

**COUNTY OF WAKE**

**STATE OF NORTH CAROLINA**

**GROUND LEASE, LEASES AND UTILIZATION AGREEMENT**

This Ground Lease, Leases and Utilization Agreement (“Lease”) dated the \_\_ day of \_\_\_\_\_, 2019 between the Town of Cary, a North Carolina municipal corporation (“Town” or “Lessor”), and Wake County, a body politic and corporate of the State of North Carolina (“County” or “Lessee”). Town and County are sometimes referred to individually as “Party” and jointly as “Parties.”

**RECITALS**

**WHEREAS**, Town owns approximately 12 acres bordered by Walnut Street to the south, Kildaire Farm Road, Dry Avenue and South Academy Street to the west, South Walker Street to the east and East Park Street to the north (“Town Property”) as shown on Exhibit 1; and

**WHEREAS**, Town Property is located in Town’s central business district (the “Downtown”) and in an established municipal service district known as the Downtown Business Improvement District (the “BID”); and

**WHEREAS**, on January 24, 2017 Town adopted the Imagine Cary Community Plan (the “CCP”) that sets out a long-term vision, policies, and strategic actions for the Town, including support for investment in Downtown and making Downtown more of a destination for the region; and

**WHEREAS**, the CCP designates the Downtown as a Special Planning Area, identifying six distinct Downtown subareas including the ‘South Academy Subarea’ in which Town Property is located, which subarea serves as the Town’s cultural and historical center and as home to public, institutional, and cultural anchors and with opportunity areas, the downtown park (the “Downtown Park”), a regional library, and a mixed-use development; and

**WHEREAS**, the Town has engaged and will continue to engage in efforts to revitalize the Downtown, including undertaking and encouraging the undertaking of development and redevelopment projects; and

**WHEREAS**, the Town has engaged and will continue to engage in efforts to encourage and promote activity in the Downtown, including conducting events that require the occasional closing of streets, including South Academy Street, and such activities will continue and become more prominent with the construction and opening of the whole of the Downtown Park; and

**WHEREAS**, Town and County entered into an Interlocal Agreement for Funding and Construction of the Cary Regional Library Project (“Project”) dated June 6, 2018 (“ILA”) pursuant to which County is causing the construction of a County regional public library and the construction of a Town parking deck (“Parking Deck”) and related improvements on Town Property; and

**WHEREAS**, the ILA requires that the Town lease to County that portion of Town Property on which the County regional public library is constructed as more fully described herein and in Exhibit 2 (“Library Site”) and lease to County parking spaces in the Town Parking Deck as more fully described herein and in Exhibit 3; and

**WHEREAS**, the Parties desire to enter into this Lease to set forth the terms under which County will possess, occupy, improve, maintain, and use Library Site and lease or use parking spaces in Parking Deck for the Permitted Use as defined herein and to fulfill requirements of the ILA; and

**WHEREAS**, N.C.G.S. Section 160A-274 authorizes governmental units to enter into leases for any interest in real or personal property by action of their governing bodies.

**NOW THEREFORE**, for and in consideration of the Recitals and the mutual promises and covenants contained in this Lease and as authorized by N.C.G.S. § 160A-274, the Parties agree as follows:

1. **Incorporation of Recitals and Purpose.** The Recitals and all exhibits are incorporated into this Lease. The purpose of this Lease is to set forth the terms and conditions on which:

- A. The Town will lease to County and County will lease from Town the Library Site as described below for the construction, management, operation, maintenance, and use of the County regional public library (“Library”); and
- B. The Town will lease to County sixty (60) parking spaces in the Parking Deck marked exclusively for Library use during Library Hours (“Leased Parking Spaces”), and will make available during Library Hours sixty (60) general parking spaces in the Parking Deck to support the Library (“Additional Parking Spaces”); and
- C. The County will lease to Town approximately 3,300 square feet of finished and unfinished area on the ground floor of the Library for Town use; and
- D. The Town will provide County with access to Access Areas as described below; and
- E. The Parties will share management, operation, maintenance, and use responsibilities and costs for Library, Parking Deck, and Access Areas; and
- F. The Parties will address other issues of mutual concern, including access, termination, risk allocation, and other matters which may arise.

2. **Lease by Town to County:** Upon the terms and conditions herein, Town hereby leases to County and County hereby leases from Town the Library Site and the Leased Parking Spaces as set forth in this Section 2 and as more specifically described on the exhibits referenced. The Library Site and Leased Parking Spaces shall be used only for the Permitted Use as set forth in section 5 of this Lease.

A. **Library Site Ground Lease.**

- 1. The Library Site is that approximately 17,650 square foot area that is the footprint of the Library building and those features described in B, C, and D below and further described on Exhibit 2. Library Site shall be constructed by County in

accordance with ILA and development plans approved by the Town, including 17-DP-0969, 18-DP-0617, 18-DP-0795, 19-DP-5741, 19-DP-6265, and 19-DP-7334 and any amendments to development plans reasonably consistent with the original plans which the County may be required to seek during construction. (collectively “Development Plan”). Library Site shall consist of:

- A. Library building
  - B. Library Entrance Bridge (but not the area beneath or above Entrance Bridge)
  - C. West Side Library Street Level Entry Plaza
  - D. Chiller Enclosure.
2. Library Site Responsibility:
- A. Construction. County shall bear responsibility for finishing Library in accordance with terms of the ILA.
  - B. Maintenance Responsibility. County shall be responsible for regular maintenance and repair of Library Site and Library and shall maintain same in a neat, clean and safe condition and in accordance with Development Plan and Town ordinances. County shall be responsible for regular maintenance, repair, and housekeeping of Library interior space (excluding areas leased by County to Town), and intends to conduct such maintenance and housekeeping at a minimum in accordance with the Wake County Facilities Use Plan.
  - C. Operational Responsibility. The County shall maintain Library building systems (mechanical, electrical, plumbing, and fire protection) in good working order.
  - D. Trash storage and removal. County shall store Library trash and recyclables in the space identified as “Trash/Recycling” on Exhibit 5, and Town is responsible for trash and recyclables removal.
  - E. Damage. The County shall be responsible for the repair and cost of any damage to the Library Site, Library, and its related improvements, except for damage covered by insurance maintained by either Party or damage caused by Town. In the event of damage caused by a third party, the County may pursue recovery against the legally responsible party.
  - F. Notice of Closure for Maintenance/Suspension of Use. The County shall give the Town reasonable written notice of any closure of Library or any feature of Library for maintenance or of suspension of the normal use of the Library if such closure will be for longer than five (5) calendar days. Any closure or suspension is subject to the terms of this Lease.
  - G. Hours of Use. The County shall determine Library hours of use provided Library shall be open to the public for the Permitted Use on the same or similar schedule as all County regional libraries as determined by Wake County Community Services.

**B. Leased Parking Spaces and Additional Parking Spaces.**

- 1. **Leased Parking Spaces**. Ancillary to and in support of the Library, Town leases to County sixty (60) striped parking spaces on the west side of the

Parking Deck adjacent to the Library on the P2, P3, and P4 levels, to be reserved for Library use only during Library Hours (“Leased Parking Spaces”). The general location of the Leased Parking Spaces is shown on Exhibit 3. Out of the 60 Leased Parking Spaces, two (2) spaces adjacent to the Library shall be marked for Wake County GSA/Maintenance and reserved by County 24/7/365 for that use, and three (3) spaces adjacent to the GSA spaces shall be marked for Book Drop (2) and Book Truck (1). These five (5) designated spaces shall be reserved by and for County 24/7/365. County has the right to designate other spaces within the Leased Parking Spaces, and erect County signage subject to Town approval. Town and County shall work collaboratively to enforce Library-only use of Leased Parking Spaces during open Library Hours, which shall be defined as the hours the Library is regularly open to the public as well as hours for Library events scheduled and publicized by Wake County outside of regular hours, and one-half hour before and after such open hours (collectively “Library Hours”). County shall provide Town with at least thirty (30) days notice of Library events scheduled at the Library outside of regular operating hours of Library. With the exception of the five (5) marked spaces with dedicated uses described above, Town may use Leased Parking Spaces for Town and public parking at all times other than Library Hours. Town shall provide appropriate way-finding signage to Leased Parking Spaces.

2. **Additional Parking Spaces.** Ancillary to and in support of Library, Town grants County the right to use up to sixty (60) additional parking spaces in Parking Deck (the “Additional Parking Spaces”) which shall be marked for general use and not reserved to any other use. Additional Parking Spaces shall be available to Library to support its Permitted Use during Library Hours on an equal basis with other general public users of the Parking Deck. During Library Hours, there shall be no charge for use of Additional Parking Spaces by library users. The general location of Additional Parking Spaces is shown on Exhibit 3. Town will look first to spaces denoted “Other User Groups’ Spaces” on Exhibit 3 when assigning parking to non-public users.
3. **Rules.** The use of Leased Parking Spaces and Additional Parking Spaces is subject to the rules set forth on Exhibit 5, which may be reasonably changed by Town from time to time; provided that the Town rules may not deny, abridge, or restrict the use of the Leased Parking Spaces and Additional Parking Spaces for Library purposes as set forth herein. Nothing contained in this Lease shall be deemed or construed so as to restrict or inhibit the Town’s police powers or regulatory authority, including its authority to adopt ordinances to protect and regulate off-street parking facilities and systems, including Parking Deck.
4. **Statement of Materiality.** The Leased Parking Spaces and Additional Parking Spaces are a negotiated element of this Lease and a material condition of operation of the Permitted Use. The Town may change the assignment of

spaces within the general location shown on Exhibit 3, but not the number or general location of the spaces. The Leased Parking Spaces and Additional Parking Spaces shall be available for County use at no additional charge or individual space fee for the duration of the Lease (except for Operational Costs). In the event that the Town desires to enter into a long-term lease or sale of parking spaces in Parking Deck to one or more developers of Mixed-Use Development of a portion of Town Property ("Mixed-Use Development") to support the Mixed-Use Development, or to create a condominium regime for such purpose, Town at Town's expense shall reserve the County Leased Parking Spaces and Additional Parking Spaces to the Town, for the purpose of continuing the County's access as described herein at no additional charge or individual space fee. The County shall reasonably cooperate with any alternate plan to subject the Parking Deck to a condominium regime, provided that County shall not subordinate its rights under this Lease to a declaration of condominium or a declaration of restrictive covenants governing the Parking Deck which:

- a. Adversely impacts the location and availability of County to the Leased Parking Spaces or Additional Parking Spaces as set forth in this Lease;
- b. Obligates County to pay for the construction, installation, operation, maintenance, repair, or restoration of any feature or fixture of the Parking Deck which is extraordinary for urban parking decks in the Raleigh-Durham-Chapel Hill Combined Statistical Area. For purposes of example only, the commission of an original work of art to be installed in or incorporated into Parking Deck would constitute such an extraordinary feature or fixture of Parking Deck.

5. **Incorporation.** The Town accepts responsibility for assuring that the requirements of this Section 2 (including subparts) relating to the Leased Parking Spaces and Additional Parking Spaces for Library purposes are not encumbered in the event that Town enters into a contract with any third party engaged in development of the Mixed-Use or acquiring rights in the Parking Deck. . This provision is incorporated into this contract for the benefit of Wake County and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law. This provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this contract.

