

AGENDA

**SPECIAL CALLED BOARD OF TRUSTEES MEETING
CRAVEN COMMUNITY COLLEGE
WARD BOARDROOM, BROCK BUILDING
Thursday, February 9, 2017 at 5:30 P.M.**

- | | | |
|------|--|------------------------------|
| I. | Call to Order | <i>Kevin Roberts, Chair</i> |
| II. | Administrative Items | |
| | (1) Roll Call | <i>Ray Staats, Secretary</i> |
| | (2) Agenda Review and Adoption | <i>Kevin Roberts</i> |
| | (3) Conflict of Interest Declaration | <i>Kevin Roberts</i> |
| | (4) Public Comment | |
| III. | Review/Approve the WDC Lease with City of New Bern (<i>motion</i>) | <i>Ray Staats, President</i> |
| IV. | Adjournment | <i>Kevin Roberts, Chair</i> |

Vision Statement

We are Craven County's first choice for teaching and learning.

BOARD OF TRUSTEES

ROLL CALL

February 9, 2017

Mr. Steve Cella

Ms. Cora Chadwick

Mr. Ken Crow

Ms. Jennifer Dacey

Mr. Ronald Knight

Ms. Rosanne Leahy

Ms. Carol Mattocks

Ms. Allison Morris

Mr. Kevin Roberts

Mr. Bill Taylor

Mayor Chuck Tyson

Ms. Brenda Wilson

Agenda Review/Conflict of Interest Declarations

Each member of this board of trustees is reminded of their obligations and duties under the State Government Ethics Act. Trustees must continually monitor, evaluate, and manage their personal, financial, and professional affairs to ensure the absence of conflicts of interest or even appearance of conflicts of interest. Does any member of this board know of an actual conflict of interest which exists with regard to any matter coming before this board?

NORTH CAROLINA

CRAVEN COUNTY

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), dated February 28, 2017, for convenience of reference, is made by and between the CITY OF NEW BERN, ("Lessor"), a North Carolina municipal corporation, and THE TRUSTEES OF CRAVEN COMMUNITY COLLEGE ("Lessee"), collectively referred to as the "Parties."

WITNESSETH:

THAT WHEREAS, the Lessor owns the real property located at 205 First Street in the City of New Bern, said parcel being identified by Craven County Tax Parcel Number 8-011-153-C ("Subject Property"); and

WHEREAS, the Lessor has agreed that the Lessee may lease a portion of the Subject Property more specifically described herein as the "Premises" for use as a workforce development center and other activities, subject to the terms and conditions established herein; and

WHEREAS, the Lessor has determined that the Premises will not be needed by the Lessor for the term of the Lease; and

WHEREAS, the Parties have agreed upon the terms of a Lease and wish to reduce their agreement to writing.

NOW, THEREFORE, the Lessor does hereby let and lease unto said Lessee, and said Lessee does hereby accept as tenant of said Lessor, the Premises, for the term and upon the conditions hereinafter set forth:

1. **INCORPORATION OF RECITALS.** The foregoing WHEREAS paragraphs are incorporated herein as part of the terms and conditions of this Lease.

2. **THE PREMISES.** In consideration of the obligation of Lessee to pay rent as herein provided and in consideration of the other terms, covenants, and conditions hereof, Lessor hereby demises and leases to Lessee, and Lessee hereby leases from Lessor, those certain premises containing a commercial structure of approximately 7,504 square feet, along with such real property as more specifically described and illustrated on Exhibit A attached hereto and incorporated herein by reference, located at 205 First Street in the City of New Bern (the "Premises"). Lessor further grants to Lessee non-exclusive access for ingress and egress within the area identified as "Access Easement Area," as well as exclusive parking

rights within the area identified as "Parking Area" which shall contain no less than fifty (50) parking spaces identified for Lessee's exclusive use, all as identified and illustrated on Exhibit A.

