

LEASE

by and between

COUNTY OF HAYWOOD, NORTH CAROLINA

as Lessor

and

THE TRUSTEES OF HAYWOOD COMMUNITY COLLEGE

as Lessee

Dated as of October 1, 2015

This document was prepared by:
P. Michael Juby, Jr., Esq.
Parker Poe Adams & Bernstein LLP
401 South Tryon Street, Suite 3000
Charlotte, North Carolina 28202

LEASE

THIS LEASE, dated as of October 1, 2015, and entered into by and between the **COUNTY OF HAYWOOD, NORTH CAROLINA**, a political subdivision of the State of North Carolina, as lessor (the "*County*"), and the **THE TRUSTEES OF HAYWOOD COMMUNITY COLLEGE**, a body corporate which has general control and supervision of all matters pertaining to Haywood Community College (the "*College*") and which is duly organized and existing under the laws of the State of North Carolina (the "*Board*");

WITNESSETH:

WHEREAS, the County and the Board have determined to cooperate in a plan to finance the cost of (1) the acquisition, construction and completion of a public services training facility at the Community College, consisting of a 3-story live burn building/multi-disciplinary training tower, a 11,000 square foot multiuse structure used for shelter, hydration, training and showers and an underground storage tank used for testing firefighting apparatus, and (2) related site improvements, including on-site parking and utilities (collectively, the "*Project*"), which each has found to be necessary and desirable to provide for improved higher education in the County;

WHEREAS, the Board owns the site on which the Project (the "*Site*") will be located, and as part of the financing plan described above, the Board has executed a General Warranty Deed conveying to the County the Site, as more particularly described in Exhibit A hereto, together with the improvements thereon;

WHEREAS, as a part of such plan, the County will enter into (1) an Installment Financing Contract dated as of October 1, 2015 (the "*Contract*") between the County and TD Bank, N.A. to finance the cost of the Project and (2) a Deed of Trust, Security Agreement and Fixture Filing dated as of October 1, 2015 (the "*Deed of Trust*") for the benefit of the Bank in order to secure the County's obligations under the Contract;

WHEREAS, as a part of such plan, the County and the Board have entered into an Agency Agreement dated as of October 1, 2015 (the "*Agency Agreement*"), providing, among other matters, for the purchase of the Site and the improvements thereon by the County for lease to the Board and the accomplishment of the Project;

WHEREAS, as a part of such plan, the County proposes to lease the Site and the improvements thereon (collectively the "*Leased Property*") to the Board, and the Board has determined to lease the Leased Property from the County; and

WHEREAS, this Lease will be subordinate to the Deed of Trust;

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

ARTICLE I
DEFINITIONS; RULE OF CONSTRUCTION

All capitalized terms used in this Lease and not otherwise defined herein have the meanings assigned to them in the Agency Agreement, the Contract and the Deed of Trust, unless the context clearly requires otherwise. In addition, the following terms have the meanings specified below, unless the context clearly requires otherwise:

“*Board Representative*” means the Chairman of the Board, the College’s President or any other person at the time designated, by a written certificate furnished to the County and signed on the Board’s behalf by its Chairman, to act on the Board’s behalf for the purpose of performing any act under this Lease.

“*Closing Date*” means October [], 2015.

“*County Representative*” means any person at the time designated, by a written certificate furnished to the Board and signed on the County’s behalf by the Chairman of its Board of Commissioners, to act on the County’s behalf for the purpose of performing any act under this Lease.

“*Event of Default*” means one or more events of default as defined in Section 12.1.

“*Lease*” means this Lease, as it may be amended in accordance with its terms.

“*Lease Term*” means the term of this Lease as determined under Article IV.

“*Lease Year*” means, initially, from the Closing Date through June 30, 2016, and, thereafter, means the twelve-month period of each year commencing on July 1 and ending on the next June 30.

“*Leased Property*” means the Site, as described in Exhibit A, and the improvements thereon.

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

ARTICLE II
REPRESENTATIONS, COVENANTS AND WARRANTIES

The County and the Board each represent, covenant and warrant for the other’s benefit as follows:

(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 hereby, results or will result 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.

(b) To the knowledge of each party, there is no litigation or proceeding pending or threatened against such party (or against any other person) affecting the rights of such party to execute or deliver this Lease or to comply with its obligations under this Lease. Neither the execution and delivery of this Lease by such party nor compliance by such party 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 III
DEMISING CLAUSE**

The County hereby leases the Leased Property to the Board and the Board 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.