C. **Access; Access Areas.** The Town hereby grants the County, its agents, employees, contractors, and invitees the right to access Library Site, Parking Deck, and Access Areas during Library Hours, after Library Hours with reasonable prior written or electronic notice to Town, or without notice in cases of emergency, to inspect the condition of Library Site, Leased Parking Spaces, or Additional Parking Spaces;

conduct testing within Library Site; or remediate any unsafe condition within Library Site; and to make such repairs or improvements to the Library Site as County may elect to make in accordance with the terms and provisions of this Lease. "Access Areas" include the Exterior Monumental Stair, the Lower Plaza, and the Pedestrian Access to Lower Plaza, all as shown on Exhibit 2. The Parties' responsibilities for these Access Areas are as follows:

**1. Exterior Monumental Stair:**

- a. Construction. County shall bear responsibility for finishing the Exterior Monumental Stair in accordance with terms of the ILA.
- b. Maintenance Responsibility. The Town shall be responsible for regular maintenance and housekeeping of Exterior Monumental Stair, including repair, trash removal, de-icing, and re-surfacing.
- c. Damage. The Town shall be responsible for the actual repair and cost of any damage to the Exterior Monumental Stair except for damage covered by insurance maintained by either Party or damage caused by County. In the event of damage caused by a third party, the Town may pursue recovery against the legally responsible party.
- d. Notice of closure for maintenance/suspension of use. The Town shall give the County reasonable written notice of any closure for maintenance or suspension of the normal use of the Exterior Monumental Stair that is expected to last longer than five (5) days.
- e. Hours of Use. The Town shall determine hours of use.

**2. Lower Plaza.**

- a. Construction. County shall bear responsibility for finishing the Lower Plaza in accordance with terms of the ILA.
- b. Maintenance Responsibility. The Town shall be responsible for regular maintenance and housekeeping of Lower Plaza, including repair, trash removal, de-icing, and re-surfacing.
- c. Damage. The Town shall be responsible for the actual repair and cost of any damage to the Lower Plaza except for damage covered by insurance maintained by either Party or damage caused by County. In the event of damage caused by a third party, the Town may pursue recovery against the legally responsible party.
- d. Notice of closure for maintenance/suspension of use. The Town shall give the County reasonable written notice of any closure for maintenance or suspension of the normal use of the Lower Plaza that is expected to last longer than five (5) days.
- e. Hours of Use. The Town shall determine hours of use.

**3. Pedestrian Access to Lower Plaza:**

- a. Construction. County shall bear responsibility for finishing the Pedestrian Access to Lower Plaza in accordance with terms of the ILA.

- b. Maintenance Responsibility. The Town shall be responsible for regular maintenance and housekeeping of Pedestrian Access to Lower Plaza, including repair, trash removal, de-icing, and re-surfacing.
  - c. Damage. The Town shall be responsible for the actual repair and cost of any damage to the Pedestrian Access to Lower Plaza except for damage covered by insurance maintained by either party or damage caused by County. In the event of damage caused by a third party, the Town may pursue recovery against the legally responsible party.
  - d. Notice of closure for maintenance/suspension of use. The Town shall give the County reasonable written notice of any closure for maintenance or suspension of the normal use of the Pedestrian Access to Lower Plaza that is expected to last longer than five (5) days.
  - e. Hours of Use. The Town shall determine hours of use.
  - f. County Access. The Town reserves to the County the east/west cross access necessary for the County to make deliveries into the Library and to serve the Library building's mechanical/electrical systems.
- D. **Encroachments.** County may construct, maintain, and use a ground mounted County Logo Library sign at an agreed upon area located on Town Property and as approved through the Town's sign permit approval process. County may also construct, maintain, and use those other features, including a bike rack and communications box, as shown on Development Plan located on Town Property outside of Library Site or Access Areas. The Parties may agree to other signs or features as necessary.
- E. **Reversion.** Upon the Expiration Date, or sooner termination of this Lease, the Library and all other improvements upon the Library Site shall, without compensation to County, become the sole property of Town, free and clear of all claims of County or any other person or entity and free and clear of all liens, security interests, and encumbrances. Machinery, equipment, generators, and other personal property of County (Furniture, Fixtures, and Equipment), other than that which is affixed to the Library so that it cannot be removed without permanent damage to the Library, shall remain the property of County, and County shall remove or cause to be removed all such personal property by the Expiration Date or sooner termination of this Lease.
- F. **Security of Leased Parking Spaces and Additional Parking Spaces.** If the Parties have not already done so by the Effective Date, the Parties agree to work diligently, reasonably, and in good faith to evaluate and achieve consensus on the installation and operation of security features in Parking Deck, including consideration of video surveillance cameras and emergency call stations. For the duration of this Lease, the Town shall maintain security features for the Parking Deck consistent with standards for urban parking decks in the Raleigh-Durham-Chapel Hill Combined Statistical Area. The Town shall create an accessible database to share Parking Deck security information real time with County for the purpose of the County monitoring Library security.

The Town, the County, and other owner(s) of the Parking Deck (if any) shall share the cost of Parking Deck security acquisition and installation as set forth in this subsection. The County's portion of Parking Deck initial security acquisition and installation costs is a one-time contribution of \$35,609. Costs of ongoing operation and maintenance of security features shall be the responsibility of the Town and other owners of the Parking Deck without contribution from County, and shall not be added to the County's "Operational Costs".

3. **Lease by County to Town.** Commencing upon the issuance of a certificate of occupancy for Library, County, upon the terms and conditions herein, hereby leases to Town and Town hereby leases from County for the Term the following portions of Library:

- A. **Finished Restroom/Storage Areas.** One thousand one hundred square feet (1,100 SF) of finished restrooms and associated storage area on the lowest level of the Library ("Restroom/Storage Areas") as shown on Exhibit 6.
- 1) **Construction.** County shall bear responsibility for finishing Restroom/Storage Areas in accordance with terms of the ILA.
  - 2) **Maintenance Responsibility.** The Town shall be responsible for regular maintenance and housekeeping of Restroom/Storage Areas.
  - 3) **Operational Responsibility.** The County shall maintain building systems (mechanical, electrical, plumbing, and fire protection) in good working order.
  - 4) **Trash storage and removal.** Town is responsible for the storage and removal of trash and recyclables generated by Town use of Restroom/Storage Areas. Town shall not use any area on Library Site not leased to Town for such storage and removal.
  - 5) **Damage.** The Town shall be responsible for the actual repair and cost of any damage to the Restroom/Storage Areas, including fixtures, except for damage covered by insurance maintained by either Party or damage caused by County. In the event of damage caused by a third party, the Town may pursue recovery against the legally responsible party.
  - 6) **Notice of closure for maintenance/suspension of use.** The Town shall give the County reasonable written notice of any closure for maintenance or suspension of the normal use of the Town Flexible Area that is expected to last longer than five (5) days.
  - 7) **Hours of Use.** The Town shall determine hours of use of Restroom/Storage Areas.
- B. **Town Flexible Area.** Two thousand two hundred square feet, (2,200 SF) of unfinished, minimally conditioned space adjacent to the Restroom/Storage Areas as shown on Exhibit 6 (currently designated "Town Unfinished Area" but referred to herein as Town Flexible Area).
- 1) **Construction.** County will provide utility stubs for future connection by Town and County has designed exterior walls to accommodate windows and doors for construction and finishing by Town. Town shall bear sole responsibility and cost for finishing Town Flexible Area.



- 2) **Maintenance Responsibility.** The Town shall be responsible for regular maintenance and housekeeping of Town Flexible Area, including any food or beverage service areas within the space.
  - 3) **Operational Responsibility.** The County shall maintain building systems (mechanical, electrical, plumbing, and fire protection) in good working order.
  - 4) **Trash storage and removal.** Town is responsible for the storage and removal of trash and recyclables generated in Town Flexible Area. Town shall not use any area on Library Site not leased to Town for such storage and removal.
  - 5) **Damage.** The Town shall be responsible for the repair and cost of any damage to the Town Flexible Area, including fixtures, except for damage covered by insurance maintained by either Party or damage caused by County. In the event of damage caused by a third party, the Town may pursue recovery against the legally responsible party.
  - 6) **Notice of closure for maintenance/suspension of use.** The Town shall give the County reasonable written notice of any closure for maintenance or suspension of the normal use of the Town Flexible Area that is expected to last longer than five (5) days.
  - 7) **Hours of Use.** The Town shall determine hours of use of Town Flexible Area.
- C. **Town Premises.** Finished Restroom/Storage Areas and Town Flexible Area are collectively referred to as “Town Premises.”

4. **Effective Date and Term.**

A. **Effective Date.** This Lease is conditioned upon proper authorization and execution by the Parties and shall become effective upon the date it is authorized and executed by the last of Town or County (“Effective Date”). The assessment of Operational Costs for each of the various areas (Parking Deck, Library Site, Access Areas) for which such costs are recoverable shall not commence until substantial completion and readiness for occupancy of the area in question.

B. **Original Term.** This Lease shall have a term of Forty (40) years ending on the date which is forty (40) years from the Effective Date (“Expiration Date”), unless terminated sooner as provided herein (the “Original Term”). The terms and conditions contained in this Lease are mutually dependent, such that a termination of the Lease based upon a material default in any section results in a termination of the entire Lease unless otherwise agreed in writing by the Parties.

C. **Extension Options.** County shall have the option, but not the requirement, to extend the Original Term of the Lease for one (1) additional period of five (5) years, referred to as the “Option Term”. County shall exercise Option Term by giving Town written notice of its intent to exercise such right at least one hundred and eighty (180) days prior to the expiration of the Original Term. The Option Term shall be on the same terms and conditions as provided herein. The Original Term and Option Term shall hereinafter sometimes collectively be referred to as, the “Term”. Town agrees to engage in good faith discussions with County in the event the Permitted Use continues to bring

people and animating activities to Cary's downtown and County desires to extend this Lease beyond the Term.

5. **Permitted Uses.**

A. **County Premises.** County shall use the Premises as follows:

1. **Library Site.** Except for the lease of Town Premises to Town, County shall use Library Site for the sole purpose of operating and maintaining a Wake County regional branch public library providing such regional library programs, activities, and services as bring Wake County residents to the Library and are typically provided in Wake County regional libraries (the "Permitted Use"). The Restroom/Storage Areas and Town Flexible Area leased to Town shall be used by Town for Town purposes as described in paragraph 5.B below. The County shall own Library and other improvements on Library Site, including the Town Premises, until the expiration of this Lease.
2. **Leased Parking Spaces.** County shall use the Leased Parking Spaces and Additional Parking Spaces for the sole purpose of providing Library staff, maintenance, and public parking for the Permitted Use. The use of Leased Parking Spaces and Additional Parking Spaces is subject to the rules set forth on Exhibit 5, which may be reasonably changed by Town from time to time. Nothing contained in this Lease shall be deemed or construed so as to restrict or inhibit the Town's police powers or regulatory authority, including its authority to adopt ordinances to protect and regulate off-street parking facilities and systems, including Parking Deck. Town may from time to time close all or any portion of Parking Deck, Leased Parking Spaces, or Additional Parking Spaces to make Town required repairs, improvements, alterations, or changes to Parking Deck. In the event of any closure of the Parking Deck or blocked access to Leased Parking Spaces or Additional Parking Spaces, the Town shall be responsible for giving at least 48 hours written notice to the County of the purpose and estimated time of the closure. In all such events when the number of Leased Parking Spaces are affected, Town shall use good faith efforts to provide alternate parking spaces for Library use. In the event of a federal, state, or local emergency, Town may immediately and without notice close all of Parking Deck. In such an emergency Town shall provide such notice as it is able and shall work with County to provide alternative parking.
3. **Continuous Operation.** Except as provided below, County shall operate the Permitted Use without interruption or suspension for the Term, consistent with hours of operation and provision of services of County regional libraries. With reasonable notice to the Town, County may suspend the Permitted Use for repairs, upfitting, and similar activities. County shall give the Town reasonable written notice of any closure for maintenance or suspension of the Permitted Use that is expected to last longer than five (5) days. Suspension of Permitted Use for longer

than five (5) days and not associated with maintenance, repair, or renovation shall be considered a breach of this provision.