3. **LESSOR'S WORK.** Lessor agrees that it will deliver the Premises to Lessee upfit and remodeled consistent with the plans to be prepared by The Walker Group Architecture, Incorporated, as may be amended in writing from time to time by the parties, on or before December 1, 2017 (the "Scheduled Completion Date"). If Lessor should for any reason be unable to deliver the Premises to Lessee by the Scheduled Completion Date, Lessor shall continue to complete such work and shall deliver possession to the Lessee promptly upon completion, but Lessor shall not be liable for any damages to Lessee. The date on which Lessor delivers the Premises to Lessee with a final Certificate of Occupancy, whether before or after the Scheduled Completion Date, shall be the "Completion Date". Lessor warrants that, upon completion of Lessor's Work, the Premises shall be in compliance with all federal, state and local environmental laws, ordinances, rules and regulations (including but not limited to the American with Disabilities Act and the Occupational Safety and Health Act of 1970). In the event of a dispute between Lessor and Lessee with respect to Lessor's Work, and Lessor and Lessee cannot resolve the dispute, then the dispute shall be resolved by arbitration conducted in accordance with the North Carolina Uniform Arbitration Act.

4. **TERM.** The term of this Lease shall commence on a date within thirty (30) days of the Completion Date (the "Commencement Date"), shall continue for the balance of the month in which the Commencement Date occurs and for a period of ten (10) years thereafter, unless sooner terminated or extended in accordance with the terms hereof. Lessor and Lessee agree that they will, promptly following the Commencement Date, execute and deliver a letter agreement acknowledging that Lessee has accepted possession and that this Lease is operative, and reciting the Commencement Date and the date of expiration of the Lease Term. The Parties, by written instrument, may agree to an extension of the lease term prior to the termination of this Lease.

Notwithstanding the foregoing, Lessee may terminate this Lease at any time after the second anniversary of the Commencement Date upon ninety (90) days' advance written notice to Lessor.

5. **RENT.** As rent for the said Premises, the Lessee agrees to maintain the Premises, as set forth herein, and to pay the sum of ONE DOLLAR (\$1.00) per annum during the term of this Lease, the first such payment to be made contemporaneously with the execution of this Lease, each subsequent annual payment to be made on or before the anniversary date of this Lease; provided that Lessee shall have the option of paying rent for the entire Term at any time in lieu of paying rent annually.

6. **PERMITTED USES.** Lessee agrees to utilize the Premises for the conduct of College educational programs, principally being workforce development, consistent with North Carolina Community College System Policies, Craven Community College Board of Trustees Policies, and College Procedures, and for no other purposes without Lessor's prior written consent.

7. **PROHIBITED USES.** Lessee shall not cause or permit any waste to occur in the Premises and shall not overload the floor, or any mechanical, electrical, plumbing or utility systems serving the Premises. Lessee shall keep the Premises, and every part thereof, in a clean and wholesome condition, free from any objectionable activities or nuisances. Lessee agrees not to permit any Hazardous Material (as defined hereinafter) to be installed, brought, kept, used, stored or discharged upon the Premises in violation of any State, Federal or local environmental laws regulating Lessee's use and occupancy of the Premises. Lessee shall indemnify Lessor for any losses, damages, liability, claim, or expenses (including reasonable attorneys' fees) resulting from a breach of the aforesaid agreement or resulting from the exercise of Lessee's rights to store or use any Hazardous Material in accordance with the provisions of this paragraph. For purposes hereof, the term "Hazardous Material" shall include, without limitation, any substances defined as "hazardous wastes," "hazardous substances," "hazardous materials," or "toxic substances" by the Resource Conservation and Recovery Act of 1976, as amended from time to time, or the regulations promulgated thereunder, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, or the regulations promulgated thereunder, the Toxic Substances Control Act, as amended from time to time, or the regulations promulgated thereunder, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement or any governmental authority having jurisdiction over the Premises which regulates or imposes liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance or material, as now or at any

time hereafter in effect. Without limiting the generality of the foregoing, the term "Hazardous Material" shall include dry cleaning solvents and petroleum products outside sealed containers. Notwithstanding the above, Lessee shall not be responsible for any claim, demand, cost, damage, injury, loss, liability or change based on or arising out of the presence of any Hazardous Materials or conditions on or about the Premises which existed prior to Lessee's occupancy or which was not expressly caused by Lessee, its agents, employees or representatives.

