CAROLINA

By: _____
Name: _____
Title: _____

ESCROW AGENT: STERLING NATIONAL BANK

By: _____
Name: Kevin C. King
Title: Senior Vice President, Senior Managing Director

[Escrow Agreement dated as of January __, 2019]

EXHIBIT A
CERTIFICATE OF ACCEPTANCE AND PAYMENT REQUEST

Sterling National Bank (in its capacity as escrow agent, the “Escrow Agent”), as escrow agent under that certain Escrow Agreement dated January __, 2019 (the “Escrow Agreement”), by and among Jackson County, North Carolina (“the County”), Sterling National Bank (in its capacity as lender, “the Lender”) and the Escrow Agent, is hereby requested to pay from the Escrow Fund (as defined in the Escrow Agreement) established and maintained thereunder, the amount set forth below to the named payee(s). The Project Costs described below are (i) part or all of the Project described in that certain Installment Financing Contract dated as of January __, 2019 (the “Contract”), between the Lender and the County, or (ii) certain costs of entering into the Contract. The amount shown is due and payable under (i) a purchase order or contract (or has been paid by and not previously reimbursed to the County), or (ii) invoices, budgets, closing statements or any other additional documentation.

DESCRIPTION OF PROJECT COST	AMOUNT	PAYEE
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The County hereby certifies and represents to and agrees with the Lender as follows: (a) the names of the persons, firms or corporations to whom the payments requested hereby are due, the amounts to be paid and the description of the Project Costs for which each obligation requested to be paid hereby was incurred; (b) the amounts requested above either have been paid by the County, or are justly due to said persons for the costs of entering into the Contract or to vendors, manufacturers, contractors, subcontractors, materialmen, engineers, architects or other persons relating to the acquisition, construction and installation of the Project; (c) all such materials, equipment or furnishings have been delivered to the County; (d) no part thereof has been or is being made the basis for the withdrawal of any moneys in any previous or pending request under the Escrow Agreement; (e) the amount remaining to be paid from the Escrow Fund will, after payment of the amounts requested, and together with all other funds designated for Project Costs, be sufficient to pay the costs of acquiring, constructing and installing the Project; (f) this certificate contains no request for payment on account of any retained percentage which the County is on the date hereof entitled to retain; (g) there has not been filed with or served upon the County any notice of any lien, right to a lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts requested which has not been released or will not be released simultaneously with the payment of such obligation; (h) no Event of Default, as such term is defined in the Contract, or nonappropriation under the Contract, and no event which with the giving of notice or lapse of time or both, would become an Event of Default or nonappropriation under the Contract, has occurred and is continuing on the date hereof; and (i) sufficient funds have been appropriated by the County for the payment of all Installment Payments due under the Contract during the County’s current fiscal year.

Based on the foregoing, the Escrow Agent is hereby authorized and directed to pay, or cause to be paid, the vendor, manufacturer, contractor, other payee or the County, the amount(s) set forth on the attached invoices from the Escrow Fund held under the Escrow Agreement in accordance with its terms.

The following documents are attached hereto and made a part hereof: (a) invoice(s) for costs being paid; (b) a current IRS Form W-9 for the payee (unless such IRS Form W-9 has been previously submitted to the Escrow Agent); and (c) lien waivers, if applicable.

IF REQUEST IS FOR REIMBURSEMENT, CHECK HERE . The County paid an invoice prior to the execution and delivery of the Contract and is requesting reimbursement for such payment. A copy of evidence of such payment, together with a copy of the County’s Declaration of Official Intent and any other evidence required by the Lender prior to the Lender’s approval hereof that the County has satisfied the requirements for reimbursement set forth in Treas. Reg. 1.150-2, is hereby attached. The Lender’s approval hereof shall evidence that the County has delivered to the Lender such required documentation.

Date: _____, 20__.

Approved for Payment:

STERLING NATIONAL BANK, as the Lender JACKSON COUNTY, NORTH CAROLINA
and servicer for STERLING NATIONAL
FUNDING CORP.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT B

**ITEMS REQUIRED PRIOR TO DISBURSEMENTS FROM THE
ESCROW FUND PURSUANT TO SECTION 5(a) OF THE ESCROW AGREEMENT**

Name of Escrow Fund: Jackson County, North Carolina Escrow Fund

Deposit to Escrow Fund: \$[Principal Amount]

[SUBJECT TO REVISION]

1. Certificates of insurance evidencing coverage in accordance with Section 3.9(a), (b) and (c) of the Contract naming the Lender as loss payee and additional insured in form and substance satisfactory to the Lender.
2. Construction Contract relating to the Project.
3. Conditional Assignment of the Construction Contract relating to the Project in form and substance satisfactory to the Lender.
4. Payment and performance bonds relating to the Project naming the Lender as a dual obligee and issued by a surety company rated "A" or better by AM Best in form and substance satisfactory to the Lender.
5. Building permit relating to the Project in form and substance satisfactory to the Lender.
6. Title insurance policy relating to the Project in form and substance acceptable to the Lender.

EXHIBIT C

COMPLETION CERTIFICATE

Sterling National Bank
400 Rella Boulevard
Montebello, NY 10901
Attention: Commercial Loan Department

Re: Installment Financing Agreement dated as of January __, 2019 (the "Contract"),
between Sterling National Bank and Jackson County, North Carolina

Ladies and Gentlemen:

Pursuant to Section 5(c) of the Escrow Agreement dated January __, 2019 (the "Escrow Agreement"), among Sterling National Bank (in its capacity as lender, the "Lender"), Jackson County, North Carolina (the "County"), and Sterling National Bank (in its capacity as escrow agent, the "Escrow Agent"), the undersigned representative of the County hereby certifies (a) all terms in this certificate are used with the meanings used in the Escrow Agreement, (b) the acquisition, construction and installation of the Project was completed on _____, 20__, (c) all other facilities necessary in connection with the Project have been acquired, constructed and installed, (d) the Project and such other facilities have been acquired, constructed and installed substantially in accordance with any related plans and specifications and in conformance with all applicable zoning, planning, building, environmental and other similar governmental regulations, and (e) all costs of the Project to be paid from the Escrow Fund have been paid. This certificate is given without prejudice to any rights of the County that then exist or may subsequently come into being against third parties.

The County hereby further states and certifies that (a) each of the County's representations contained in the Contract is true, correct and not misleading in all material respects as though made as of the date hereof, and (b) no event exists that constitutes, or with the giving of notice of the passage of time or both would constitute, an event of default under the Contract.

Date: _____, 20__.

JACKSON COUNTY, NORTH CAROLINA

By _____
County Representative

SCHEDULE 1

Attached to and made a part of the Escrow Agreement (the "Escrow Agreement") dated January __, 2019, by and among Sterling National Bank (in its capacity as lender, "the Lender"), Jackson County, North Carolina (the "County"), and Sterling National Bank (in its capacity as escrow agent, the "Escrow Agent").

A. Based upon our current understanding of your proposed transaction, the proposed services are as follows:

1. New Account Acceptance

Encompassing review, negotiation and execution of governing documentation, opening of the account, and completion of all due diligence documentation.

2. Monthly Administration

Covering our usual and customary ministerial duties, including record keeping, distributions, document compliance and such other duties and responsibilities expressly set forth in the governing documents for each transaction.

B. Extraordinary Services and Out-of Pocket Expenses

Any additional services beyond our standard services as specified above, and all reasonable out-of-pocket expenses including attorney's or accountant's fees and expenses will be considered extraordinary services for which related costs, transaction charges, and additional fees may be billed at Escrow Agent's then standard rate. Disbursements, receipts, investments or tax reporting exceeding 25 items per year may be treated as extraordinary services.