4. **Statement of Materiality.** The Permitted Use is a negotiated element of this Lease and a material condition of this Lease. The Permitted Use is a use that will bring a diverse mix of people of all ages to Cary's downtown and will contribute to the vision and goals of the CCP by offering a full service library with experiences for adults, teens and children.
  - B. **Town Premises.** Town shall use the Town Premises for Town purposes, which may include a community activity area open to the public, Town office space, or other Town purposes. The County shall review proposed modifications to Town Premises, including Town Flexible Area, to ensure that all modifications conform to Wake County Design and Energy Guidelines and follow Wake County's standard of care. All Town modifications are subject to normal County permitting processes. Notwithstanding the preceding, Town shall not use Town Premises for food preparation as defined in Wake County Code of Ordinances, though Town may use Town Premises for a modest food and beverage service area such as a coffee, beverage, and snack shop. Town shall not upfit Town Premises or build systems in a manner that adversely impacts the upper floors of Library (by way of example and not limitation, a modification requiring a vertical exhaust system to run through upper floor of Library). Town shall not sublease or license the Town Premises to any party for longer than one (1) day without the consent of the County. Any subleased or licensed use of the Town Premises must be consistent with the overall plan and character of the Library Site. No subleased or licensed use shall include the serving, selling, or tasting of alcoholic beverages or tobacco products on the Town Premises during Library Hours.
6. **Improvements.**
- A. **Construction of Project.** County shall pursue to completion the Project in accordance with ILA and Development Plan, including punch list and correction or warranty period completion. County shall obtain and maintain as-built drawings, operations and maintenance manuals, warranties, and other Project records and provide those related to Town Premises to Town upon Town request. County shall provide to Town as-built drawings, operations and maintenance manuals, warranties, and other similar records related to Library upon the completion of the one-year construction warranty period.
  - B. **Directional Signs; Parking Deck Signs.** At or before the Effective Date of this Lease, the Parties shall work collaboratively to plan and locate appropriate exterior directional signage for the Library and Parking Deck, to include wayfinding signage for Library and Town Premises patrons and staff, and for citizens, visitors, and future tenants living or working in the Mixed-Use Project ("Directional Signs"). The developer of the Mixed-Use Project may be included by Town in such collaborative effort. The Parties shall endeavor to incorporate the County's signage standards for libraries within the Directional Signs. The Parties shall endeavor to incorporate the Wake County logo into the Directional Signs (or some of them) to ensure identification as a Wake County public

library branch. Town reserves the right to add to, eliminate, change, and modify signage on and in Parking Deck so long as County's requirements set forth in this Ground Lease are met. The County's prior review and approval shall be required for interior signage modification affecting County requirements for use of the Leased Parking Spaces. The Town shall be responsible for the cost of installing, maintaining, repairing, and replacing Directional and Parking Deck Signs; provided that County shall pay for subsequent County requested signage subject to Town approval of signage.

- C. **Temporary Signs.** Town and County shall agree upon mutually acceptable locations for temporary event or notice signs on Library Site for both Town and County activities, and on Access Areas for County activities, keeping in mind the purposes of the Town's sign ordinance, including enhancing the aesthetic quality of the Town, improving traffic and pedestrian safety, reducing visual clutter, and fostering integration of signage with architectural and landscape designs. Town may place temporary signs on Access Areas as deemed appropriate by Town for Town purposes.

7. **Rent.**

In consideration of the benefits accruing to the Town and the County from the Permitted Use, for other good and valuable consideration, the receipt of which is acknowledged, and as authorized by N.C.G.S. § 160A-274, there shall be no ground lease or other lease payments due under this Lease from County to Town or Town to County for the Term, including any Option Terms. The Parties shall be and remain liable for their proportionate share of Operational Costs as provided in Paragraph 9.

8. **Quiet Enjoyment.**

A. **Town to County.** Town covenants and agrees that County, upon observing and keeping the covenants, conditions, and terms of this Lease on County's part to be kept or performed, shall lawfully and quietly hold, occupy, and enjoy the Library Site and Leased Parking Spaces during the Term without hindrance of Town or any person claiming under Town. The Parties understand and recognize that as development continues, particularly the development of the Downtown Park and the Mixed-Use Project but also other construction activity, residents and businesses in the Downtown, including County, will experience inconveniences including temporary road closures, construction activity and traffic, competition for public (non-Leased) parking spaces in Parking Deck, noise from public and private events, and increased pedestrian activity in and around Library Site. When Town plans events that may have noise or other impacts to Library operations and accessibility, the Town agrees to give notice and coordinate programming with Library to minimize impacts. Town shall give County reasonable notice of any known road closings or interruptions impacting Library use. Except in an emergency situation or as permitted by this Lease, Town shall not fully obstruct access to Library. Town hereby retains the right to enter upon and inspect the Library Site and Library at reasonable times and upon reasonable notice to observe and fulfill its rights and obligations under this Lease. Town further reserves the right to enter upon the Library Site and Library, without prior notice, in the event of an emergency condition or situation, as reasonably determined by Town, including an emergency condition which

the County is unable to correct within a reasonable time, to avoid personal injury or damage to Town Premises or property.

B. **County to Town.** County covenants and agrees that Town, upon observing and keeping the covenants, conditions, and terms of this Lease on Town's part to be kept or performed, shall lawfully and quietly hold, occupy, and enjoy the Town Premises during the Term without hindrance of County or any person claiming under County. Notwithstanding the foregoing, County hereby retains the right to enter upon and inspect the Town Premises at reasonable times and upon reasonable notice to observe and fulfill its rights and obligations under this Lease. County further reserves the right to enter upon the Town Premises, without prior notice, in the event of an emergency condition or situation, as reasonably determined by County, including an emergency condition which the Town is unable to correct within a reasonable time, to avoid personal injury or damage to Library or County property.

9. **Capital Expenses, Maintenance and Operational Costs, and Allocation of Responsibilities.**

A. **Capital Expenses.** "Capital Expenses" means the cost and expense of fixing a design or flaw; creating an addition, enlargement, or expansion; creating an increase in capacity, productivity, or efficiency; rebuilding after useful economic life; or replacing a major component or structural part of the improvement.

1. County, as Library owner, shall be responsible for Capital Expenses attributable to necessary capital repairs, capital replacements, and capital improvement to the Library Site. These Capital Expenses shall not be passed along to Town as Operating Expenses; provided however that the Town shall be solely responsible for Capital Expenses which solely benefit the Town Premises and the Town Capital Expenses shall not be passed along to County as Operating Expenses. County shall have access through Access Areas for necessary capital repairs, capital replacements, or capital improvements on the Library Site.
2. The Town and County shall each comply with Wake County Design and Energy Guidelines in any repairs, replacements, or improvements performed to Town Premises and Library, respectively. Each Party shall give the other notice of planned improvements to Library or Town Premises which shall require permitting.
3. Town, as Parking Deck owner, shall be responsible for Capital Expenses attributable to all necessary capital repairs, capital replacements, and capital improvement to the Parking Deck. These Capital Expenses shall not be passed along to County as Operating Expenses.

B. **Operational Costs.** "Operational Costs" means the costs and expenses to operate, clean, maintain, and periodically repair and service Library (including Town Premises) and Parking Deck and appurtenances, and the Access Areas, including costs and expenses for janitorial care; elevator maintenance and repairs; HVAC preventative maintenance and repairs; electrical maintenance and repairs; concrete/asphalt maintenance and repairs; pest management; landscaping; grass cutting; snow removal; de-icing walkways; security

and fire alarm system repairs and monitoring; painting; roof repairs and maintenance; doors, locks and window repairs; interior repairs to walls and ceilings; HVAC repairs; other interior and exterior building repairs; building inspections as required by governmental authorities; State inspections to include boilers, compressed air vessels, and elevators; utilities allocable to the areas shared and trash removal. Operational Costs shall not include depreciation or amortization of costs required to be capitalized in accordance with generally accepted accounting practices; third party insurance premiums for policies insuring the Property; compensation paid to and expenses of “in-house” property management personnel; financial accounting and legal personnel; interest, principal, points, and fees of any mortgage or mortgages or any other debt instrument encumbering the Premises; condominium dues or assessments; or any operating costs or expenses that either Party incurs with respect to land or improvements outside of the Library Site, Parking Deck, or Access Areas not agreed upon by both Parties. Operational Costs shall not include costs and expenses for the repair of damage to the Library Site, Parking Deck, or Access Areas to the extent that damage is reimbursed by insurance proceeds, or caused by the negligence of a third party.

1. **Library Site and Library.** County shall be responsible for all Operational Costs of Library Site except those that are the direct responsibility of Town for Town Premises.
2. **Town Premises.** Town shall be responsible for all Town’s Operational Costs of the Town Premises, including Telecom and Fiber. Town shall reimburse County for a proportionate share of County Operational Costs of Library which directly benefit Town Premises, based upon the total square footage of Town Premises/total square footage of Library building times Operational Costs for the Premises that directly benefit Town Premises. County shall bill Town for its share of Operational Costs on an annual basis.
3. **Parking Deck.** Town shall be responsible for all Operational Costs of Parking Deck and County shall reimburse Town for County’s proportionate share of those Operational Costs. The County’s portion of Operational Costs of the Parking Deck shall be determined by multiplying the parking spaces that can be used by Library patrons which shall be 120 (60 leased spaces plus 60 general use spaces), over the total number of spaces in the Parking Deck times Operational Costs as defined in 9.B. above. The County shall at no time have responsibility for prorated Operational Costs greater than a fraction equivalent to Leased Parking Spaces plus Additional Parking Spaces (not to exceed 120 spaces) over total spaces, even if a future Declaration of Condominium increases the spaces available for general use. The Operational Costs borne by the County on a per space basis will not in any event exceed the Operational Costs borne by any other party on a per space basis. The Operational Costs for the Parking Deck shall not include any construction or maintenance of additional elevators to the Parking Deck beyond what is represented in the building plans and specifications. These Operational Costs will be billed to the County annually via the Town’s billing department.
4. **Elevator Costs.** The Town shall be responsible for the maintenance and repair of elevators servicing the Parking Deck, and the County shall be responsible for

maintenance and repair of elevators servicing the Library, subject to the qualifications set forth in this Lease.

5. **Telecom/Fiber Costs.** The Town shall be responsible for the installation, maintenance, and repair of Telecom and Fiber servicing the Parking Deck and Town Premises, and the County shall be responsible for installation, maintenance, and repair of Telecom and Fiber servicing the Library, subject to the qualifications set forth in this Lease.