8. **UTILITIES.** All applications and connections for utility services required by Lessee in conjunction with Lessee's use and occupancy of the Premises shall be made in the name of Lessee only, and Lessee shall be solely responsible for obtaining such services and for the payment of all charges for such services as they become due. Such utility services include, but are not limited to, sewer, water, gas, electricity, and telephone services.

9. **REPAIR AND MAINTENANCE.** Lessor shall keep the foundation, exterior walls (except plate glass and exterior doors), HVAC systems, roof, gutters, downspouts, and foundation walls of the Premises, and all interior and exterior water, sewer, electrical and gas systems serving the Premises in good repair, except that Lessor shall not be required to make any repairs occasioned by the act or neglect of Lessee or its employees or agents. For purposes of this Section 9, Lessor's obligation to maintain all interior water, sewer, electrical and gas systems serving the Premises in good repair shall be limited to such portions of the water, sewer, electrical and gas systems located within the walls, floors and ceilings of the commercial structure located on the Premises. In the event that the Premises become in need of repairs required to be made by Lessor hereunder, Lessee shall give prompt written notice to Lessor; and Lessor shall not in any way be responsible for failure to make any such repairs until thirty (30) days shall have passed after its receipt of such written notice (provided, however, that in the event the repair cannot, with reasonable diligence, be completed within such thirty (30) day period, Lessor shall have a reasonable time thereafter to complete such repair so long as Lessor promptly commences and diligently pursues such repair to completion). Should the Premises require an emergency repair, Lessor shall contact the City Manager or Public Works Director by telephone, and Lessor shall take immediate action to address such emergency repair unless Lessee is advised by the City Manager or Public Works Director that Lessor is unable to take immediate action in which case Lessee may take all reasonable steps to resolve such emergency repair at Lessor's expense. Lessor shall maintain the grounds, driveways, and parking areas on

the Subject Property and any other property over which Lessee has access rights in good condition and repair, and maintain adequate lighting in such areas, all consistent with Lessor's maintenance standards for its public facilities. Lessor's obligations include the removal of snow and ice from walkways, driveways, and parking lots in the area surrounding the Premises consistent with Lessor's practices for its public parking areas.

Except for the foregoing Lessor responsibilities, Lessee shall perform all other repairs and maintenance necessary to maintain the Premises, including, but not limited to, needed repairs and replacements to all exterior and interior items unless such items are the responsibility of Lessor as set forth above. Lessee shall perform all preventative maintenance and repairs to the Premises, including without limitation all repairs and replacements to all interior items, to the ceiling, to the lighting system, to all doors and door opening mechanisms, and to all water, sewer, and electrical facilities located within the Premises, unless such items are the responsibility of Lessor as set forth above. Lessee shall promptly replace any cracked or broken plate glass or window glass used in any interior and exterior windows and doors in the Premises.

10. CARE OF PREMISES BY LESSEE. Lessee shall keep the inside and outside of all glass in the doors and windows of the Premises clean; shall keep clean all exterior surfaces of the Premises which are not Lessor's responsibility; shall not place or maintain any structures or other articles on the sidewalk or street adjacent to the Premises or elsewhere on the exterior thereof without Lessor's written consent; shall maintain the Premises at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; shall not permit undue accumulations of garbage, trash, rubbish and other refuse, and shall keep such refuse in proper containers on the exterior of the Premises in the areas designated therefor by Lessor; and shall maintain temperatures within the Premises sufficient (and open taps to reduce pressure as needed) to prevent the freezing and bursting of water and sewer pipes serving the Premises. All repairs and replacements shall be of quality and class at least equal to the quality and class of the Premises at the time of entry by Lessee.

11. ALTERATIONS AND IMPROVEMENTS. Lessee may only make changes, alterations or improvements to the Premises with the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. If approved by Lessor, such work shall be done in accordance with the requirements of local ordinances and public authorities having jurisdiction thereof. Lessee shall make no such change, alteration or

improvement which substantially affects the structural integrity of the Premises or substantially decreases the value of the Premises. All changes, alterations or improvements to the Premises shall remain for the benefit of Lessor unless otherwise provided in a writing signed by Lessor.