**ARTICLE IV
LEASE TERM**

Section 4.1. *Commencement.* The Lease Term commences on the Closing Date.

Section 4.2. *Termination.* The Lease Term terminates on the earlier of the following dates or events:

(a) the date on which the County has paid or made provision for all Installment Payments (as defined in the Contract) and all other payments due under Contract in accordance with its terms; or

(b) an Event of Default and termination of this Lease under Article XII.

**ARTICLE V
QUIET ENJOYMENT; TRANSFER**

Section 5.1 *Quiet Enjoyment; Transfer.* The County hereby covenants that the Board shall, 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 shall not interfere with the quiet use and enjoyment of the Leased Property during the Lease Term. The County shall, at the Board's request, join and cooperate fully in any legal action in which the Board 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 Board may at its own expense join in any legal action affecting its possession and enjoyment of the Leased Property, and shall be joined (to the extent legally possible and at the Board's expense) in any action affecting its liabilities hereunder.

The provisions of this Section 5.1 are subject to rights to inspect the Leased Property granted to parties under the Contract and to the right hereby reserved to the County to inspect the Leased Property at any reasonable time.

If the Board deems the Site no longer necessary for College purposes, the Board may request that the County transfer the Site to the Board so that the Board may dispose of such property, *provided* that any transfer requires the Bank's consent so long as the Contract and Deed of Trust remain in effect. The County agrees to consider such request in a timely manner and to not unreasonably withhold its approval of such transfer to the Board; provided, however, that both parties hereto recognize that the County may not be able to transfer any Site that is subject to a security interest related to a financing for the Site.

Section 5.2 *Transfer on Lease Termination.* At the end of the Lease Term under Section 4.2(a) and on confirmation from the County that the lien on the Leased Property has been released pursuant to the Deed of Trust, the County shall execute, deliver and record a Limited Warranty Deed transferring title to the Leased Property to the Board, together with such other documents as are necessary

to convey to the Board good and marketable title to the Leased Property, subject only to (a) Permitted Encumbrances and (b) any encumbrance or imperfection caused by or attributable to the Board.

**ARTICLE VI
CONSIDERATION FOR LEASE**

Section 6.1 *Use of Leased Property; Assumption of Obligations.* The Board hereby agrees to use the Leased Property for higher education purposes in fulfillment of its obligation, shared by the County, to provide for improved public education in the County. In addition, in consideration of its rights under this Lease, the Board undertakes the obligations imposed on it hereunder, including those imposed by Section 8.1.

**ARTICLE VII
CONSTRUCTION AND OTHER ACCOMPLISHMENT OF
PROJECT AND CERTAIN RELATED COVENANTS**

Section 7.1 *Construction and Other Accomplishment of Project.* The County has provided in the Agency Agreement for the construction and other accomplishment of the Project by the Board as the County's agent. The Board represents that it has reviewed all provisions concerning the construction and other accomplishment of the Project in the Contract and hereby approves such provisions. The Board shall take possession of the Leased Property on the date of delivery of this Lease. Title to the Leased Property shall be held by the County, subject only to Permitted Encumbrances.

Section 7.2 *Maintenance, Repair, Taxes and Assessments.*

(a) *Maintenance; Repair.* The Board shall use, or cause to be used, the Leased Property in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole expense, shall service, repair, maintain and insure, or cause to be serviced, repaired, maintained and insured, the Leased Property so as to keep the Leased Property in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted.

(b) *Taxes and Assessments.* The Board shall also pay, or cause to be paid, all taxes and assessments, as applicable, including, but not limited to, utility charges, of any type or nature levied, assessed or charged against any portion of the Leased Property, provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Board is obligated to pay only such installments as are required to be paid as and when the same become due.

(c) *Contests.* The Board may, at its sole expense and in its name, in good faith contest any such taxes, assessments, utility and other charges, as applicable, and, if any such contest occurs, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, but before such nonpayment it shall consult with the County and, if the County requires, furnish the County with the opinion of a counsel acceptable to the County, to the effect that, by nonpayment of any such items, the interest of the County in the Leased Property will not be materially endangered and that the Leased Property will not be subject to loss or forfeiture. The County will cooperate fully in such contest on the request and at the expense of the Board.

