

STATE OF NORTH CAROLINA

GROUND LEASE AGREEMENT

COUNTY OF WAKE

THIS GROUND LEASE AGREEMENT (“Lease”) is made as of the _____ day of _____, 2018 (“Effective Date”), by and between the TOWN OF MORRISVILLE, a North Carolina municipal corporation, (the “Landlord”) and WAKE COUNTY, NORTH CAROLINA, a public body politic and a political subdivision of the State of North Carolina (the “Tenant” or “County”).

STATEMENT OF PURPOSE

Landlord is the fee simple owner of a certain tract of land located in Wake County, North Carolina, consisting of approximately 4.3 acres of land bounded by Town Hall Drive on the southwest, Jeremiah Street on the northwest, the future extension of Foxglove Drive on the northeast and the future extension of Carolina Street on the southeast, as described on Exhibit A, attached hereto as **Exhibit A** (“Town Property”). It is the present intent and purpose of the Tenant to use a portion of the southeastern portion of the Town Property, marked as the “Library Lease Area” on the Site Plan attached hereto as **Exhibit B**. This Ground Lease shall include the demise of Forty-Nine (49) surface parking spaces occupying the “Library Lease Area” and portions of the “Library Site” (“Demised Premise”), for the construction and operation of a Wake County Public Library to be known as the Morrisville Community Library (the “Project” or the “Library”). Therefore, Landlord has agreed to lease to Tenant, and Tenant has agreed to lease from Landlord, the Demised Premise upon the terms, provisions and conditions hereinafter set forth in this Lease.

WITNESSETH

In consideration of the rent to be paid, the mutual covenants and agreements herein contained and other good and valuable considerations, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, Landlord and Tenant agree as follows:

1. Demised Premises. Landlord hereby leases and rents to Tenant, and Tenant hereby leases and rents from Landlord, the Demised Premises, together with all easements, rights-of-ways, streets, alleys, passages, waters, water courses, water privileges, tenements, hereditaments, appurtenances and rights, whatsoever, now or hereafter, in any way belonging, relating or appertaining to the Demised Premises. The Demised Premises shall not include any Town Infrastructure, which shall remain the property and responsibility of the Town.

2. Construction of Library; Conditions to Rights of Parties.

(a) Prior to commencement of construction of the Library on the Demised Premises, Tenant and Landlord shall develop a communications plan which defines the process by which Tenant shall provide prompt notice, of not less than one week, to Landlord and the public

of any traffic control, lane closures, and/or other disruption of services on or around the Town Property to Landlord's citizens as a result of the Project.

(b) As a condition of commencing construction of the Library, Tenant must be able to obtain a commitment for a leasehold policy issued by a title company acceptable to the Tenant insuring title and survey of the Demised Property prior to the Tenant's initiation of construction of the Project. Tenant's inability to secure such policy pursuant to this Section 2(b) is expressly agreed upon between the parties as a required condition precedent to all rights and obligations granted by this Lease.

3. Term of Lease; Termination. The term of this Lease (the "Term") shall begin as of the Effective Date hereof and shall continue for an initial Lease term ("Term") of Forty (40) years, unless sooner terminated or extended in accordance with the terms hereof. Upon the expiration of the Term of this Lease, unless one hundred eighty (180) days' written notice is provided by either party to the other of its intent to terminate the Lease, the Lease shall automatically renew for ten (10) subsequent five-year renewal terms (each a "Renewal Term") until terminated by a party hereto.

(a) During the Term of the Lease or any extensions, Landlord shall retain the right to terminate the Lease upon 60 days' written notice should Tenant permanently cease operation of the Library as a Wake County community branch library providing such library services and programs as are typically provided in Wake County community libraries, subject to the default provisions set forth in Section 12.

(b) During the Term of the Lease, both parties shall have the right to terminate the Lease upon 60 days' written notice in the event of the non-appropriation or Default, pursuant to the Terms of Section 12 hereof, of the other party. Non-appropriation shall include the non-appropriation of construction funds or operational funds.

(c) In the event the Lease shall terminate pursuant to Section 3(a) or 3(b) of the Lease, all improvements to the Demised Premises shall become the exclusive property of the Landlord, and Tenant shall have no further rights thereto. Upon termination by either party for any reason permitted by this Lease, each party shall promptly obtain such governing board approvals and execute such documents as are necessary for legal transfer of Demised Premises from County to Town. Except as expressly provided herein, the Lease shall be non-cancellable during the Term and all Renewal Terms thereof.