12. CASUALTY AND LIABILITY INSURANCE. Lessee, at its sole cost and expense, shall maintain for the benefit of Lessor and Lessee, general liability insurance protecting Lessor and Lessee against any claim or claims for damage arising by reason of injury, death or damage occasioned in, upon or adjacent to the Premises, and products liability, such insurance to protect Lessor and Lessee jointly and severally to the combined limit of One Million and No/100 Dollars (\$1,000,000.00) for injury to or death of any one (1) or more persons by the same accident or for damage to property of other persons. Each policy effecting such coverage shall designate Lessor, Lessor's mortgagee, if any, as additional insureds as their respective interests may appear, and shall contain a clause that the insurer will not cancel or materially modify the insurance coverage without first giving Lessor a minimum of thirty (30) days' advance written notice. Further, each such policy shall be carried with a reputable insurance company authorized to do business in North Carolina and reasonably approved by Lessor, and a certificate of insurance shall be provided to Lessor. In the event Lessee at any time shall fail to maintain such insurance or shall fail to pay any and all premiums therefor, Lessor shall have the right and option to effect such insurance and pay any and all premiums therefor; and, in the event of any such payment, Lessee, on the rental date next succeeding the date on which Lessee receives notice of such payment having been made, shall pay to Lessor a sum equal to the amount which was so paid for such insurance premiums, it being expressly understood that Lessor shall have no obligation whatsoever hereunder to effect such insurance or to make such premium payments to cure the default of Lessee.

Lessor shall keep all improvements upon the property of which the Premises are a part insured to the extent of not less than One Hundred percent (100%) of the replacement cost thereof in such amount as may be agreed upon by Lessor and Lessee prior to the commencement of each lease year against loss or damage by fire, with extended coverage. Each such policy shall be carried with a reputable insurance company authorized to do business in North Carolina. Lessee shall reimburse Lessor for the reasonable cost of such insurance within thirty (30) days after receipt of notice from Lessor with supporting information as to the amount due.

13. **DAMAGE OR DESTRUCTION.** In the event the Premises shall be totally or partially damaged or destroyed by fire, flood, act of God or other casualty, the duties, rights and obligations of Lessor and Lessee shall be as follows:

(a) If the Premises shall be damaged or destroyed so as to render the Premises untenable, Lessor or Lessee may, at either party's election, terminate this Lease by written notice to the other party not more than thirty (30) days after the occurrence of such damage or destruction. Untenable shall mean that the improvements upon property of which the Premises are a part shall be damaged or destroyed by fire, the elements, or other casualty to the extent of one-half (1/2) of the replacement cost thereof as determined by the final adjustment of the insurance claim related thereto.

(b) If the Premises are not rendered untenable by such damage or destruction, this Lease shall remain in full force and effect and Lessor shall promptly commence the required repair or restoration using such insurance proceeds as are available and prosecute the work of repair to completion with reasonable speed and diligence. Lessee shall during any period of repair and restoration continue to operate on the Premises to the extent reasonably practical.

14. **DEFAULT.** If Lessor or Lessee shall fail to perform or comply with any of the agreements or covenants of this Lease and if such nonperformance shall continue for a period of ten (10) days after receipt of notice thereof, or, if such performance cannot be reasonably had within the ten (10) day period, such party shall not in good faith have commenced performance within the ten (10) day period and shall not diligently proceed to the completion of such performance, such event shall constitute a default under this Lease.

15. **REMEDIES.** Upon the occurrence of any default, each party shall have all of the rights and remedies that are available under the laws of the State of North Carolina, including, but not limited to the termination of this Lease.

16. **SIGNAGE.** Lessor shall implement a program for common signage for the Subject Property, which shall include reasonable space on the sign face(s) to identify Lessee's operations, the design of which shall be similar to Lessee's other signage at its existing facilities. Lessee may not install any additional signage without Lessor's consent. Lessor shall be responsible for the cost of the common signage program. Once the common signage is installed on the Premises, Lessee shall be responsible for the cost of any replacement signage necessitated by Lessee.