C. **County Rights and Responsibilities.** In addition to other responsibilities set forth in this Lease , County shall:

1. complete construction of the Project in accordance with the ILA and Development Plan.
2. maintain throughout the Term the Library Site, Library and all improvements thereon in a safe, neat, and good condition and state of repair and maintain and use Premises, and Library in accordance with all applicable laws, rules, ordinances, orders, and regulations of federal, state, county, municipal and other governmental bodies having jurisdiction, including the Code of Ordinances and Land Development Ordinance of the Town of Cary (collectively “Laws & Regulations”) and in strict accord with this Lease. This requirement is not designed to alter the responsibility for Operational Costs set forth in Section 9.B. above.
3. not bring or permit the bringing of Hazardous Substances upon the Library Site except as provided in Paragraph 13B.
4. obtain and maintain at all times during Term insurance in accordance with Exhibit 7.
5. except as specifically provided otherwise herein, be solely responsible and liable for the construction, maintenance and operation of the Library Site and Library and for any losses, costs or damages that may result from County’s use, improvement, operation, or maintenance of the Library Site and Library.
6. share proportionately in Town’s Operational Costs as provided in Paragraph 9.B.
7. dispose of Library trash and recycling in receptacles provided by Town.
8. be solely responsible and liable for the acts and omissions of its officers, employees, contractors, and agents to the extent permitted by law and consistent with the terms of the County’s 2003 Resolution Regarding Limited Waiver of Sovereign Immunity.
9. assure that its officers, employees, contractors, and agents comply with all applicable Laws & Regulations.
10. permit no encumbrances on Library Site.
11. pay Town for the level of trash and recyclables collection service County chooses, which shall be no less than XX days per week.
12. cooperate with Town reasonably, diligently, and in good faith to coordinate the Town’s execution, operation, and management of the Downtown Park and the Mixed-Use Development subject to County’s rights hereunder and the County not being required to expend any County funds in connection with the Mixed Use Development.

13. Pay a proportionate share of the annual maintenance costs of the Stormwater Management device for the Library Site, based on County's percent usage of the square footage of Library Site and Parking Deck. County shall not be responsible for costs of the Stormwater Management devices related to the Downtown Park and Mixed Use Development.
14. inform Town of, and make available to Town, books and records related to the construction of Library Site and Parking Deck prior to disposition or purging of such books and records.
15. Meet with Town to discuss proposed events on and use of outside plaza areas related to the Permitted Use.

D. **Town Rights and Responsibilities.** In addition to other responsibilities set forth in this Lease, Town shall:

1. Maintain the Parking Deck and Access Areas as set forth in this Lease.
2. maintain throughout the Term the Town Premises in a safe, neat, and good condition and state of repair, ordinary wear and tear only excepted, and maintain and use Town Premises in accordance with all applicable Laws & Regulations and in strict accordance with this Lease.
3. not bring or permit the bringing of Hazardous Substances upon the Town Premises except as provided in Paragraph 13B.
4. obtain and maintain at all times during the Term insurance in accordance with Exhibit 7.
5. subject to the allocation of Operating Costs set forth in Paragraph 9.B, be responsible and liable for the maintenance and operation of the Parking Deck and maintain throughout the Term the Leased Parking Spaces and Additional Parking Spaces in a safe, neat, clean and good condition and state of repair, ordinary wear and tear only excepted, and in accordance with all applicable Laws & Regulations.
6. provide County with a collection point for trash and recycled materials from the Library Permitted Use. Due to the lack of exterior space on the Library Site for a trash and recyclables collection point, a trash and recyclables collection site shall be identified and maintained by the County in a location reasonably convenient to County staff who work in Library.
7. provide County with stormwater management. There will be no construction or annual maintenance cost attributed to County as part of this Project. Wake County shall be responsible for a proportionate share of the annual maintenance costs of the Stormwater Management device as provided in 9 C.
8. landscape the exterior of Library Site, except the "Planter Wall A" and "Planter Wall B" which shall be the responsibility of County.
9. share proportionately in the Operational Costs that directly benefit Town Premises.
10. be solely responsible and liable for the acts and omissions of its respective officers, employees, contractors, and agents on Town Premises to the



extent permitted by law and any applicable resolution of its governing board.

11. permit no encumbrances on Town Premises.
12. not transfer any interest in Town Premises.
13. not permit the Mixed Use Project to infringe County's rights or entitlements under this Lease.
14. Meet with Town to discuss proposed events on and use of outside plaza areas related to the Permitted Use.

#### 10. **Default, Remedies and Termination.**

A. **Events of Default.** Each of the following events shall be a default and a breach of this Lease and constitute an 'Event of Default':

1. **Abandonment or Change in Use.**

- a. Abandonment or change of use by County of the Library Site or Library or any portion thereof, or cessation of conducting the Permitted Use where such abandonment or change of use continues for a period of thirty (30) days after written notice thereof by the Town. This shall not include scheduled closures for maintenance or repairs permitted under this Lease or consented to by Town, or damage by fire or other casualty.
- b. Abandonment or change of use by Town of the Town Premises, or any portion thereof where such abandonment or change of use continues for a period of thirty (30) days after written notice thereof by the County. Abandonment shall not include scheduled closures for maintenance or repairs permitted under this Lease or consented to by County, or damage by fire or other casualty.

2. **Default in Payment or Performance.** Failure to pay any monetary obligations accruing under this Lease when due and payable or failure to observe or perform any of the material covenants, terms, or conditions of this Lease.

B. **Notice and Right to Cure.** The non-defaulting Party shall provide written notice to defaulting Party specifying the nature of the default and defaulting Party shall have ninety (90) days after written notice is given by the non-defaulting Party in which to cure the default.

C. **Remedies and Termination.**

1. **Remedies.** In the event of an uncured default by either Party, in addition to any other remedies available at law or in equity, including, without limitation, the remedies of injunction and specific performance, the non-defaulting Party may, at its option, having provided notice and opportunity to cure to other Party as required by Section B, terminate this Lease by termination notice to defaulting Party ("Termination Notice"). Upon the issuance of Termination Notice to defaulting Party, all obligations of the non-defaulting Party are terminated and shall come to an end fully and completely as of the date of

such notice as if it were the date originally fixed for the expiration of the Term. No such expiration or termination of the Lease shall relieve either Party of its liability and obligations under the Lease accruing up until the date of termination.

2. Termination by Town. Upon the termination of this Lease by the Town due to an uncured default of the County, the County shall remove all of its personal property, including furniture, fixtures, and equipment from the Premises and deliver the Premises to Town in as-is condition, taking into account normal wear and tear. The County shall be responsible for any maintenance obligations up until the effective date of termination.
3. Termination by County. In addition to any legal remedies available, the County may pursue the remedies of injunction or specific performance to cure default of the Town in order to continue or restore the Permitted Use of the Library and Parking Deck for County purposes as set forth herein, provided that the Term or Permitted Use is not changed by the Court without agreement of the parties.

D. Non-Appropriation. As the Parties are each governmental entities, the performance of this Lease is contingent upon the availability of public funding. In the event that public funds are unavailable and not appropriated for the performance of either Party's obligations under this Lease, then upon written notice to the other Party of the unavailability and non-appropriation of public funds, this Lease shall be suspended for a period of 180 days with no change in the rights of occupancy to allow the Town and County to transition into a termination phase ("Suspension Period"). After the Suspension Period, the Lease shall automatically terminate without default or penalty to either Party. It is expressly agreed that neither Party shall activate this non-appropriation provision for its convenience or to circumvent the requirements of this Lease but only as an emergency fiscal measure during a substantial fiscal crisis which affects generally all governmental operations.

11. Damage by Fire or Other Casualty. If any of the Leased Premises are damaged or destroyed by fire, earthquake, act of God, or other casualty (a "Casualty"), County or Town shall either (i) repair and restore the affected Improvements to substantially the same condition as existed immediately prior to the Casualty, or (ii) terminate the lease. All property insurance proceeds payable with respect to the Improvements shall belong to and be the exclusive property of the insuring party.
12. Condemnation. If all or any part of the Premises, or any interest therein, are taken as a result of the exercise of the power of condemnation or eminent domain, including a conveyance in lieu of or in anticipation of the exercise of such power (a "Taking"), then Town shall be entitled to the portion of the award for the Land and County shall be entitled to the portion of the award for the value of County's leasehold estate, including its

interest in improvements for the remainder of the Term. If the Taking renders the Premises unsuitable for use as a Library and/or Parking Deck, both parties shall have the option to terminate this Lease by delivery of written notice to that effect to the other party within sixty (60) days after the Taking.

**13. Hazardous Materials, Environmental Laws.**

A. Except as permitted herein, neither County nor Town shall bring any Hazardous Materials onto the Library Site, the Leased Parking Spaces or Additional Parking Spaces. The term Hazardous Materials means those substances, materials, and wastes that are pollutants, contaminants, and toxic wastes, including, but not limited to those substances, materials, and wastes (hereafter jointly "substances") listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments to such laws and regulations, and such substances which are or become regulated under any applicable local, state, or federal law, including, without limitation, any substance which is (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) designated as a "Hazardous Substance" pursuant to Section 331 of the Clean water Act, 33 USC Sec. 1251, *et. seq* (33 USC Sec 1321) or listed pursuant to Section 307 of the Clean Water Act (33 USC Sec. 1371); (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 USC Sec 6901, *et. seq.* (42 USC Sec 6903); or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Sec 9601 *et. seq.* (42 USC 9601).

B. To the extent necessary for the construction or operation of the Permitted Use or Town's use of Town Premises, Town and County may bring necessary Hazardous Materials onto Library Site, Leased Parking Spaces, Additional Parking Spaces, and Town Premises upon the following conditions:

1. Compliance with any and all federal, state, or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to Hazardous Substances including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, any other legal requirement concerning Hazardous Materials, and any amendments to the foregoing (collectively, all such matters being "Hazardous Materials Requirements"). County shall remove from the Library Site all Hazardous Materials that were brought onto or placed thereon by County or County's employees, agents, invitees, or contractors, at the earlier of completion of their use in construction or operations or upon the expiration or earlier termination of this Lease. County shall remove from the Leased Parking Spaces, Additional Parking Spaces, and Town Premises all Hazardous Materials that were brought onto or placed thereon by County or County's employees, agents, invitees, or contractors immediately upon their use. Such removal shall be in compliance with all Hazardous Materials Requirements. Town shall remove from Town Premises all Hazardous Materials that were brought onto the Town

Premises at the earlier of completion of their use in construction or operations or upon the expiration or earlier termination of this Lease.

2. County shall be responsible for obtaining all necessary permits in connection with its use, storage, and disposal of Hazardous Materials as permitted herein, and shall develop and maintain, and where necessary file with the appropriate authorities, all reports, receipts, manifest, filings, lists, and invoices covering those Hazardous Materials and County shall provide Town with copies of all such items upon request. County shall provide within five (5) days after receipt thereof, copies of all notices, orders, claims, or other correspondence from any federal, state or local government or agency alleging any violation of any Hazardous Materials Requirements by County, or related in any manner to Hazardous Materials. In addition, County shall provide Town with copies of all responses to such correspondence at the time of the response.
3. Town shall be responsible for obtaining all necessary permits in connection with its use, storage and disposal of Hazardous Materials on Town Premises, and shall develop and maintain, and where necessary file with the appropriate authorities, all reports, receipts, manifest, filings, lists and invoices covering those Hazardous Materials and Town shall provide County with copies of all such items upon request. Town shall provide within five (5) days after receipt thereof, copies of all notices, orders, claims, or other correspondence from any federal, state or local government or agency alleging any violation of any Hazardous Materials Requirements by Town, or related in any manner to Hazardous Materials on Town Premises. In addition, Town shall provide County with copies of all responses to such correspondence at the time of the response.

C. In the event of a prohibited release of Hazardous Materials on Library Site, Leased Parking Spaces, Additional Parking Spaces, or Town Premises the Party in possession of the premises under this Lease shall be responsible for all necessary clean up and mitigation. If said clean up or mitigation is regulated by a federal, state, or local regulation, the responsible Party shall insure that all clean up and mitigation is done in compliance with any such regulation.

The warranties and indemnities contained in this Section shall survive the termination of this Lease.

14. **Notices.** Unless otherwise provided, any notice, demand, request, consent, approval, or communication which a Party is required to serve or may give to the other Party shall be in writing and shall be delivered or addressed to the other Party at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner herein prescribed. Such communication shall be given or served both by email and by personal service through (i) certified return receipt requested or registered mail, postage prepaid; or (ii) FedEx or other nationally recognized commercial courier, charges prepaid. Any such notice, demand, request, or other communication shall be deemed to have been given upon the earlier of: personal delivery thereof; three (3) business days after having been mailed

as provided above; or one (1) business day after deposit for next business day delivery with a commercial overnight courier service, as the case may be.

Notice of suspension or closing for maintenance may be given by email communication only.

All notices, demands, requests, consents, approvals or communications to the Town shall be addressed to:

Town Manager,  
Town of Cary  
PO Box 8005  
Cary, North Carolina 27512-8005  
Attention: \_\_\_\_\_  
Email address:

With a copy to:

Town of Cary  
PO Box 8005  
Cary, North Carolina 27512-8005  
Attention:  
Email address:

All notices, demands, requests, consents, approvals or communications to the County shall be addressed to:

Wake County  
P.O. Box 550  
Raleigh, NC 27602  
Attention: David Ellis, County Manager  
Email address: [david.ellis@wakegov.com](mailto:david.ellis@wakegov.com)

With a copy to:  
Wake County  
P.O. Box 550  
Raleigh, NC 27602  
Attention: \_\_\_\_\_  
Email address:

With a copy to the Facilities, Design and Construction Director:

Wake County  
P.O. Box 550  
Raleigh, NC 27602  
Attention: Mark Forestieri  
Email address: [mforestieri@wakegov.com](mailto:mforestieri@wakegov.com)

15. **Entire Lease/Amendments.** This Lease constitutes the entire agreement between the Parties with respect to its general subject matter. This Lease may not be changed except in writing signed by all the Parties. The Managers of Town and County are authorized to execute minor amendments to this Lease unless such amendment constitutes a substantial change to the Lease or the law requires approval by the governing board. A substantial change shall be defined as a change requiring the appropriation of funding or a change in the Permitted Use of the Library Site/Library or Town Premises.

16. **Representations and Warranties.** The Parties each represent, covenant and warrant for the other's benefit as follows:

- A. Each Party has all necessary power and authority to enter into this Lease and to carry out the transactions contemplated by this Lease, and this Lease has been authorized by Resolution spread upon the minutes of each Party's governing body. This Lease is a valid and binding obligation of each Party.
- B. 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, will result in a breach of the terms, conditions, and provisions of any Lease or instrument to which a Party is now a party or by which either is bound, or constitutes a default under any of the foregoing.
- C. To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such Party (or against any other person) affecting such Party's rights to execute or deliver this Lease or to comply with its obligations under this Lease. Neither such 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.
- D. The Parties have not dealt with any real estate broker or brokerage firm regarding transactions relating to the Property, and no person or firm has a claim for real estate commissions arising out of the lease of Property
- E. Warranties of Town only:
  - A. To the best of Town's knowledge, there are no disputes concerning the boundaries of the Library Site.
  - B. The Town possesses fee simple title to the Property.

17. **Dispute Resolution.** In the event of conflict that might arise for matters associated with this Lease, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Lease, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Wake County, North Carolina.

18. **No Waiver of Non-Compliance with Lease.** No provision of this Lease shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Lease. The failure of any Party at any time to require strict performance by another of any provision hereof shall in no way affect the right of the other Party to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of

any breach of any provision hereof by another Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

19. **Governing Law.** The Parties intend that this Lease be governed by the law of the State of North Carolina. Proper venue for any action shall solely be Wake County Superior Court.

20. **Assignment.** Except as provided herein, neither Party may sell or assign any interest in or obligation under this Lease without prior written consent of the other Party.

21. **Liability of Officers and Agents.** No officer, agent or employee of any Party will be subject to any personal liability or accountability by reason of the execution of this Lease or any other documents related to the transactions contemplated hereby. 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 such officer, agent or employee from the performance of any official duty provided by law.

22. **Execution in Counterparts/Electronic Version of Lease.** This Lease may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. A Party may convert a signed original of the Lease, or any amendment hereto, to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Lease shall be deemed for all purposes to be an original signed Lease.

23. **Verification of Work Authorization.** The Parties, and all contractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.

24. **No third-Party Beneficiaries.** There are no third-party beneficiaries to this Lease.

25. **Time.** Time is of the essence in this Lease and each and all of its provisions.

26. **Further Assurances/Corrective Instruments; Good Faith/Due Diligence.** The Parties 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 carrying out the purpose of this Lease. The Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Lease.

27. **Memorandum of Lease.** This Lease shall not be recorded. The Parties agree that, upon execution, at the request of either Party, a Memorandum of Lease shall be signed by each Party and duly recorded in the Wake County Registry.

**IN TESTIMONY WHEREOF**, the Parties pursuant to resolutions of their respective governing boards spread upon their minutes, have caused this Lease to be executed and attested by their duly authorized officers and their official seals affixed.

**TOWN OF CARY**

By: \_\_\_\_\_  
Harold Weinbrecht, Jr.  
Mayor, Town of Cary

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

ATTEST:

SEAL

\_\_\_\_\_  
Virginia Johnson  
Town Clerk

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

\_\_\_\_\_  
Karen Mills  
Finance Officer, Town of Cary

**COUNTY OF WAKE**

By: \_\_\_\_\_  
Jessica N. Holmes, Chair  
Wake County Board of Commissioners

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

ATTEST:

SEAL

\_\_\_\_\_  
Denise Hogan  
Clerk to the Board

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

\_\_\_\_\_  
Emily Lucas, Finance Officer, Wake County



## **LIST OF EXHIBITS**

EXHIBIT 1  
Town Property

EXHIBIT 2  
Library Site with Access Areas

EXHIBIT 3  
Parking Deck Plan  
General location of County Leased Parking Spaces, County Additional Parking Spaces

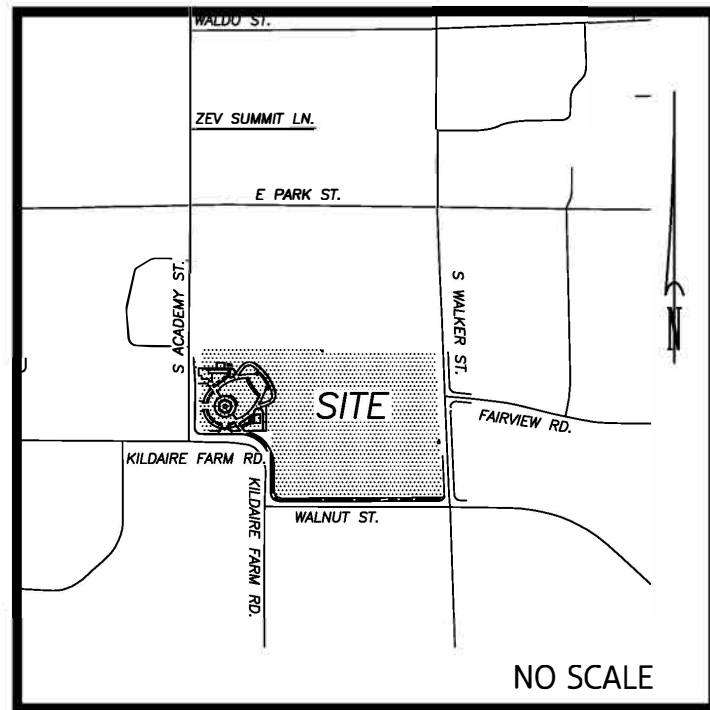
EXHIBIT 4  
**OMITTED**

EXHIBIT 5  
Rules Governing Leased Parking Spaces and General Parking Spaces

EXHIBIT 6  
Town Premises  
Library Lower Level Plan

EXHIBIT 7  
Insurance Requirements





**LEGEND**  
CL - CENTER LINE  
DI - DROP INLET  
FES - FLARED END SECTION PIPE  
IPF - IRON PIPE FOUND  
IPS - IRON PIPE SET  
IRF - IRON ROD FOUND  
PKNF - P.K. NAIL FOUND  
PKNS - P.K. NAIL SET  
CMF - CONCRETE MONUMENT FOUND  
RBF - REBAR FOUND  
R/W - RIGHT OF WAY  
STMH - STORM DRAIN MANHOLE  
TOC - TOWN OF CARY

ADJOINER \_\_\_\_\_  
BOUNDARY \_\_\_\_\_  
CL \_\_\_\_\_  
R/W \_\_\_\_\_  
EASEMENT \_\_\_\_\_  
TOC SANITARY SEWER EASEMENT \_\_\_\_\_  
OLD PROPERTY LINE \_\_\_\_\_  
STORM DRAIN \_\_\_\_\_

REVIEW OFFICER CERTIFICATE  
STATE OF NORTH CAROLINA COUNTY OF WAKE

I, \_\_\_\_\_ REVIEW OFFICER OF CARY, NC IN WAKE COUNTY CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER \_\_\_\_\_ DATE \_\_\_\_\_

30 DAY RECORDING LIMIT

THIS PLAT IS NOT TO BE RECORDED AFTER THE \_\_\_\_\_ DAY OF \_\_\_\_\_  
20\_\_\_\_  
THIS PLAT IS ☒ INSIDE - [ ] OUTSIDE OF THE TOWN OF CARY'S CORPORATE LIMITS  
TOWN OF CARY HTE # \_\_\_\_\_ TRACKING # 19-7069 19-PLT-7069

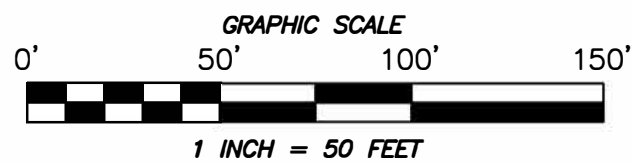
DEVELOPMENT TECHNICIAN \_\_\_\_\_ DATE \_\_\_\_\_

CERTIFICATE OF EXEMPTION FROM SUBDIVISION ORDINANCE

I HEREBY CERTIFY THIS PLAT IS EXEMPT FROM THE SUBDIVISION ORDINANCE UNDER DEFINITIONS OF SUBDIVISION CONTAINED IN §47-30(F)(11)(D) AND (E), §153A-335, AND/OR §160A-376 OF N.C. GEN. STATUTES AND SECTION 3.9 OF THE TOWN OF CARY LAND DEVELOPMENT ORDINANCE FOR THE FOLLOWING REASON: (SELECT APPROPRIATE REASON)

- THE SURVEY SHOWS THE COMBINATION OR RECOMBINATION OF PORTIONS OF PREVIOUSLY SUBDIVIDED AND RECORDED LOTS WHERE THE TOTAL NUMBER OF LOTS IS NOT INCREASED AND THE RESULTANT LOTS ARE EQUAL TO OR EXCEED THE STANDARDS SET FORTH IN THE ORDINANCE; OR
  - THE SURVEY SHOWS A DIVISION OF LAND INTO PARCELS LARGER THAN TEN ACRES WHERE NO STREET RIGHT-OF-WAY DEDICATION IS INVOLVED; OR
  - THE SURVEY SHOWS THE PUBLIC PURCHASE OF STRIPS OF LAND FOR THE WIDENING OR OPENING OF STREETS; OR
  - THE SURVEY SHOWS THE DIVISION OF A TRACT OF LAND IN SINGLE OWNERSHIP WHOSE ENTIRE AREA IS NO GREATER THAN TWO ACRES INTO THREE OR FEWER LOTS, WHERE NO STREET RIGHT OF WAY DEDICATION IS INVOLVED AND WHERE THE RESULTING LOTS ARE EQUAL TO OR EXCEED THE STANDARDS SET FORTH IN THE ORDINANCE; OR
  - THE SURVEY SHOWS THE DIVISION OF A TRACT INTO PARCELS IN ACCORDANCE WITH THE TERMS OF A PROBATED WILL OR IN ACCORDANCE WITH INTESATE SUCCESSION UNDER CHAPTER 29 OF THE GENERAL STATUTES; OR
  - THE SURVEY IS OF ANOTHER EXEMPTION OR EXCEPTION TO THE DEFINITION OF SUBDIVISION NOT DETAILED ABOVE; OR
  - THE SURVEYOR IS UNABLE TO MAKE A DETERMINATION TO THE BEST OF THE SURVEYOR'S PROFESSIONAL ABILITY AS TO WHETHER THE PLAT FALLS WITHIN THE PROVISIONS CONTAINED IN §40-30(F)(11)(A) THROUGH (D).
- APPROVAL IS REQUIRED BY THE TOWN OF CARY

DIRECTOR OF PLANNING OR DESIGNEE DATE \_\_\_\_\_



CERTIFICATE OF SURVEY & ACCURACY

I, MARSHALL G. WIGHT, LICENSED AS A PROFESSIONAL LAND SURVEYOR IN THE STATE OF NORTH CAROLINA, DO HEREBY CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION DEED DESCRIPTIONS RECORDED IN REFERENCES SHOWN HEREON; THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS BROKEN LINES DRAWN FROM INFORMATION HEREON; THAT THE RATIO OF PRECISION AS CALCULATED IS 1 : 92,000+; THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G.S. 47-30, AS AMENDED. WITNESS MY ORIGINAL SIGNATURE AND SEAL THIS 7TH DAY OF \_\_\_\_\_ A.D., 2019.

MARSHALL G. WIGHT, PROFESSIONAL LAND SURVEYOR L-5034

I, MARSHALL G. WIGHT, LICENSED AS A PROFESSIONAL LAND SURVEYOR IN THE STATE OF NORTH CAROLINA, DO HEREBY CERTIFY THAT THIS SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.

MARSHALL G. WIGHT, PROFESSIONAL LAND SURVEYOR L-5034

CURVE TABLE					
CURVE #	DELTA	RADIUS	ARC	CHORD	TANGENT
C1	89°44'03"	109.57'	171.51'	154.52'	109.01'
C2	40°01'32"	109.44'	78.43'	74.91'	39.86'
C3	49°43'49"	109.51'	95.05'	92.10'	50.75'
C4	45°09'25"	19.00'	14.72'	14.59'	7.90'
C5	10°44'42"	62.50'	11.72'	11.70'	5.88'
C6	19°13'50"	32.50'	10.91'	10.86'	5.51'

EASEMENT					
LINE #	BEARING	DISTANCE	LINE #	BEARING	DISTANCE
L1	S 04°54'51" W	9.45'	L24	S 00°04'21" W	8.23'
L2	S 89°44'36" W	13.68'	L25	N 90°00'00" W	9.06'
L3	S 89°44'36" W	42.00'	L26	S 00°00'00" E	8.11'
L4	S 89°44'36" W	38.96'	L27	S 00°03'03" E	79.54'
L5	N 00°08'33" W	3.10'	L28	N 89°56'57" E	3.69'
L6	S 89°46'27" W	48.80'	L29	S 00°03'03" E	5.00'
L7	N 45°06'24" W	24.30'	L30	S 00°00'00" E	4.36'
L8	N 44°39'57" W	7.08'	L31	N 19°13'50" W	27.60'
L9	S 90°00'00" E	22.78'	L32	S 00°28'37" E	36.63'
L10	N 00°00'00" W	27.58'	L33	N 00°00'00" W	104.21'
L11	S 00°00'00" W	11.26'	L34	S 00°00'00" E	80.45'
L12	N 90°00'00" E	2.30'	L35	S 00°00'05" W	3.00'
L13	S 00°00'00" E	2.01'	L36	S 89°59'55" E	30.68'
L14	N 90°00'00" E	10.20'	L37	N 00°00'05" E	3.00'
L15	S 89°56'58" W	15.86'			
L16	S 00°00'00" E	2.16'			
L17	N 90°00'00" W	5.25'			
L18	S 00°00'00" E	9.95'			
L19	N 89°35'24" W	21.57'			
L20	S 00°00'00" E	100.59'			
L21	S 00°00'56" E	23.89'			
L22	N 90°00'00" W	31.38'			
L23	S 00°00'00" E	6.80'			

- NOTES
- AREAS COMPUTED BY COORDINATE METHOD.
  - BASIS OF BEARING NAD 83, NAVD 88
  - ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED.
  - IRON PIPES SET AT ALL CORNERS UNLESS OTHERWISE NOTED.
  - THIS PROPERTY IS NOT LOCATED IN A DESIGNATED FEMA FLOOD PLAIN AS SHOWN ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP NO. 3720076300J, PANEL 0763 AND MAP NO. 3720076400J, PANEL 0764, EFFECTIVE DATE MAY 2, 2006.
  - THE SUBJECT PROPERTIES SHOWN ON THIS PLAT ARE LOCATED WITHIN THE TOWN OF CARY TOWN CENTER (TC) ZONING DISTRICT. PLEASE REFER TO THE TOWN OF CARY OFFICIAL BASE ZONING MAP TO IDENTIFY THE TOWN CENTER SUB-DISTRICTS FOR PROPERTIES SHOWN ON THIS PLAT.
  - NO REFERENCE INFORMATION FOR RIGHT OF WAY DEDICATION FOUND FOR S. ACADEMY ST, KILDAIRE FARM RD, WALNUT ST., S WALKER ST. AND FAIRVIEW RD.
  - SOLE PURPOSE OF THIS PLAT IS TO RECOMBINE PARCELS AS SHOWN.
  - THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND IS SUBJECT TO ANY MATTERS THAT A FULL TITLE SEARCH WOULD DISCLOSE.
  - THE TOWN OF CARY ACKNOWLEDGES THE OFFER OF DEDICATION OF THE STREETS, EASEMENTS, RIGHTS OF WAY AND PUBLIC PARKS SHOWN HEREIN TO THE PUBLIC, BUT THE TOWN OF CARY ASSUMES NO RESPONSIBILITY TO ACCEPT, OPEN OR MAINTAIN THE SAME UNTIL IT IS IN THE PUBLIC INTEREST TO DO SO AND ACTION IS TAKEN BY THE TOWN OF CARY TO ACCEPT SAID OFFER OF DEDICATION.
  - SIGHT DISTANCE LINES: NOTHING CAN BE PLANTED, BUILT, INSTALLED OR CONSTRUCTED, INCLUDING GRADING, LANDSCAPING, FENCING ETC., THAT WILL OBSTRUCT OR RESTRICT VISIBILITY ACCORDING TO APPLICABLE TOWN STANDARDS ALONG THE ADJACENT ROADWAY WITHIN THE AREA DEFINED BY THE SIGHT DISTANCE LINE AND THE ROADWAY RIGHT-OF-WAY AND THE TOWN HAS THE RIGHT TO MAINTAIN THE SIGHT DISTANCE AREA AS NEEDED. THIS IS A RESTRICTION ON THE DEED WHEN CONVEYING LOTS WITH A SIGHT DISTANCE EASEMENT. DRIVEWAYS NEED TO BE INSTALLED SUCH THAT A MINIMUM OF 18 FEET OF DRIVEWAY IS PROVIDED OUTSIDE OF SIGHT LINE EASEMENT TO ENSURE PARKED CARS DO NOT OBSTRUCT SIGHT LINE VIEWS

TOWN OF CARY  
D.B. 13212 PG. 1195  
B.M. 2015 PG 640  
P.I.N.: 0764-50-0354  
ZONING TC OFC/INS  
200.17'

TOWN OF CARY  
D.B. 12756 PG. 1796  
B.M. 2015 PG 640  
P.I.N.: 0764-50-2224  
ZONING TC

TOWN OF CARY  
D.B. 10778 PG. 1207  
B.M. 2015 PG 643  
P.I.N.: 0764-50-1026  
ZONING TC

TOC SANITARY  
N 05°30'01" E  
108.82'

TOWN OF CARY  
D.B. 11290 PG. 1831  
B.M. 2015 PG 640  
P.I.N.: 0764-50-3482  
ZONING TC HDR GARDEN

NOTARY CERTIFICATE

THE COUNTY OF \_\_\_\_\_, STATE OF NORTH CAROLINA HEREBY CERTIFY THAT PERSONALLY APPEARED BEFORE ME THIS DAY AND UNDER OATH ACKNOWLEDGED THAT THE ABOVE FORM WAS EXECUTED BY HIM/HER. WITNESS MY HAND AND SEAL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

NOTARY

MY COMMISSION EXPIRES \_\_\_\_\_

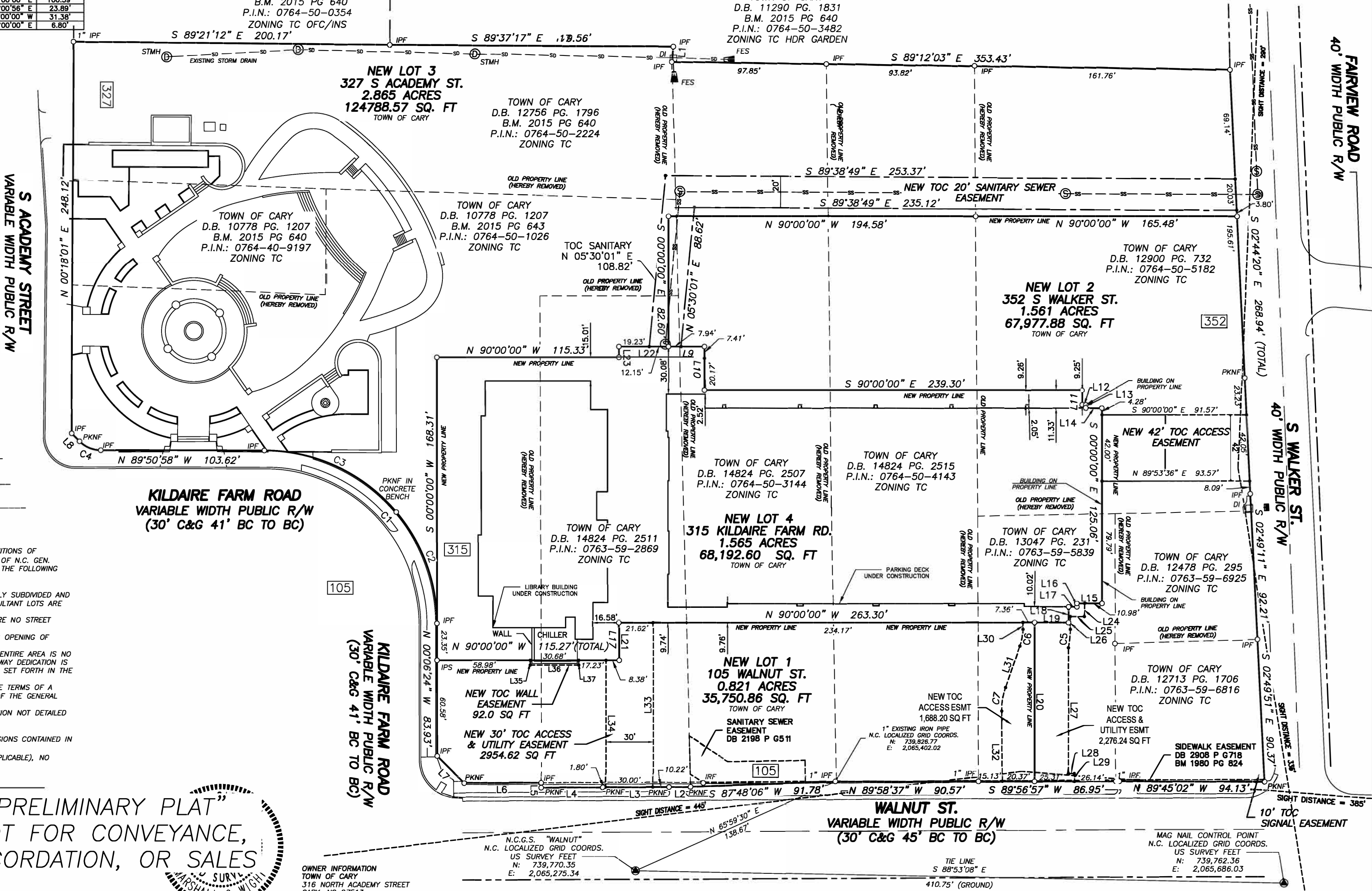
CERTIFICATE OF OWNERSHIP AND DEDICATION

THIS CERTIFIES THAT THE UNDERSIGNED IS (ARE) THE SOLE OWNER(S) OF THE PROPERTY SHOWN ON THIS MAP, HAVING ACQUIRED TITLE THERETO BY DEED(S) RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF WAKE COUNTY AND/OR CHATHAM COUNTY, NC (AS APPROPRIATE). BY SUBMISSION OF THIS PLAT FOR APPROVAL, I/WE DO OFFER TO DEDICATE TO THE TOWN OF CARY FOR PUBLIC USE ALL STREETS, EASEMENTS, RIGHTS-OF-WAY AND PARKS IDENTIFIED AS BEING OFFERED FOR DEDICATION THEREON (IF ANY) FOR ALL LAWFUL PURPOSES TO WHICH THE TOWN MAY DEVOTE OR ALLOW THE SAME TO BE USED, SAID DEDICATION TO BE IRREVOCABLE. ANY EASEMENTS FOR STORM DRAINAGE SHOWN ON THIS PLAT ARE NOT MADE TO THE TOWN OF CARY, BUT ARE IRREVOCABLY MADE TO THE SUBSEQUENT OWNERS OF ANY AND ALL PROPERTIES SHOWN HEREON FOR THEIR USE AND BENEFIT. ALL PRIVATE STREETS SHOWN ON THIS PLAT, IF ANY, ARE TO BE AVAILABLE FOR PUBLIC USE.

SIGNATURE OF OWNER(S) \_\_\_\_\_

PRINT OWNER'S NAME: \_\_\_\_\_

## EXHIBIT 1 - TOWN PROPERTY



"PRELIMINARY PLAT"  
NOT FOR CONVEYANCE,  
RECORDATION, OR SALES



OWNER INFORMATION  
TOWN OF CARY  
316 NORTH ACADEMY STREET  
CARY, NC 27513  
PHONE: (919) 469-4046

DEVELOPMENT PLAN NUMBER (17-DP-0969)

RECOMBINATION PLAT FOR  
CARY REGIONAL LIBRARY AND DOWNTOWN PARKING DECK  
FOR  
TOWN OF CARY  
SHEET 1 OF 1

TOWNSHIP: CARY

COUNTY: WAKE

STATE: NORTH CAROLINA

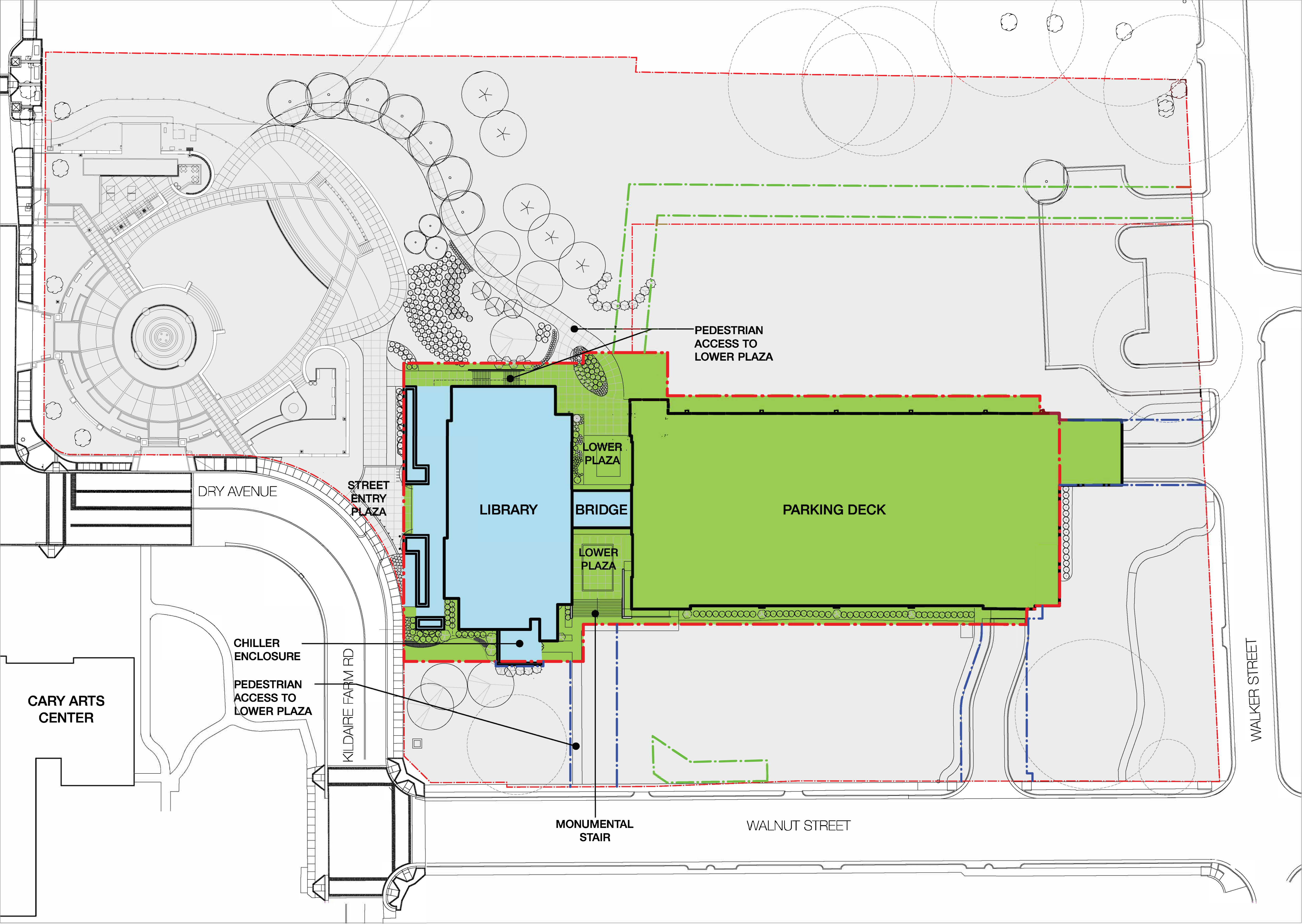
ZONE: SEE NOTE

P.I.N. AS SHOWN

**WithersRavenel**  
Engineers | Planners | Surveyors

115 MacKenan Drive | Cary, NC 27511 | t: 919.469.3340 | license #: C-0832 |  
www.withersravenel.com





**EXHIBIT 2 - LIBRARY SITE WITH ACCESS AREA**  
**CARY REGIONAL LIBRARY & PARKING DECK**







# EXHIBIT 3

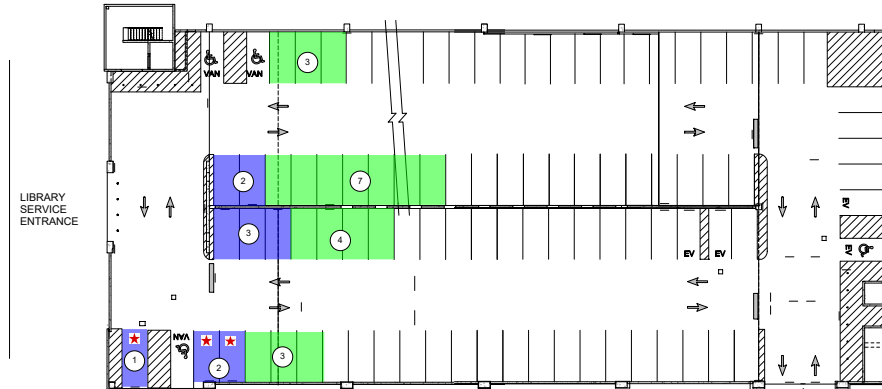
## PARKING DECK PLAN

### County Lease Parking Spaces, County Leased Additional Parking Spaces

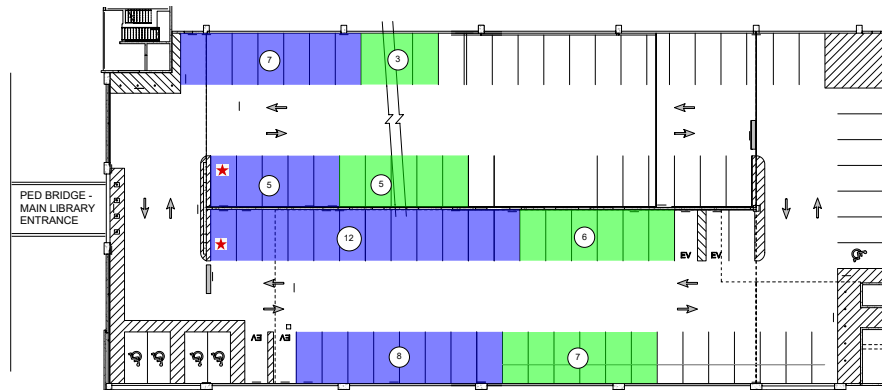
PARKING SPACE SUMMARY						
LEVEL	DESIGNATION			ADA	EV	TOTAL
	LIBRARY ONLY	LIBRARY*	OTHER			
P7	-	-	58	-	-	58
P6	-	-	97	2	2	101
P5	-	-	97	2	2	101
P4	12	15	70	2	2	101
P3	28	20	44	5	4	101
P2	18	15	56	3	4	96
P1	2	10	34	0	0	46
TOTAL	60	60	456	14	14	604

\* SIXTY (60) UNASSIGNED PARKING SPACES, ON LEVELS P2-P4, SHALL BE ALLOCATED FOR LIBRARY PATRONS PER THE INTERLOCAL AGREEMENT BETWEEN THE TOWN OF CARY AND WAKE COUNTY.

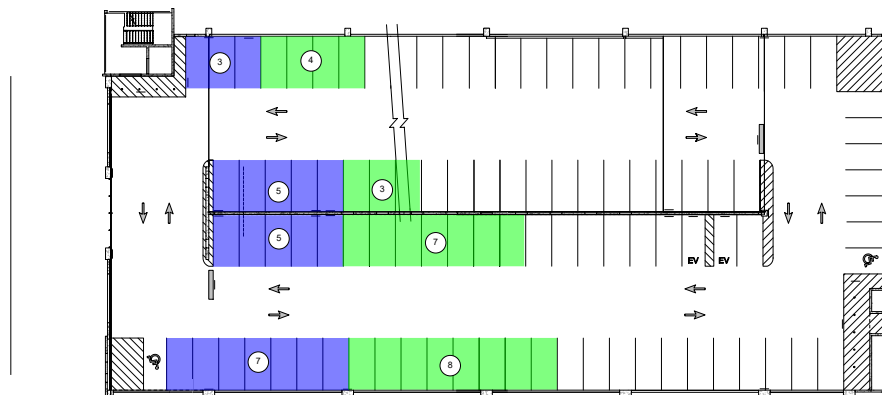
COLOR LEGEND	
	DENOTES LIBRARY SPACES ONLY
	DENOTES UNASSIGNED LIBRARY SPACES
	DENOTES OTHER USER GROUPS' SPACES
	DENOTES SPACES RESERVED FOR GSA, BOOK TRUCK, AND BOOK DROP (5 TOTAL SPACES)



Level P2



Level P3



Level P4

**EXHIBIT 4**  
**OMITTED**

**EXHIBIT 5**  
**RULES GOVERNING LEASED PARKING SPACES AND**  
**GENERAL PARKING SPACES**

Except as permitted otherwise by the Town Manager, the parking deck ("Deck") shall be used for parking purposes only. When used for parking purposes, the following rules apply:

There shall be no assembly by two or more persons in the Deck except for the purpose of lawfully parking or removing a vehicle in the deck (or placing in or retrieving something from a parked vehicle).

No person shall enter upon or remain in the Deck unless:

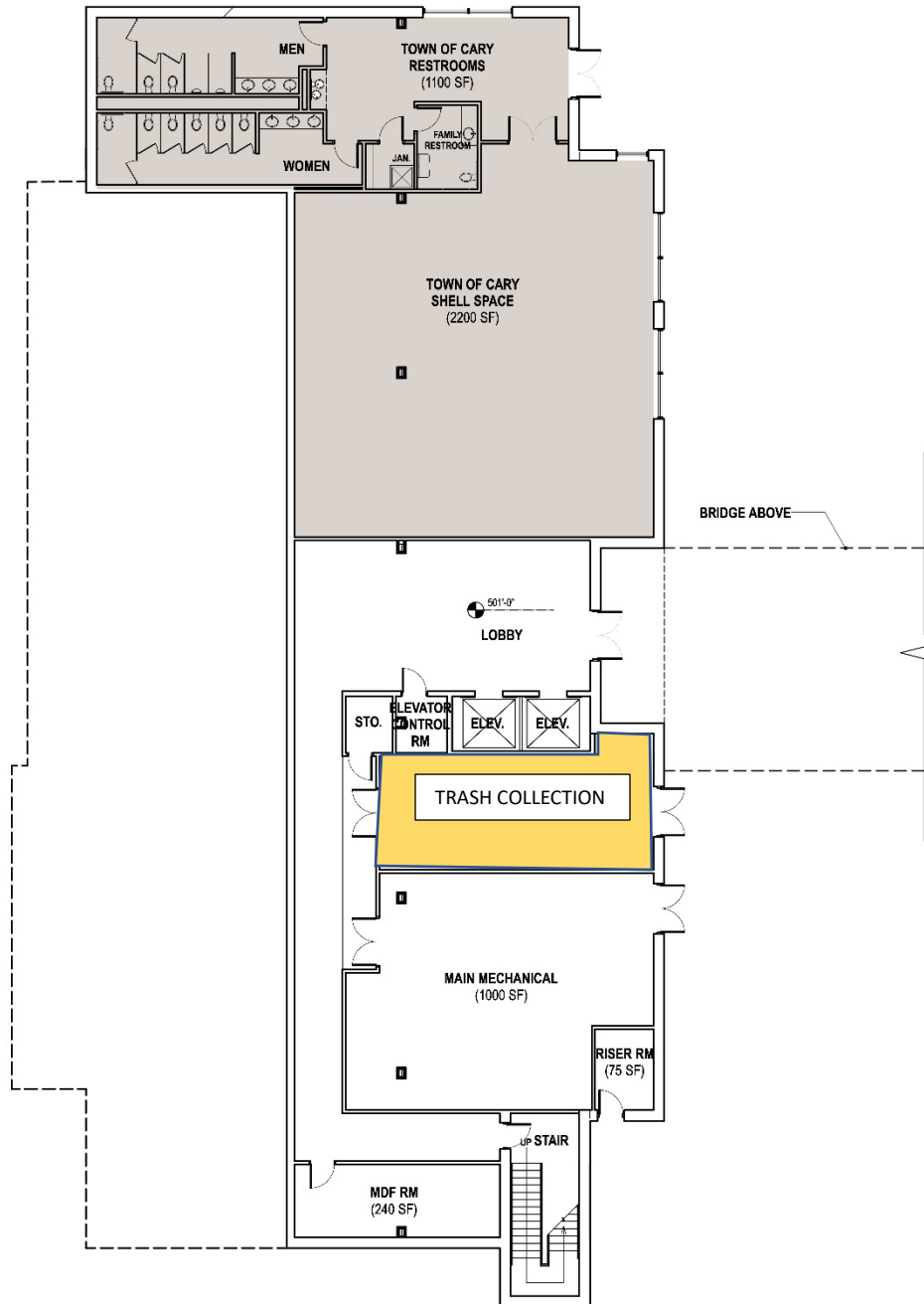
- (1) Such person is the owner, operator, or passenger of a motor vehicle entering, leaving, or parked in the Deck;
- (2) Such person is an employee of the Town of Cary;
- (3) Such person is an employee of Wake County regularly charged with operation, maintenance, or supervision of the book drop located within the Deck or with inspection of the condition of the parking spaces assigned for library use; or
- (4) Such person has been previously authorized by an agent or employee of the Town or Wake County to enter upon the Deck.

There shall be no affixing of leaflets, promotional items, or other items or things to vehicles in Deck except by the owner of, or passenger in, that vehicle.

There shall be no distribution of leaflets, promotional items, or other items or things to other persons in the Deck.

There shall be no affixing of leaflets, promotional items, or other items or things to the Deck, except as permitted by the Town of Cary.

**EXHIBIT 6**  
**TOWN PREMISES**



**Library Lower Level Floor Plan**

Town Components Shown in Gray

Library Trash Collection Room in Gold

**EXHIBIT 7**  
**INSURANCE REQUIREMENTS**

**Insurance.** Town and County shall each procure and maintain for the full Term of the Lease the following insurance in the following minimum limits. Each insurance policy (except Workers Comp) shall name the other Party, its elected officials, officers, employees and volunteers as an additional insured

General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Commercial Automobile Liability	\$1,000,000 CSL per accident
Commercial Excess Liability / Umbrella Policy	\$5,000,000 per occurrence and aggregate
Workers Comp	Statutory Limits
Employer's Liability	\$1,000,000 each accident

**Property Insurance:**

County shall procure and maintain property insurance against all risks of loss, including fire, to any structures, improvements, or betterments, including course of construction, on the "Library Site" as such term is defined and described in the Lease. County shall name Town as an additional insured on such Property Insurance as Town's interests may appear.

Town shall procure and maintain Property Insurance against all risks of loss, including fire, to any structures, improvements, or betterments, on the Parking Deck and Access Areas.. Town shall name County as an additional insured on such Property Insurance as County's interests may appear.

General liability, automobile liability and excess/umbrella can be satisfied through a combination of primary, umbrella/excess, or self-insured coverage.

All of the insurance policies are to contain, or be endorsed to contain, the following provisions:

***Insurers***

The minimum insurance ratings for any company insuring the Lessee shall be Best's A-. Should the ratings of any insurance carrier of County fall below the minimum rating, the Town may, at its option, require the County to purchase insurance from a company whose rating meets the minimum standard. Should the ratings of any insurance carrier of Town fall below the minimum rating, the County may, at its option, require the Town to purchase insurance from a company whose rating meets the minimum standard.

All insurance carrier(s) shall be authorized to do business in the state of North Carolina. If either Party is unable to find an authorized carrier for any line of insurance coverage, that Party shall notify the other Party in writing.



*Additional Insured Status*

All insurance policies (except Workers Compensation) shall name the other Party, its elected officials, officers, employees and volunteers as an additional insured.

*Notice of Cancellation*

Each policy shall provide that the other Party (the 'additional insured') shall receive not less than thirty (30) days prior written notice, when available, of any cancellation or non-renewal of coverage of any of the policies. Upon notice of such cancellation, non-renewal or if a policy's limits are exhausted, the Party responsible for obtaining that insurance policy shall procure substitute insurance so as to assure the other Party that the minimum limits of coverage are maintained continuously throughout the Term.

*Primary*

County's insurance coverage shall be primary for any claims related to [Library Site]. Town insurance coverage shall be primary for any claims related to Parking Deck and Access Areas.

*Waiver of Subrogation*

The County's insurer(s) shall have no right of recovery or subrogation against Town, its agents or agencies, it being the intention of the Parties that the County insurance policies shall protect Town and be primary coverage for any and all losses covered by the policies.

The Town's insurer(s) shall have no right of recovery or subrogation against County its agents or agencies, it being the intention of the Parties that the Town insurance policies shall protect County and be primary coverage for any and all losses covered by the policies.

*Verification of Coverage*

A certificate of insurance and all endorsements required shall be provided at, or prior to, execution of this Lease. Any Party maintaining a funded reserve pursuant to N.C. law and resolution of its governing board may satisfy the requirements set forth herein by providing a letter of self-insurance to the other Party. Failure by any Party to obtain and maintain in force the above-referenced insurance coverage shall constitute a default under the terms of this Agreement. A Party's review or acceptance of certificates of insurance shall neither relieve the other Party of any requirement to provide the specific insurance coverage set forth herein nor shall it constitute a waiver or acknowledgement of satisfaction of the specific insurance requirements set forth in this Lease.

Certificate Holder address should read:

Town of Cary  
PO Box 8005  
Cary, NC 27512-8005