4. Rental. Tenant shall pay to Landlord for the use and occupancy of the Demised Premises during the Term or any extension a fixed annual rental rate of One Dollar (\$1.00) ("Rental"), payable by Tenant annually on each anniversary of the Effective Date hereof or in a lump sum payment of Forty Dollars (\$40.00) on the Effective Date hereof, as agreed upon between the parties.

5. Condition and Use of Demised Premises.

(a) Tenant may only use the Premises for the construction and operation of the Library and for no other purpose without Landlord's prior written consent. Further, Tenant shall at all times in the use of the Demised Premises and the performance of this Lease comply with all laws, ordinances, decrees, orders, rules and regulations of any lawful authority, agency or governmental unit having jurisdiction over the Demised Premises required by any such authority, agency or governmental unit and shall save Landlord harmless from penalties, fines, costs, expenses or damages resulting from failure to do so. Without limiting the generality of the foregoing, Tenant shall not do or permit any act or thing which might impair the value of the Demised Premises or any part thereof or which constitutes a public or private nuisance.

(b) Landlord makes no representation or warranty with respect to the condition of the Demised Premises or its fitness or availability for any particular use or purpose and shall not be liable for any latent or patent defect therein.

(c) Tenant shall be able to construct and maintain as part of the Demised Premises Forty-Nine (49) surface parking spaces for use by patrons of the Library ("Surface Lot"). At all times during the Term of this Lease and any Renewal Term, Tenant shall be solely and exclusively responsible for all maintenance of the Surface Lot, and all operational expenses associated therewith. The Landlord shall retain the right to replace said parking spaces during the Term of this Lease if a plan for construction of a parking garage in lieu of the Surface Lot is agreed upon between the Parties. In the event that any of the 49 parking spaces are displaced by future development of the parking deck, the Town shall ensure that a like number of ADA compliant light asphalt paved parking spaces and other reserved spaces identified herein, remain available for the use of the Library patrons and County staff in the same proximity to the Library building as currently located. These spaces must be striped and reserved for library use. The spaces shall be available within the Project demonstration area prior to availability in the parking deck anticipated to be part of the Project. The Town shall be responsible for the cost and maintenance of replacement parking spaces with no contribution from the County. Nothing herein shall prevent Town from delegating this responsibility to a third-party developer, provided that the Town remains liable to County for performance of this obligation. The County must approve the location of the parking spaces in advance of construction. County approval shall not be unreasonably withheld as long as the spaces meet the criteria outlined in this section. Should Landlord replace the Surface Lot with other parking spaces or a parking garage owned by Landlord, Landlord shall thereafter assume all maintenance and operational costs and responsibility associated therewith. Library patrons shall at all times during the Term hereof be permitted to use the Parking Garage free of charge. No less than 2 ADA parking spaces, 1 parking space reserved for vehicle maintenance, and 2 parking spaces reserved for book returns shall be maintained in their present location in front of the library as shown on the site plan. No less than 44 accessible spaces shall be relocated within the parking deck. This provision shall be made part of any agreement between the Town and a third-party developer of the Project.

(d) During the Term of this Lease, patrons of the Library shall additionally enjoy the non-exclusive right to use an additional Twenty (20) parking spaces as street parking alongside Fox Glove Drive and the extension of Carolina Avenue ("Additional Parking"). Tenant

shall have no right hereunder to install signage regarding the Additional Parking or to otherwise attempt to restrict use of the Additional Parking to use by Library patrons to the exclusion of the general public; however, signage may be installed by County at library identifying additional street parking available for Library patrons and County staff.

(e) During the Term of this Lease, Tenant shall be allowed to use and maintain a commercial container area adjacent to the Surface Lot ("Container Site"). Tenant shall be solely responsible for all maintenance and operational costs and responsibility associated with the Container Site. Tenant's right to the Container Site shall at all times during the Term hereof be subject to Landlord's right to allow a private developer to relocate the Container Site, within its discretion and without approval of Tenant, to a location within the southeast quadrant of the Town Center Core Project, a true and accurate depiction of which is attached hereto as **Exhibit B**.

6. Taxes. Landlord shall pay, satisfy and discharge as the same becomes due and payable, all assessments, real estate taxes, ad valorem taxes of any sort, and any governmental charges, penalties and interest levied, assessed or imposed upon or against the Demised Premises during the Lease Term.

7. Utilities. During the Term of this Lease, the Tenant shall pay for all electricity, gas, water, heat, air conditioning, sewerage, janitorial services, garbage disposal and all other utilities or services relating to its use or occupancy of the Demised Premises.