17. **ASSIGNMENT OR SUBLETTING.** Lessee shall not assign this Lease nor sublet any part of the Premises without written consent of the Lessor.

18. QUIET POSSESSION. Lessor agrees that Lessee shall, upon paying the rent and performing the covenants of this Lease, quietly have, hold and enjoy the Premises during the term of this Lease. Lessor acknowledges that Lessee's operations on the Premises may extend beyond customary "business hours" and that Lessee and its invitees will need access to the Premises "around the clock"; therefore, Lessee's access to and use of the Premises shall not be limited by Lessor. Further, Lessor acknowledges that Lessee's use of the Premises as a workforce development center by its nature may involve noises and odors emanating from the Premises from equipment and machinery, and that such use shall not constitute a nuisance to Lessor or other tenants of the Subject Property. Lessor will disclose in leases with other tenants of the Subject Property the nature of Lessee's use of the Premises and include a provision in the leases that such tenants waive any right to object to Lessee's operations on the Premises.

19. SURRENDER OF POSSESSION. Upon expiration of the term of this Lease, Lessee shall surrender the Premises to Lessor in as good condition as the same are at the beginning of the lease term, reasonable wear and tear and casualty excepted.

20. FIXTURES. Lessee shall have the right to install in the Premises such fixtures or equipment deemed necessary by Lessee for the conduct of Lessee's operations. So long as Lessee is not in default of the terms of this Lease, all fixtures and equipment installed by Lessee shall remain the property of Lessee and Lessee shall have the right to remove such equipment at any time up to and including the expiration date of this Lease or sooner termination of this Lease for any reason; provided, however, Lessee shall give Lessor ten (10) days' written notice prior to removal of a fixture that has been affixed to the foundation or structural systems of the Premises if the removal would damage in any way the Premises. Lessor shall be responsible for the cost of repairing any damage to the Premises which is caused by such removal. Any fixtures installed by Lessee shall automatically become the property of the Lessor, with Lessor remaining liable for any indebtedness thereon, if such fixtures are not removed by Lessee within a reasonable time after the expiration date of this Lease or sooner termination of this Lease for any reason.

21. NOTICES. All notices required to be given with respect to any matter pertaining to this Lease shall be sent by certified mail, return receipt requested, or other nationally recognized overnight courier and shall be deemed delivered upon receipt or refusal if addressed to Lessee or to Lessor at the following addresses:

Lessor
City of New Bern
Attn: Director of Public Works
P.O. Box 1129
New Bern, N.C. 28560

Lessee
Craven Community College
Attn: President
800 College Court
New Bern, N.C. 28562

Either Lessor or Lessee may change the address to which notices are to be sent to them by giving written notice of such change of address to the other party as herein provided.

22. INDEMNIFICATION/LIMITATION OF LIABILITY. To the extent allowed by law, and as limited by the laws of North Carolina, including the North Carolina Tort Claims Act, the Defense of State Employees Act, and the Excess Liability Policy administered through the North Carolina Department of Insurance, subject to the availability of appropriations and in proportion to and to the extent that such liability for injury or damages is caused by or results from the negligent acts or omissions of Lessee, its officers, agents, contractors, or employees, Lessee shall indemnify Lessor and save it harmless from and against any and all liability for injury or damage to person or property arising from or out of any occurrence in, upon, or at the Premises, or the occupancy or use by Lessee of the Premises, unless the same is caused by the negligence or willful misconduct of Lessor. To the extent allowed by law, and as limited by all state and federal laws, subject to the availability of appropriations and in proportion to and to the extent that such liability for injury or damages is caused by or results from the negligent acts or omissions of Lessor, its agents, contractors, or employees, Lessor shall indemnify Lessee and save it harmless from and against any and all liability for injury or damage to person or property arising from or out of any occurrence in, upon, or at the Subject Property, unless the same is caused by the negligence or willful misconduct of Lessee.

23. MEMORANDUM OF LEASE. This Lease shall not be recorded, but Lessor and Lessee, at either's request, shall execute a memorandum of lease for recording purposes which shall contain only the information required by Section 47-118 of the North Carolina General Statutes.

24. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the Parties with respect to the Premises, and cannot be changed or terminated except by written instrument subsequently executed by the parties hereto.

25. **BINDING EFFECT.** All the terms and conditions of this Lease shall be binding upon and shall apply and inure to the benefit of the parties hereto.

26. **CONSTRUCTION OF LEASE.** In construing and interpreting this lease, the following rules shall apply:

(a) This lease shall be construed with equal weight for the rights of both parties, the terms hereof having been determined by fair negotiations with due consideration for the rights and requirements of both parties.

(b) Pronouns used in this lease importing any specific gender shall be interpreted to refer to corporations, partnerships, men and women, as the identity of the parties hereto, or the parties herein referred to, may require.

(c) Pronouns, verbs and/or other words used in this lease importing the singular number shall be interpreted as plural, and plural words as singular, as the identity of the parties hereto, or the parties or objects herein referred to, may require.

(d) Paragraph headings appearing in this lease are for purposes of easy reference and shall be considered a part of this lease and shall in no way modify, amend, or affect the provisions thereof.

27. **GOVERNING LAW.** This Lease shall be construed and interpreted in accordance with the laws of the State of North Carolina.

IN TESTIMONY WHEREOF, the City has caused this instrument to be executed as its act and deed by the Mayor, and its corporate seal to be hereunto affixed, and attested by its City Clerk, all by the authority of its Board of Aldermen; and the Chair of the Board of Trustees of Craven Community College has executed or caused this document to be duly executed, all as of the day and year first above written.

LESSOR:

CITY OF NEW BERN

By 
MAYOR

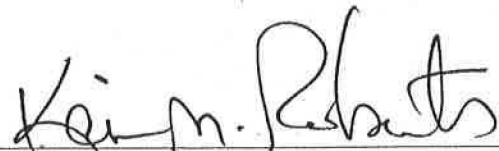
ATTEST:


City Clerk

(CORPORATE SEAL)

LESSEE:

THE TRUSTEES OF CRAVEN COMMUNITY
COLLEGE

By: 
Kevin M. Roberts, Chair

[SEAL]

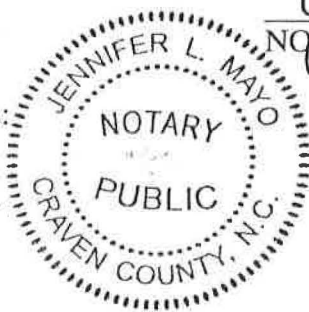
NORTH CAROLINA
CRAVEN COUNTY

I, Jennifer L. Mayo, a notary public in and for said county and state, do hereby certify that on the 28th day of February, 2017, before me personally appeared DANA OUTLAW with whom I am personally acquainted, who, being by me duly sworn, says that he is the Mayor and that BRENDA BLANCO is the City Clerk of the City of New Bern, the municipal corporation described in and which executed the foregoing instrument; that he knows the common seal of said municipal corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the municipal corporation was subscribed thereto by the said Mayor; that the said common seal was affixed, all by order of the Board of Aldermen of said municipal corporation; and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and notarial seal, this the 28th day of February, 2017.

My Commission Expires:

August 16, 2021



Jennifer L. Mayo
NOTARY PUBLIC

NORTH CAROLINA
CRAVEN COUNTY

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein: KEVIN M. ROBERTS.

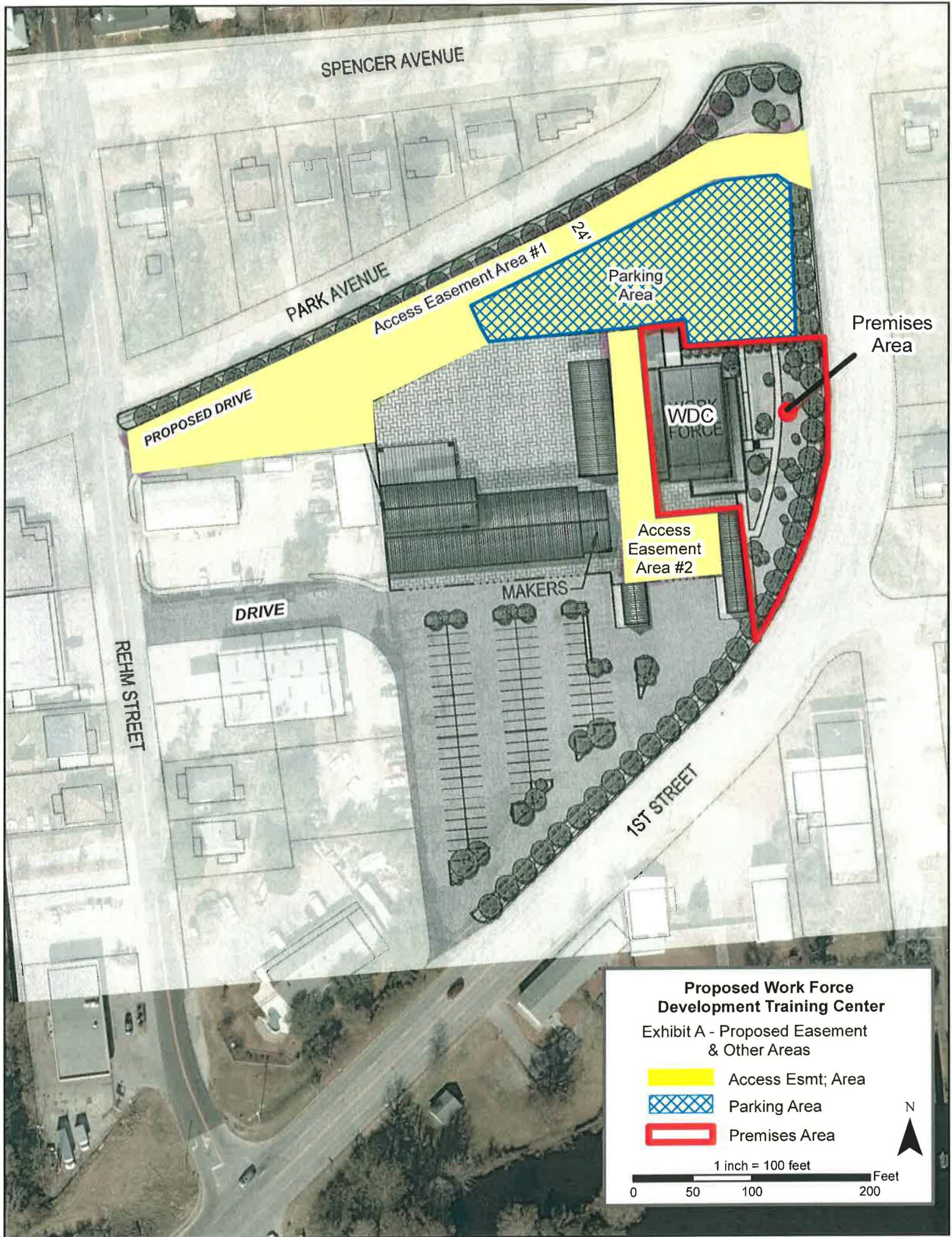
Date: March 6, 2017

Cynthia G. Ensley
Signature of Notary Public

Cynthia G. Ensley
Notary's printed or typed name

My commission expires: 9-15-18





SPENCER AVENUE

PARK AVENUE

PROPOSED DRIVE

Access Easement Area #1

Parking Area

Premises Area

WDC
FORCE

Access
Easement
Area #2

MAKERS

DRIVE

REHM STREET

1ST STREET

**Proposed Work Force
Development Training Center**
Exhibit A - Proposed Easement
& Other Areas

-  Access Esmt; Area
-  Parking Area
-  Premises Area

1 inch = 100 feet
0 50 100 200 Feet