Section 7.3 *Modification of Leased Property, Liens.*

(a) *Additions, Modifications and Improvements.* The Board shall, at its own expense, have

the right to make, or cause to be made, additions, modifications and improvements to any portion of the Leased Property if such additions, modifications or improvements are necessary or beneficial for the use of such portion of the Leased Property. All such additions, modifications and improvements shall thereafter comprise part of the Leased Property and be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage any portion of the Leased Property or cause it to be used for purposes other than those authorized under the provisions of State and federal law or in any way which would cause the interest components of the Installment Payments to be includable in gross income for purposes of federal income taxation under Section 103 of the Internal Revenue Code of 1986, as amended.

(b) *Liens.* The Board will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any additions, modifications or improvements made by the Board under this Section, but if any such lien is filed or established and the Board first notifies, or causes to be notified, the County of the Board's intention to do so, the Board may in good faith contest any lien filed or established against the Leased Property and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the County with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the County. The County will cooperate fully in any such contest on the request and at the expense of the Board.

Except as provided in this Article and except as the County may consent thereto, which consent shall not be unreasonably withheld, the Board shall 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 Leased Property, other than the respective rights of the Board and the County as herein provided. Except for the Deed of Trust and except as provided in this Article or otherwise with the County's consent, the Board shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim for which it is responsible, if the same shall arise at any time; provided that the Board may contest such liens, charges, encumbrances, or claims if it desires to do so. The Board shall reimburse the County for any expense incurred by the County in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

ARTICLE VIII BOARD'S ASSUMPTION OF COUNTY'S OBLIGATIONS

Section 8.1 *Assumption of Obligations.* The Board hereby assumes all the County's obligations under the Contract regarding the maintenance of general liability and casualty insurance with respect to the Leased Property. It is expressly understood that the Board does not assume the County's obligation under the Contract to pay the Installment Payments and that the Board does not indemnify the County or any other party to the Contract for third-party claims asserted against any party to the Contract relating to the payment of the Installment Payments.

Section 8.2 *Transfer of Obligations.* The Board shall carry out the County's obligations under the Contract with respect to the construction of the Project.

Section 8.3 *Board's General Covenant.* The Board further undertakes not to take or omit to take any action the taking or omission of which would cause the County to be in default in any manner under the Contract. In particular, the Board covenants not to make any use of the Leased Property that would cause the County's obligations to make Installment Payments under the Contract to be "*private activity bonds*" within the meaning of the Internal Revenue Code of 1986, as amended. If the Board takes or omits to take any such action, then the Board shall proceed with all due diligence to take such action as may be necessary to cure such default.

Section 8.4 **County's Cooperation.** The County shall cooperate fully with the Board in filing any proof of loss or taking any other action under this Lease. Neither the County nor the Board may 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.

Section 8.5 **Advances; Performance of Obligations.** If the Board 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, then the County may (but is under no obligation to) pay such amount or perform such other obligation. The Board agrees to reimburse the County for any such payment or for its costs incurred in connection with performing such other obligation.

**ARTICLE IX
DISCLAIMER OF WARRANTIES; OTHER COVENANTS**

Section 9.1 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. The County is not 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 anyone of any item, product or service provided for herein.

Section 9.2 Further Assurances; Corrective Instruments. The Board 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 hereof.

Section 9.3 Board and County Representatives. Whenever under the provisions hereof the approval of the Board or the County is required to take some action at the request of the other, unless otherwise provided, such approval or such request is to be given for the Board by the Board Representative and for the County by the County Representative, and the Board and the County are authorized to act on any such approval or request of such representative of the other.

Section 9.4 Compliance with Requirements. During the Lease Term, the Board and the County shall 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' written policies covering the Leased Property or any portion thereof.

**ARTICLE X
TITLE TO LEASED PROPERTY; LIMITATIONS ON ENCUMBRANCES**

Except for personal property purchased or leased by the Board 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 shall be held in the County's name, subject only to Permitted Encumbrances, until conveyed as provided in this Lease, notwithstanding (a) the occurrence of any event of damage, destruction, condemnation or construction or title defect or (b) the violation by the County of any provision of this Lease.

The Board 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.

ARTICLE XI
SUBLEASING AND INDEMNIFICATION

Section 11.1 *Board's Subleasing.* The Board may not assign or sublease the Leased Property, in whole or in part, without the prior written consent of the County, which consent shall not be unreasonably withheld.

Section 11.2 *Indemnification.* Except as provided in Section 8.1, to the extent permitted by law, the Board agrees to indemnify and save the County, its officers, employees and agents 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 by the Board during the Lease Term, including any claims arising from: (a) any condition of the Leased Property, (b) any act of negligence of the Board or of any of its agents, contractors or employees or any violation of law by the Board or breach of any covenant or warranty by the Board hereunder; or (c) the incurrence of any cost or expense in connection with the construction and other accomplishment of the Project in excess of the moneys available therefor in the Project Fund. The Board shall be notified promptly by the County of any action or proceeding brought in connection with any claims arising out of circumstances described in (a), (b) or (c) above.