8. Insurance. Throughout the Lease Term, Tenant at its sole cost and expense, shall keep or cause to be kept in force, for the mutual benefit of Landlord and Tenant and with commercially reasonable policy limits, comprehensive broad form general public liability insurance against claims and liability for personal injury, death or property damage arising from the use, occupancy, misuse or condition of the Demised Premises, and adjoining areas or ways, together with appropriate worker's compensation insurance in connection with any work on or about the Demised Premises, which amount of insurance coverage shall be adjusted during the term hereof to provide at all times coverage comparable to that for similar facilities in Raleigh, North Carolina.

Tenant may, in lieu of original policies of insurance, deliver to Landlord certificates of insurance policies or endorsements duly authenticated by the issuing company. All insurance policies (except for worker's compensation coverage) shall name as insured: Landlord, Tenant, and such other persons as may be designated by Landlord and/or Tenant, as their interests may appear. Tenant may also elect at any time during the Term of this Lease not to carry the general public liability and property damage insurance required by this Section, and to "self-insure" against such risks provided that (i) County has in effect a program of "self-insurance" against such risks, (ii) County has and maintains a Moody's Investors Service bond rating of "AAA," and (iii) the failure to carry such insurance does not violate any law, statute, code, act, ordinance, order, judgment, decree, injunction, rule, regulation, permit, license, authorization or other requirement which is issued by any government or governmental agency with jurisdiction over the Premises or which is applicable to County in the conduct of its business.

9. Maintenance; Repairs; Alterations; Reconstruction. Tenant shall promptly and diligently repair, restore, replace or remedy all damage to or destruction of all or any part of the Demised Premises. Except where due to the negligence of Landlord, its agents, or contractors, Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Demised Premises, all such matters being the sole duty and responsibility of Tenant. In the event of damage to Community Library and related improvements by fire or other casualty, County may at its option rebuild or terminate Ground Lease. Any insurance proceeds payable to County shall belong to and be the exclusive property of the County

10. Ownership of Improvements. All improvements constructed on the Demised Premises by Tenant as permitted by this Lease shall be owned by Tenant until expiration of the Lease Term, or earlier termination of this Lease. Any improvements on the Demised Premises at the expiration of the Lease Term (but excluding any equipment, fixtures, or personal property removable by Tenant under Paragraph 21 hereof) shall, without compensation to Tenant, then become Landlord's property, free and clear of all claims to or against them by Tenant, or any third person. Landlord shall take all improvements to the Demised Premises AS IS, regardless of condition, and Tenant shall have no obligation to Landlord for maintenance, repair, or replacement at or after the expiration of the Lease.

11. Assignment and Subletting. Tenant may not assign this Lease or any interest therein, without prior written consent of the Landlord, whose consent shall not be unreasonably withheld, provided that as a condition precedent to such assignment becoming effective any such assignee shall expressly assume all covenants and conditions of this Lease on the part of Tenant to observe, comply with or perform.

Tenant may not sublease any portion of the Demised Premises to a sublessee, nor may Tenant assign, encumber, extend or renew any such sublease, without prior written consent of the Landlord, whose consent shall not be unreasonably withheld.

12. Default. If default be made by Tenant or Landlord in any of the other covenants herein contained and not rectified (or rectification not started and pursued with reasonable dispatch) by the other party within sixty (60) days after receipt of written notice, then the non-defaulting party, if it shall so elect and without any obligation to do so, may cause such default to be remedied by such manner and such means as the non-defaulting party may deem proper and the cost and expense thereof paid or incurred shall be due and payable within thirty (30) days of presentment of an invoice for such services. In the alternative, the non-defaulting party shall be entitled to terminate the Lease. The rights and remedies hereinabove set forth are cumulative, are not exclusive and do not constitute a limitation, restriction, or waiver of any other right or remedy provided by law, and the parties at all times and from time to time, may and shall have the right to pursue and employ any one or more remedies that may be provided by and under the laws of North Carolina.

13. Condemnation. In the event, during the term of this Lease or any extension thereof, the entire Demised Premises are acquired by the exercise of the power of eminent domain, or so much thereof as shall render the same not reasonably suitable to Tenant's uses, this Lease shall terminate at the time possession must be surrendered, and the Tenant shall be relieved of all future

rental or other payments provided for herein. In the event that a portion of the Demised Premises is taken on which no improvements have been made, and if adequate parking remains available on the Demised Premises, and if vehicular ingress and egress is not substantially injured, then in that event, this Lease shall not terminate. Any award or proceeds of condemnation relating in whole or in part to the improvements made to the Demised Premises shall belong to Landlord and Tenant in the proportion to the ownership of the condemned property or improvements immediately preceding the condemnation. Landlord shall have sole direction over the negotiation or litigation involving such condemnation.

14. Financial Responsibility. If allowed by North Carolina law and to the extent it does not operate as a waiver of sovereign immunity and is not inconsistent with County's "Resolution Regarding Limited Waiver of Sovereign Immunity", attached hereto as Exhibit C, Tenant shall be responsible for all claims, demand, costs and expenses arising out of or relating to this Lease, County's use or occupancy of the Demised Premises, County's obligations under this Lease or any occurrence in, upon, or from the Land. However, the foregoing shall not apply to bodily injury, death, or property damage caused by Town's sole negligence or willful misconduct.

If allowed by North Carolina law, Landlord shall be responsible for all claims, demand, costs and expenses arising out of or relating to this Lease, Town's obligations under this Lease or any occurrence in, upon, or from the Demised Premises. However, the foregoing indemnity shall not apply to bodily injury, death, or property damage caused by County's sole negligence or willful misconduct.

15. Inspection. Landlord and its authorized representatives may enter the Demised Premises or any part thereof at all reasonable times for the purpose of inspecting the same. Landlord shall not have any duty to make any such inspection nor shall it incur any liability or obligation for not making any such inspection.

16. Liens. Tenant will not, directly or indirectly, create or permit to be created, or to remain, and will discharge, any lien, encumbrance, or charge on, pledge of, or conditional sale or other title retention agreement with respect to the Demised Premises or any part thereof, Tenant's interest therein, or the Rental or any other sum payable under this Lease, other than (i) this Lease and any assignment hereof or sublease hereunder, (ii) liens for taxes, assessments or other charges not yet payable, or payable without the addition of any fine, penalty, interest or costs for nonpayment, or being contested as permitted hereby, (iii) liens arising under the North Carolina Uniform Commercial Code (GS 25-9-101, et seq.) which encumber only the personal property and fixtures of Tenant located on or at the Demised Premises, which personal property and fixtures Tenant is entitled to remove at the end of the Lease Term, and (iv) liens of mechanics, materialmen, suppliers or vendors, or rights thereto, incurred in the ordinary course of business, which Tenant shall remove and discharge within sixty (60) days of such liens having been filed.

17. Notices. Any notices or submissions required or permitted under this Lease shall be in writing and shall be delivered or sent personally, by prepaid registered or certified mail, or by Federal Express, express United States Mail, or air courier addressed to the parties hereto at the following addresses:

For Wake County: Wake County Manager
Wake County Justice Center
301 S. McDowell St.
Raleigh, NC 27601

With a copy to Wake County Attorney
Wake County Justice Center
301 S. McDowell St.
Raleigh, NC 27601

For Town of Morrisville: Town Manager
Town of Morrisville
100 Town Hall Drive
Morrisville, NC 27560

With a copy to Town Attorney
c/o Town of Morrisville
100 Town Hall Drive
Morrisville, NC 27560

Any such party may from time to time by notice, as herein provided, designate a different address to which notices to it shall be sent. Such notices and submissions shall be deemed delivered: on the date of delivery if personally delivered, three (3) days after mailing if sent certified or registered mail, and the next business day if sent by Federal Express, express United States mail, or air courier.

18. Recording. Landlord and Tenant agree that upon request of either party, a memorandum of this Lease will be recorded in the Wake County Public Registry but that this Lease itself will not be so recorded.

19. Gender: Singular and Plural. As used herein, the neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes a corporation, partnership or other legal entity when the context so requires. The singular number includes the plural, and vice versa, whenever the context so requires.

20. Nature and Extent of Agreement. This instrument and its exhibits contain the complete agreement of the parties regarding the terms and conditions of the Lease of the Demised Premises, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporate herein. This instrument creates only the relationship of Landlord and Tenant between the parties hereto as to the Demised Premises, and nothing herein shall in any way be construed to impose upon either party hereto any obligations or restrictions not herein expressly set forth. This Lease shall not be construed to authorize either Landlord or Tenant to act as agent for the other, except as expressly permitted by the terms hereof. The laws of the State of North Carolina shall govern the validity, interpretations, performance and enforcement of this Lease.

21. Environmental Compliance.

(a) Tenant's Responsibility. Tenant covenants and agrees that the Demised Premises will, at all times during its use or occupancy thereof, be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits, and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies, and bodies applicable to the Demised Premises, pertaining to environmental matters, or regulating, prohibiting or otherwise having to do with asbestos and all other toxic, radioactive, or hazardous wastes or materials including, but not limited to the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended (all hereafter collectively called "Laws"). No material shall be installed in the Demised Premises, by Tenant or any employee, agent, or contractor of Tenant which contains any asbestos or other toxic or hazardous waste or substance; or which causes, or could cause, the Demised Premises to be in violation of any Laws: (i) when such material is installed; (ii) while such material remains on the Demised Premises; or (iii) when such material is disturbed or removed.

(b) Tenant's Liability. Tenant shall hold Landlord free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Landlord shall incur, or which Landlord would otherwise incur, by reason of Tenant's failure to comply with this Section; including, but not limited to: (i) the cost of bringing the Demised Premises into compliance with all Laws; (ii) the reasonable cost of all appropriate tests and examinations of the Demised Premises to confirm that the Demised Premises have been brought into compliance with all Laws; and (iii) the reasonable fees and expenses of Landlord's attorneys, engineers, and consultants incurred by Landlord in enforcing and confirming compliance with this Section.

(c) Covered Property. For the purposes of this Section, the Demised Premises shall include the real estate covered by this Lease, all improvements placed on the Demised Premises by Tenant and all personal property and fixtures located on or used in connection with the Demised Premises (including that owned by Tenant).

(d) Inspections by Landlord. Landlord and its engineers, technicians, and consultants (collectively the "Auditors") may, from time to time as Landlord deems appropriate,

during Tenant's usual business hours and after reasonable notice to Tenant, conduct periodic tests and examinations ("Audits") of the Demised Premises to confirm and monitor Tenant's compliance with this Section. Such Audits shall be conducted in such manner as to minimize the interference with Tenant's permitted activities; however, in all cases, the Audits shall be of such nature and scope as shall be reasonably required by then existing technology to confirm Tenant's compliance with this Section. Tenant shall fully cooperate with Landlord and its Auditors in the conduct of such Audits. The cost of such Audits shall be paid by Landlord unless an Audit shall disclose a material failure of Tenant to comply with this Section, in which case the cost of such Audit, and the cost of all subsequent Audits made during the Lease Term and within thirty (30) days thereafter (not to exceed two (2) such Audits per Lease Year), shall be paid for by Tenant within fifteen (15) days of receipt of invoices from Landlord.

(e) Landlord's Liability. Provided, however, the foregoing covenants and undertakings of Tenant contained in this Section shall not apply to any condition or matter constituting a violation of any Law to the extent such violation is caused by, or results from, the acts or neglects of Landlord; Landlord's employees, officers, partners, contractors, guests or invitees; prior owners or occupants of the Demised Premises; or owners or occupants of other property within the vicinity of the Demised Premises, in which case, Landlord shall hold Tenant free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Tenant shall incur, or which Tenant would otherwise incur, by reason of Landlord's failure to comply with this Section; including, but not limited to: (i) the cost of bringing the Demised Premises into compliance with all Laws; (ii) the reasonable cost of all appropriate tests and examinations of the Demised Premises to confirm that the Demised Premises have been brought into compliance with all Laws; and (iii) the reasonable fees and expenses of Tenant's attorneys, engineers, and consultants incurred by Tenant in enforcing and confirming compliance with this Section. .

(f) Liability After Termination of Lease. The covenants contained in this Section shall survive the expiration or termination of this Lease and shall continue for so long as the parties hereto and their successors and assigns may be subject to any expense, liability, charge, penalty, or obligation against which either party has agreed to indemnify the other under this Section.

22. Binding Effect. Subject to express provisions hereof to the contrary, this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns during the Term hereof and during any extensions or renewals of said Term.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused these present to be duly executed and sealed all in pursuance of proper legal authority, as of the day and year first above written.

<p>TOWN OF MORRISVILLE, NORTH CAROLINA – “LANDLORD”</p> <p>By: _____ Town of Morrisville Manager</p>	<p>This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Finance Officer Town of Morrisville, North Carolina</p>
<p>ATTEST:</p> <p>By: _____ Clerk</p> <p style="text-align: center;">[Seal]</p>	<p>This instrument is approved as to form and legal sufficiency.</p> <p>_____</p> <p>Town of Morrisville, Attorney</p>
<p>WAKE COUNTY, NORTH CAROLINA – “TENANT”</p> <p>By: _____ County Manager</p>	<p>This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.</p> <p>_____</p> <p>Finance Director Wake County, North Carolina</p>
<p>[Seal]</p> <p>ATTEST:</p> <p>_____</p> <p>By _____ Clerk</p>	<p>This instrument is approved as to form and legal sufficiency.</p> <p>_____</p> <p>County Attorney</p>

EXHIBIT A
TOWN CENTER CORE MASTER PLAN – “PROJECT SITE:”
TOWN PROPERTY