ARTICLE XII
EVENTS OF DEFAULT

Section 12.1 *Events of Default.* Each of the following is an "*Event of Default*" under this Lease and the term "*Default*" means, whenever it is used in this Lease, any one or more of the following events:

(a) The Board's or the County'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 defaulting party by the non-defaulting party, unless the non-defaulting party agrees in writing to an extension of such time before its expiration; but if the failure stated in such notice cannot be corrected within the applicable period, the non-defaulting party shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the defaulting party within the applicable period and diligently pursued until such failure is corrected and, further, if by reason of any event or occurrence constituting force majeure the defaulting party is unable in whole or in part to carry out any of its agreements contained herein (other than its obligations contained in Section 6.2 or 8.1), the defaulting party shall not be deemed in default during the continuance of such event or occurrence.

(b) The dissolution or liquidation of the Board, the College or the County or the voluntary initiation by the Board or the County 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 Board or the County of any such proceeding which shall remain undismissed for 60 days, or the entry by the Board or the County into an agreement of composition with creditors or the Board's or the County's failure generally to pay its debts as they become due.

Section 12.2 Remedies on Default. Whenever any Event of Default has happened and is continuing, the non-defaulting party may terminate this Lease or take whatever action at law or in equity may appear necessary or desirable, including the appointment of a receiver, to collect the amounts then due, or to enforce performance and observance of any obligation, agreement or covenants under this Lease.

Section 12.3 No Remedy Exclusive. No remedy herein conferred on or reserved is intended to be exclusive, and every such remedy is cumulative and in addition to every other remedy given hereunder and every remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing on any default impairs any such right or power, and any such right and power may be exercised from time to time as may be deemed expedient. It is not necessary to give any notice in order to be entitled to exercise any remedy reserved in this Article XII, other than such notice as may be required in this Article XII.

Section 12.4 Waivers. If any agreement contained herein is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 12.5 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. The Board and County agree, to the extent permitted by law, that in the case of a termination of the Lease Term by reason of an Event of Default, neither the Board nor the County nor any one claiming through or under either of them shall or 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 any remedy provided hereunder; and the Board 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 XIII
MISCELLANEOUS**

Section 13.1 Notices. All notices, certificates or other communications hereunder are sufficiently given if given by United States mail in certified form, postage prepaid, and will be deemed to have been received five Business Days (as defined in the Contract) after deposit in the United States mail in certified form, postage prepaid, as follows:

- (a) If intended for the County, addressed to it at the following address:

County of Haywood, North Carolina
215 North Main Street
Waynesville, North Carolina 28786
Attention: County Manager

- (b) If intended for the Board, addressed to it at the following address:

Haywood Community College
185 Freedlander Drive
Clyde, North Carolina 28721
Attention: President

Section 13.2 Binding Effect. This Lease is binding on and inures to the benefit of the Board and the County, subject, however, to the limitations contained in Article XI.

Section 13.3 *Net Lease.* This Lease is a “*net lease*,” and the Board shall pay absolutely net during the Lease Term all other payments required hereunder, free of any deductions, and without abatement or setoff.

Section 13.4 *Payments Due on 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, as provided in this Lease, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding day that is a Business Day with the same force and effect as if done on the nominal date provided in this Lease.

Section 13.5 *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 shall not invalidate or render unenforceable any other provision hereof.

Section 13.6 *Execution in Counterparts.* This Lease may be simultaneously executed in several counterparts, each of which is an original and all of which constitute but one and the same instrument.

Section 13.7 *Applicable Law.* This Lease is governed by and to be construed in accordance with the laws of the State of North Carolina.

Section 13.8 *Captions.* The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

Section 13.9. *Amendments and Further Instruments.* The County and the Board may, from time to time, execute and deliver such amendments to this Lease and such further instruments as may be required or desired for carrying out the expressed intention of this Lease.

Section 13.10 *Memorandum of Lease.* The County and the Board shall, on or before the Closing Date, file this Lease or a memorandum of this Lease legally sufficient to comply with the relevant provisions of the North Carolina General Statutes with the Haywood County Register of Deeds.

Section 13.11 *Subordinate to Deed of Trust.* This Lease is subordinate to the Deed of Trust.

[Signatures Begin on Following Page]

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE