RESOLUTION
OF
THE CARY TOWN COUNCIL
AUTHORIZING
A DOWNTOWN DEVELOPMENT PROJECT AGREEMENT
INCLUDING
THE SALE AND CONVEYANCE OF REAL PROPERTY
(ACADEMY PARK CARY)

WHEREAS, North Carolina General Statutes § 160A-458.3 Downtown development projects authorizes Cary to undertake capital projects in Cary’s central business district that are likely to have a significant effect on the revitalization of the central business district and to transfer and convey interests in Cary property pursuant to North Carolina General Statutes § 160A-457(4); and

WHEREAS, Council has established a Downtown Business Improvement District (the “BID”) pursuant to North Carolina General Statutes § 160A-535 et seq; and

WHEREAS, Council has, since at least 2001, seen the revitalization of Cary’s downtown (“Downtown”) as important and the Imagine Cary Community Plan (“ICCP”) adopted in 2017 sets out a long-term vision with policies and strategic actions for Downtown; and

WHEREAS, Cary with Academy Park Cary, LLC (“APC I”) and Academy Park Commercial, LLC (“APC II”) (APC I and APC II collectively the “Developer”) have negotiated a Downtown Development Project Agreement (“DDPA”) for the redevelopment of New Lot 1 (.821 acres) and New Lot 2 (1.561 acres) as shown on “Recombination Plat for Cary Regional Library and Downtown Parking Deck for Town of Cary” recorded in Book of Maps 2019, Page 1376 Wake County Registry, as amended (the “Lots”). Lots are located in the BID and are the southern portion of the block of Downtown Cary bounded by Walnut Street, Kildare Farm Road, South Academy Street, Park Street and Walker Street (the “Park/Library/Mixed-Use Community Development Project Area” or “Community Development Project Area”); and

WHEREAS, the DDPA contemplates that Cary sell and convey the Lots to Developer for their appraised value after subjecting Lots to covenants, conditions and restrictions ("CC&Rs") that are in the public interest and designed to benefit the Community Development Project Area; and

WHEREAS, pursuant to the DDPA the Developer will construct a downtown development project ("DDP" or “Academy Park Project”) comprised of private facilities and public facilities. The Private Facilities will wrap Cary’s newly constructed parking deck (“Deck”) and be (1) a commercial building along Walnut Street consisting of approximately 95,000 to 110,000 square feet of office and first floor retail space, (2) a multi-family building along Walnut and South Walker Streets consisting of 153 dwelling units with retail on the first floor, and (3) connections of those buildings to the Deck. The Public Facilities include (1) construction of public streetscape and public streetscape amenities and (2) construction...
of portions of the Downtown Park regional stormwater management system ("Park SMS"); and

WHEREAS, participation by the Town in the DDPA includes (1) the sale and conveyance of Lots with reservations of easements and subject to the CC&Rs for their appraised values, (2) the reservation of 250 parking spaces in Deck for an initial annual payment of $225,000 pursuant to a license agreement ("Parking License"), (3) the granting of a stormwater discharge easement and entering into an agreement to provide stormwater detention capacity with the Park SMS ("Stormwater Agreement") for which Developer will pay $405,000, (3) reimbursing Developer for constructing the public streetscape and public streetscape amenities and certain of the stormwater facilities improvements constructed on Town property, and (4) paying transportation, water, and sewer development fees for the DDP due to its location in the BID; and

WHEREAS, the Town obtained from an MAI appraiser experienced in appraising property in Cary and elsewhere in the Triangle an appraisal of Lots subject to the CC&Rs and DDPA development restrictions and such appraisal gives a value of $150,000 to New Lot 1 and $720,000 to New Lot 2; and

WHEREAS, the DDPA is likely to involve a private investment of $68,000,000; and

WHEREAS, Cary is not providing financing for construction or operation of the Private Facilities; and

WHEREAS, the conveyance of Lots and development of the DDP is beneficial to the Town’s efforts to increase its population, ad valorem tax revenues, sales tax revenues, and business prospects in general and is beneficial to the Town’s efforts to have a significant effect on the revitalization of the central business district of Cary; and

WHEREAS, pursuant to the notice and hearing requirements of N.C.G.S. 160A-457(4) and the Charter for the Town of Cary, notice was published and a public hearing held by Council to consider whether to sell to Developer the Lots, restricted by covenants, conditions and restrictions, by private sale for their appraised value.

NOW THEREFORE, the Town Council of the Town of Cary finds, determines and resolves that:

A. New Lot 1 and New Lot 2 are located in Cary’s Park/Library/Mixed-Use Community Development Project Area and in the Downtown Business Improvement District ("BID").
B. The Downtown Development Project Agreement ("DDPA") establishes a downtown development project ("DDP") comprising one or more buildings and includes both private and public facilities, and the public facilities meet the needs of Cary.
C. The DDPA requires the conveyance of New Lot 1 and New Lot 2 subject to covenants, conditions and restrictions ("CC&Rs") that are in the public interest and are designed to carry out the purposes of revitalization of this portion of the Park/Library/Mixed-Use Community Development Project Area.
D. The CC&Rs and the DDPA carry out the purposes of N.C.G.S. §§ 160A-458.3 and 160A-457.
E. The DDPA requires Academy Park Cary, LLC (“APC I”) and Academy Park Commercial, LLC (“APC II”) to pay the appraised value for New Lot 1 and New Lot 2 and the consideration received by Cary for New Lot 1 and New Lot 2 is fair and reasonable.

F. The provisions of the DDPA specify:
   a. the property interests of Cary, APC I, and APC II.
   b. Cary’s property interests are owned for a public purpose and meet the needs of Cary.
   c. the responsibilities of Cary, APC I, and APC II for construction of the DDP and provisions to assure that the public facilities are constructed at a reasonable price.
   d. the responsibilities of Cary, APC I, and APC II with respect to financing the DDP.
   e. the responsibilities of Cary, APC I, and APC II for management and operation of the DDP and rights of participation in the management and operation of the DDP.

G. The DDPA provides a comprehensive and collaborative plan for the implementation of the Imagine Cary Community Plan (“ICCP”) and policies for development and use of the southern portion of the Park/Library/Mixed-Use Community Development Project Area.

H. The DDPA is the Town’s community development plan for development and use of New Lots 1 and 2 and the southern portion of the Park/Library/Mixed-Use Community Development Project Area.

I. The DDPA is authorized by law, promotes Cary’s Downtown including Downtown revitalization and implementation of the ICCP and other policies for the Downtown, is in the public interest, and strengthens the Downtown as the heart and soul of the Town.

J. Forming the DDPA and establishing the DDP is likely to have a significant positive effect on the revitalization of Cary’s Downtown.

K. The DDPA with its Exhibits attached to this Resolution is approved and any one of the Mayor, Town Manager, or Deputy Manager is authorized to enter into a DDPA on behalf of the Town of Cary on terms materially the same as the terms of such DDPA and Exhibits.

L. Any of the Mayor, Town Manager, or Deputy Manager is authorized to enter into, on behalf of Cary, the instruments, documents, and agreements specified in the DDPA including one or more special warranty deeds, the CC&Rs, the easements, and other agreements described in and attached to the DDPA, to prepare and execute such closing statements and other instruments and records otherwise necessary in the discretion of the Town Manager for the conveyances and undertakings described in this Resolution and the DDPA, and to provide such notices as may be required under DDPA and its Exhibits.
Adopted this the ____ day of February, 2020.

___________________________
Harold Weinbrecht, Jr Mayor

ATTEST

___________________________
Virginia Johnson,
Town Clerk

Attachment: DDPA with Exhibits
STATE OF NORTH CAROLINA
COUNTY OF WAKE

DOWNTOWN DEVELOPMENT
PROJECT AGREEMENT

This DOWNTOWN DEVELOPMENT PROJECT AGREEMENT (hereinafter the “Agreement”) is made and entered into as of the ____ day of February 2020, by and between ACADEMY PARK CARY, LLC, a North Carolina limited liability company (“APC I”), ACADEMY PARK COMMERCIAL, LLC, a North Carolina limited liability company (“APC II”), and the TOWN OF CARY, North Carolina, a municipal corporation of the State of North Carolina (“Cary”). APC I, APC II, and Cary may sometimes be referred to individually as a “Principal Party” and collectively as the “Principal Parties.”

RECITALS

Cary’s Downtown History, Current Cary Vision for the Downtown and Policies Governing the Downtown

WHEREAS, while Cary’s roots are found in a 1750’s settlement known as Bradford’s Ordinary, in 1854 Frank and Catherine Page bought 300 acres, named their development Cary, and after the junction of Seaboard and North Carolina Railroads formed in Cary, the Pages incorporated Cary in 1871; and

WHEREAS, the Pages formed the beginnings of Cary’s central business district by laying out the first streets adjacent and near the Seaboard and North Carolina Railroads in a traditional grid pattern to provide easy navigation and good connectivity between destinations; and

WHEREAS, with the development of the Research Triangle Park in the 1960s, Cary grew from a few thousand residents to nearly tripling the number of residents during the 1970s, doubling in the number of residents during the 1980s and again doubling the number of residents in the 1990s; and

WHEREAS, the Cary Town Council (“Town Council”) defined Cary’s current central business district as the Downtown (the “Downtown”) and planning for the Downtown included adoption of a major streetscape update in the 1980s and a comprehensive master plan for the Downtown in 2001; and

WHEREAS, the 2001 comprehensive master plan proposed establishing a Town Center Park as the visual and cultural focal point for the Downtown (the “Downtown Park”); and

WHEREAS, in 2012 the Town Council established a municipal service district, the Downtown Business Improvement District (“BID”), to support the Downtown; and

WHEREAS, Cary has engaged and continues to engage in planning, designing and developing the Downtown Park with substantial community participation by taking these concrete steps, among
others: the Town Council \( (1) \) adopted the Downtown Park Master Plan in July 2013, \( (2) \) established the size of the Downtown Park in February 2014, \( (3) \) established the location of the future Wake County Regional Public Library (“Regional Library”) and Cary Public Parking Deck (“Parking Deck”) adjacent to the Downtown Park in August 2015, \( (4) \) authorized construction of the Academy Street improvements and Town Square of the Downtown Park in 2016 and these improvements were completed in 2017, \( (5) \) selected OJB Landscape Architecture to prepare an updated Downtown Park Master Plan in May 2018, and \( (6) \) adopted the Downtown Park Master Plan on March 14, 2019, excerpts of which are attached as Exhibit I; and

\( \text{WHEREAS} \), while Cary was engaged in planning, designing and developing the Downtown Park and, after years of work, unprecedented community input, and dozens of meetings and workshops, Cary adopted on January 24, 2017 the Imagine Cary Community Plan (the “ICCP”), Cary’s current comprehensive plan that sets out a long-term vision, policies, and strategic actions; and

\( \text{WHEREAS} \), consistent with Cary history, the ICCP recognizes the Downtown to be “the heart and soul of [Cary],” and acknowledges “there is support for enhancing the historic heart of [Cary] by providing more dining, entertainment, retail and employment options, and for encouraging investment in Downtown to make it more of a destination within the region;” and

\( \text{WHEREAS} \), specifically the ICCP envisions the Downtown to be a vibrant, sustainable, pedestrian-oriented place rich in charm and character where people will work, live, recreate and shop with an emphasis on office, residential, retail, entertainment and civic development and there are opportunities “to provide new denser housing options;” and

\( \text{WHEREAS} \), to achieve the vision for Downtown, the ICCP designates the Downtown as a Special Planning Area and further identifies six (6) distinct Downtown subareas, recognizing that each of these subareas possess unique contexts and opportunities with different scales of development, land uses and forms of development; and

\( \text{WHEREAS} \), development and redevelopment of the six (6) subareas is intended to form a cohesive Downtown where consistency of downtown character and cohesive design is translated by Downtown streetscapes and public areas; and

\( \text{WHEREAS} \), the ICCP sets forth six (6) policies for Downtown development and redevelopment, and the first policy provides that new development should highlight and complement the character of the valued Downtown areas through architectural design and public art; and

\( \text{WHEREAS} \), the second policy directs that a common Downtown identity should be established and reinforced through physical experiences in Downtown public areas, particularly on Downtown streetscapes and sidewalks; and
WHEREAS, specifically the second policy of the ICCP sets forth the policy that the public realm defined by streetscape should be consistent throughout the Downtown while the buildings that frame the streetscape should help define the unique character for each distinct subarea; and

WHEREAS, the third policy provides that Cary, should support opportunities in the Downtown which increase connectivity and cohesion between subareas by setting a standard for future improvements along Downtown streetscapes creating a more cohesive Downtown environment for drivers, bikers and pedestrians moving between Downtown subareas; and

WHEREAS, the fourth policy directs that transportation facilities and services investments should support the vision of the Downtown as being a multi-activity destination placing priority on creating a safe and accessible environment by providing necessary parking and related infrastructure for all modes of travel - biking, walking, transit and driving; and

WHEREAS, specifically, the fourth policy directs Cary to continue to promote street design supporting all modes of travel and elevating pedestrians and bicyclists to the level of motorists so that all Downtown visitors are treated as primary users of infrastructure in the Downtown; and

WHEREAS, implementing the ICCP’s fourth policy requires all new street development to include sidewalks, street trees, bike facilities and development of new parking infrastructure to support increased vehicular traffic coming to new development in the Downtown; and

WHEREAS, the fifth policy directs Cary to support private actions and investments in the Downtown consistent with the ICCP’s Downtown policies by using Cary resources to enhance the Downtown’s economic vibrancy; and

WHEREAS, the sixth policy guiding Downtown development and redevelopment is that new development should include a range of uses to create a full-service environment for Cary residents living, working, recreating and shopping in Downtown; and

The South Academy Street Subarea

WHEREAS, one of the six Downtown subareas established by the ICCP is the South Academy Subarea (the “SA Subarea”) and the SA Subarea is south of the railroad lines and the Central Chatham Subarea, centering around South Academy Street; and

WHEREAS, the ICCP recognizes that the SA Subarea serves as Cary’s cultural and historical center as being home to, among other things, public, institutional and cultural arts anchors; and
WHEREAS, the southern portion of the block formed by East Park Street, South Walker Street, Walnut Street, Kildaire Farm Road and South Academy Street in the SA Subarea is identified by the ICCP as having Opportunity Areas for the Downtown Park, Regional Library and Mixed-Use Development (collectively the “Park/Library/Mixed-Use Community Development Project Area”) and as shown on Exhibit H; and

WHEREAS, consistent with the ICCP, the new Regional Library has been built in the Park/Library/Mixed-Use Community Development Project Area at a location diagonally opposite and northeast of Cary’s existing Art Center and immediately south of the planned Downtown Park and is open for public use; and

WHEREAS, the ICCP recognizes that the Regional Library and the new Downtown Park will be a visual and focal point for the Downtown; and

WHEREAS, to serve the new Regional Library, the planned Downtown Park, the existing Cary Art Center and other destinations in the SA Subarea, the ICCP directs construction of a central Public Parking Deck in the Park/Library/Mixed-Use Community Development Project Area near the Regional Library, and such Parking Deck has been constructed and is in operation; and

Implementation of Cary’s Vision and Policies for the Park/Library/Mixed-Use Community Development Project Area

A. The Existing Public Facilities

WHEREAS, consistent with ICCP’s vision and policies directing and guiding developing and redeveloping the Park/Library/Mixed-Use Community Development Project Area, Cary and Wake County entered into an interlocal agreement (the “ILA”) to design, fund and construct the Regional Library and the Cary-owned and operated Parking Deck containing 608 parking spaces with 120 parking spaces reserved for Library patrons, including reliance on a regional stormwater management system to be constructed on the planned Downtown Park (collectively the “Existing Public Facilities”) to be located in the Park/Library/Mixed-Use Community Development Project Area; and

WHEREAS, in November 2019, Cary entered into a ground lease with Wake County for the operation of the Regional Library (‘Ground Lease’), and the Regional Library and the Parking Deck opened for use by the public; and

WHEREAS, the land between the Parking Deck and Walnut and South Walker Streets in the Park/Library/Mixed-Use Community Development Project Area is owned by Cary; and
B. The Private Mixed-Use Facilities

WHEREAS, recognizing the economic opportunity for private mixed-use facilities integrated with the Existing Public Facilities in the Park/Library/Mixed-Use Community Development Project Area in vicinity of the intersection of Walnut and South Walker Streets, private development groups began submitting information to Cary in January 2017, requesting to participate with Cary in a capital project designated by Cary as a downtown development project comprised of both public and private facilities; and

WHEREAS, one of the private development groups requesting to participate with Cary in a downtown development project was the development group/team consisting of Triangle Real Estate Company, Knier and Associates and Mackenan Investment Group, LLC, (collectively “Development Group”), and after interviews with Development Group and two (2) other development groups, Cary decided to enter into exclusive, non-binding negotiations with the Development Group, finding that the Development Group possesses (1) the capacity to develop the private mixed-use facilities in the DDP, (2) the relationships with financial institutions, equity sources, general contractors, architects and civil engineers and prospective tenants sufficient to develop and operate these private mixed-use facilities, and (3) the problem-solving and creativity to develop and operate these private mixed-use facilities as part of the DDP in a first-class manner, as well as the Development Group is committed (4) to an exploratory process with Cary allowing Cary to play a significant role in design, construction and operation of the DDP’s private mixed-use facilities beyond a traditional regulatory role and (5) to ensuring that the DDP’s private mixed-use facilities satisfy the vision, goals and community standards found in the CCP, the approved Cary Park Master Plan and related Cary development plans, agreements and regulations; and

WHEREAS, Development Group proposed two (2) private buildings: (1) wrapping the existing Parking Deck with a private office building along Walnut Street, (2) wrapping the existing Parking Deck with a private multi-family building along Walnut and South Walker Streets, (3) both private buildings having street level private retail establishments along Walnut and/or South Walker Streets (4) the owners of these private buildings having reserved parking spaces in the existing Parking Deck and paying Cary for use of the public regional stormwater management system and (5) the owners of these private buildings constructing major and essential elements of the regional stormwater system and multiple other public facilities such as streetscapes and public spaces integrating the private facilities with the Existing Public Facilities (collectively the “Downtown Development Project” or “DDP” or sometimes “Academy Park Project”); and

WHEREAS, during the course of negotiations, the Development Group formed APC I and APC II and Principal Parties determined that the most efficient and effective plan for development of the DDP is to designate APC I and APC II as Master Developers, both APC I and APC II, being controlled by the Principal Owners identified in section 3.1 of this Agreement and the Principal Owners having majority ownership of both APC I and APC II; and
WHEREAS, to demonstrate their commitment to ensuring that the DDP’s private mixed-use facilities harmonize, integrate and connect with the Existing Public Facilities as a DDP that harmonizes and integrates aesthetically and functionally with the Downtown Park, the supporting neighborhoods and other assets in the SA Subarea, APC I and APC II have consulted with OJB Landscape Architecture, Cary’s Downtown Park’s planning consultant, to collaboratively create with Cary a true sense of place where the Downtown Park, the Public Facilities and DDP’s private mixed-use facilities are harmonized and integrated to promote enhanced experiences for residents, downtown businesses and visitors of the Downtown; and

WHEREAS, APC I and APC II proposed private mixed-use facilities connected, integrated, and harmonized with the Existing Public Facilities of the Park/Library/Mixed-Use Community Development Project Area by (1) APC I and APC II purchasing from Cary New Lot 2 and New Lot 1 (collectively, the “Property”) currently depicted on that certain plat recorded in Book of Maps 2019, Page 1376 of the Wake County Registry (the “Plat”), a copy of which is attached hereto as Exhibit A, together with certain easements and rights to ensure connectivity between the private mixed-use facilities and Cary’s Parking Deck and subject to the reservations and easements described in Section 5.1 (and its subsections) of this Agreement, and subject to deed covenants, conditions and restrictions (the “CC&Rs”) that run with the land contained in Exhibits B1 and B2 of this Agreement by way of Cary signing and delivering the Special Warranty Deeds attached as Exhibits C1 and C2, other documents necessary to effectuate the sale of the Property and the Stormwater Easement and Stormwater Agreement attached as Exhibits E1 and E2 (collectively the “Property Transfers”); (2) Cary reserving for APC I two hundred and fifty (250) parking spaces in accordance with the Academy Park Project Parking Space Reservation and License Agreement attached as Exhibit D (the “Parking Space License”) and in exchange for (A) APC II promising to plan, design, manage, construct and operate a new commercial office building containing 95,000-110,000 square foot leasable office and retail space with private street level retail space along Walnut Street on New Lot 1 of the Property in accordance with the Development Plan approved by Cary, the CC&Rs, and this Agreement (the “Commercial Building”), (B) APC I promising to plan, design, manage, construct and operate a new multi-family residential building containing 153 housing units and private street level retail space along South Walker Street and along the exterior of the new multi-family building facing toward the Downtown Park on New Lot 2 of the Property in accordance with the Development Plan approved by Cary, the CC&Rs, and this Agreement (the “Multi-Family Building”), and (C) APC I and APC II promising to plan, design, manage, construct and operate, subject to Cary’s approval, the physical connections to the Parking Deck from the Commercial Building and the Multi-Family Building (collectively items A-C are the “Private Mixed-Use Facilities”) in accordance with the CC&Rs, this Agreement, the Development Plan approved by Cary and Exhibit G of this Agreement; and

WHEREAS, as part of the DDP, APC I and APC II promise, as part of constructing the Private Mixed-Use Facilities, to construct new public streetscapes, new public streetscape amenities, other public gathering areas and pedestrian walkways integrated into the Downtown Park and Regional Library and elements of the regional stormwater management system as new public facilities enhancing the Existing
Public Facilities and DDP and implementing ICCP’s vision and policies for the Park/Library/Mixed-Use Community Development Project Area (“New Public Facilities”) and the New Public Facilities shall be integrated with the Existing Public Facilities and will significantly improve and enhance the Existing Public Facilities (collectively “Public Facilities”) and the Downtown Park; and

WHEREAS, Cary commissioned and received an appraisal of the Property Transfers prepared by a Member of the Appraisal Institute (MAI) who is licensed in North Carolina as a Certified General Appraiser of the Property, and the appraised value of New Lot 1 is $150,000.00 and New Lot 2 is $720,000.00 (collectively the “Appraised Value”); and

WHEREAS, APC I and APC II have agreed to pay their respective portions of the Appraised Value in exchange for Cary signing and delivering the Special Warranty Deeds attached as Exhibits C1 and C2 that include Exhibits B1 and B2 and reservations or easements described in Section 5.1 of this Agreement and Exhibit E1, the Stormwater Easement; and the Principal Parties signing and delivering the Parking Space License attached as Exhibit D and the Stormwater Agreement attached as Exhibit E2; and

The Town Council’s Findings

WHEREAS, recognizing that downtown revitalization is a public purpose, the General Assembly authorizes Cary to form contracts with private parties for the public purpose of revitalizing the Downtown though an array of State laws, including without limitation N.C.G.S. §§ 160A-458.3, 160A-457, 160A-456, and Chapter 160A, Article 19, Part 3D (Development Agreements), Article 23 (Municipal Service Districts) and Article 24 (Parking Authorities); and

WHEREAS, because accomplishing the DDP requires the Property Transfers, the Town Council conducted a public hearing on February 20, 2020 concerning the Property Transfers and this Agreement; and

WHEREAS, after closing the public hearing concerning the Property Transfers and this Agreement, the Town Council finds (1) the provisions of this Agreement establish a downtown development project, (2) forming this Agreement and establishing the DDP is likely to have a significant positive effect on the revitalization of the Downtown, (3) the CC&R’s and this Agreement are in the public interest and carry out the purposes of revitalization of this portion of the Park/Library/Mixed-Use Community Development Project Area in the Downtown and carry out the purposes of N.C.G.S. §§ 160A-458.3 and 160A-457, (4) the Agreement requires APC I and APC II to pay the Appraised Value for the Property Transfers and the consideration received by Cary for the Property Transfers is fair and reasonable, (5) the provisions of this Agreement specify the property interests of Cary, APC I and APC
II in the DDP and Cary’s property interests in the DDP are owned for a public purpose, (6) the provisions of this Agreement specify the responsibilities of Cary, APC I, and APC II for construction of the DDP, (7) the provisions of this Agreement specify the responsibilities of Cary, APC I, and APC II with respect to financing the DDP, (8) the provisions of this Agreement specify the responsibilities of Cary, APC I, and APC II for management and operation of the DDP as well as Cary’s, APC I’s, and APC II’s rights of participation in the management and operation of the DDP, (9) this Agreement provides a comprehensive and collaborative plan for the implementation of Cary’s vision and policies for development and use of the southern portion of the Park/Library/Mixed-Use Community Development Project Area in the vicinity of Walnut and South Walker Streets, (10) this Agreement is Cary’s community plan for development and use of the Property and this part of the Park/Library/Mixed-Use Community Development Project Area, and (11) forming this Agreement is authorized by law, promotes the Downtown including revitalization of the Downtown as well as Cary’s policies for Downtown, is in the public interests and strengthens the Downtown as the heart and soul of Cary.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, including without limitation, the CC&R's that run with the Property to be conveyed to APC I and APC II, the benefits that will accrue to the Principal Parties and the public by development of the DDP, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Principal Parties agree as follows:

TERMS AND CONDITIONS OF THIS AGREEMENT

ARTICLE 1. RECITALS AND EXHIBITS

1.1 Incorporation of Recitals and Exhibits. The Principal Parties agree the Recitals are true and correct and are incorporated as terms of this Agreement. All Exhibits referenced in this Agreement are hereby incorporated by reference and made a part hereof.

ARTICLE 2. DEFINITIONS

2.1 Definitions. In the construction of this Agreement and its incorporated Exhibits, in addition to words and terms defined in the Recitals and other sections of this Agreement, the following capitalized terms shall have the meanings set forth below wherever they appear in this Agreement. Except as otherwise provided in this Agreement, terms used in this Agreement and defined in the Cary’s Land Development Ordinance (the “LDO”) shall have the meanings defined in the LDO, unless the context indicates otherwise.

Agreement means this Downtown Development Project Agreement or DDPA.

BID means Cary’s Downtown Business Improvement District.
Building Permits means the two building permits sought in the applications submitted to Cary by Master Developer and identified by Cary as “One Walker 20-BP-2197” and “One Walnut 20-BP-2198.” Nothing in this Agreement shall constitute approval of Building Permits under Laws.

CC&Rs mean the covenants, conditions and restrictions running with the Property set forth in section 5.1, including subsections, and Exhibits B-1 and B-2 of the Agreement formed and imposed for the benefit of Cary deemed by the Town Council to be in the public interest and to carry out the purposes of Park/Library/Mixed-Use Community Development Project Area.

Community Development Plan means collectively (1) the Development Plan approved for the Private Mixed-Use Facilities, and (2) this Agreement, including without limitation the Exhibits attached hereto.

Council or Town Council means the governing body of Cary.

Day or Days mean calendar day or days.

DDP means the downtown development project consisting of the New Public Facilities and the Private Mixed-Use Facilities. The DDP is also sometimes called the Academy Park Project.

DDP’s Stormwater Management System means the regional stormwater management system principally located on the Downtown Park which manages the stormwater of the Public Facilities and Private Mixed-Use Facilities of the DDP.

Developer means a Person who intends to undertake Development of the DDP. Under this Agreement, there are two categories of Developers and these categories are Master Developer and Limited Developer.

Development means the planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. “Development,” as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, “development” refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

Development Permit or Local Development Permit means a building permit, zoning permit, subdivision or site plan approval, special or conditional use permit, variance, or any other official action of local government having the effect of permitting the development of property.

Development Plan means the development plan submitted to Cary by Master Developer and identified by Cary as “One Walker & One Walnut 20-DP-2171.” Nothing in this Agreement shall
constitute approval of a site plan, sketch or design of the Private Mixed-Use Facilities by Cary under Section 3.9 of Cary’s LDO.

_Downtown_ means the area designated in the ICCP as the Downtown Special Planning Area.

_Downtown Park_ means Cary’s Park to be located in the South Academy Subarea shown in the ICCP.

_Effective Date_ means the date this Agreement is executed by Cary.

_Ground Lease_ means the “Ground Lease, Leases and Utilization Agreement” between Cary and Wake County dated November 4, 2019.

_ICCP_ means the Imagine Cary Community Plan adopted by the Town Council.

_Land Development Ordinance or LDO_ means Cary’s Land Development Ordinance.

_Land Development Regulations_ means ordinances and regulations enacted by Cary for the regulation of any aspect of development and includes the LDO, zoning, subdivision, or any other land development ordinances.

_Laws_ mean all ordinances, regulations, comprehensive plans, land development regulations, policies, and rules adopted by Cary affecting the development of the Property, and includes laws governing permitted uses of the Property, density, design, and improvements.

_Limited Developer_ means one or more Developers selected by a Master Developer and who intend to undertake a portion of the Development of the Commercial Building or the street level retail space of the Multi-Family Building and who take a limited assignment of a Master Developer’s rights without a corresponding assignment of the Master Developer’s duties. One example of a Limited Developer is a tenant who performs upfit of its leased space. Every Limited Developer shall coordinate its Development with the Master Developer whose rights have been assigned, and such Master Developer shall remain directly responsible to Cary for performance of any duties under this Agreement in connection with, arising from or related to Development undertaken by any Limited Developer.

_Master Developer_ means APC I and APC II and any successor Master Developer approved by Cary. There are only two initial Master Developers. APC I shall own, control and be principally responsible for Development of the Multi-Family Building of the Private Mixed-Use Facilities located on New Lot 2 of the Property and APC II shall control and be principally responsible for Development of the Commercial Building of the Private Mixed-Use Facilities located on New Lot 1 of the Property. Each Master Developer shall remain a Master Developer until a total assignment of that Master Developer’s rights and duties has been approved by Cary pursuant to section 10.11.1.c of this Agreement.
New Plat means a plat that depicts the same New Lot 1 and New Lot 2 as the Plat, and more specifically shows all easements and land rights necessary for Development of the DDP.

Parking Deck means the Cary Parking Deck constructed with the Regional Library and adjacent to the Downtown Park.

Park/Library/Mixed-Use Community Development Project Area means the areas designated in the ICCP as the Downtown Park, and Library and Mixed-Use Opportunity Areas.

Parking Space License means the Academy Park Project Parking Space Reservation and License Agreement between Cary and APC I attached hereto as Exhibit D.

Periodic Review means the process and procedures established in section 8.3 of this Agreement for all Developers to demonstrate good faith compliance with the terms of this Agreement.

Permitted Successors or Assigns means those successors or assigns of the Master Developers permitted by Section 10.11 of this Agreement.

Person means a natural person, a corporation, limited liability company, a partnership, joint venture, a trust, or any other legal entity.

Plat means that document recorded in Book of Maps 2019, Page 1376 of the Registry, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

Principal Party or Principal Parties means only Cary and the two initial Master Developers, APC I and APC II, or any Permitted Successors or Assigns of APC I or APC II.

Private Mixed-Use Facilities means the Commercial Building, the Multi-Family Building and the physical connections to the Parking Deck from the Commercial Building and the Multi-Family Building as shown on one or more of the Development Plans approved by Cary and developed, constructed and operated on the Property by APC I and APC II, their Permitted Successors or Assigns and Limited Developers.

Property means New Lot 1 and New Lot 2 as depicted on the Plat.

Public Facilities mean the Existing Public Facilities and the New Public Facilities as described and defined in the Recitals.

Public Improvements mean major capital improvements, including, but not limited to, transportation, including public streetscapes and sidewalks, sanitary sewer, solid waste, drainage, potable water, the DDP’s Stormwater Management System, and parks and recreational facilities.


Recorded Assignment means any written assignment signed by Cary, the Master Developer and Permitted Successors or Assigns that is effective when recorded in the Registry. A Recorded Assignment shall include a complete assignment of the rights and duties established by this Agreement by a Master Developer to a new Master Developer. No Limited Developer shall be assigned any of the Master Developer’s duties established by this Agreement.

Regional Library means the regional library described in the Ground Lease.

Registry means the Wake County Register of Deeds.

State means the State of North Carolina.

Stormwater Agreement means the Downtown Park Regional Stormwater Management System Agreement attached to this Agreement as Exhibit E2.

Town Manager means the Town Manager or any Deputy Town Manager of the Town or his/her designee.

ARTICLE 3. SELECTION OF MASTER DEVELOPERS AND DESIGNING AND INTEGRATING THE PRIVATE MIXED-USE FACILITIES

3.1 Selection and Description of Master Developers. The Principal Parties have determined that the most efficient and effective plan for development of the DDP is to designate two Master Developers. Cary selected APC I as the Master Developer of the Multi-Family Building of the Private Mixed-Use Facilities and APC I agrees to be selected as the Master Developer of the Multi-Family Building of the Private Mixed-Use Facilities. Cary selected APC II as the Master Developer of the Commercial Building of the Private Mixed-Use Facilities and APC II agrees to be selected as the Master Developer of the Commercial Building of the Private Mixed-Use Facilities. APC I and APC II represent to Cary that they are each owned by entities owned or controlled by the following: William F. Zahn (“Zahn”); Steven J. Knier (“Knier”); and H. Don Stephenson, Jr., Richard C. Stephenson, and A. Craig Stephenson (together, the “Stephensons”). At all times during the term of this Agreement, at least fifty-one percent (51%) of APC I and at least fifty-one percent (51%) of APC II shall be owned by, and APC I and APC II, individually and collectively, shall be controlled by one or more of the following: (1) Zahn and/or members of Zahn’s family and/or entities owned or controlled by Zahn and/or members of Zahn’s family; (2) Knier and/or members of Knier’s family and/or entities owned or controlled by Knier and/or members of Knier’s family; and (3) the Stephensons and/or members of the Stephensons’ families and/or members of entities owned or controlled by the Stephensons and/or members of the Stephensons’ families (all of the foregoing who own an interest in APC I, APC II or an interest in another legal entity that owns an interest in APC I or APC II being referred to herein together as the “Principal Owners”). At all times during the term of this Agreement, each Master Developer shall maintain control of the planning, design, development, construction, management and operation of the Private Mixed-Use Facilities for which the Master Developer owns and is responsible, and the Principal Owners shall maintain fifty-one percent (51%) ownership and control of each Master Developer until an assignment to another Master Developer is approved by Cary under section 10.11 of this Agreement.
3.2 Master Developers’ Duties to Collaborate with Cary. At all times during this Agreement, the Master Developers shall comply with all Laws, including without limitation Cary’s LDO and agree to engage with Cary in an active and collaborative relationship regarding the DDP and specifically:

a) Engage in an exploratory process with Cary allowing Cary to play a significant role in design and construction of the Private Mixed-Use Facilities beyond a traditional regulatory role, and

b) Design, construct, and operate the Private Mixed-Use Facilities to meet the vision, goals and community standards found in the ICCP and other Cary agreements or policies applicable to this DDP and Cary Laws, and

c) Harmonize and integrate the Private Mixed-Use Facilities with the Public Facilities, the Downtown Park and other assets and elements in the SA Subarea visible or near the Property so that residents and visitors experience a vibrant, cohesive multi-activity destination supporting all modes of travel, and

d) Cooperate and coordinate with Cary in connection with the construction and operation of the Public Facilities and the Downtown Park, including without limitation, not causing Cary to default under the Ground Lease.

3.3 Cary’s Duties to Cooperate with Master Developers. At all times during this Agreement, Cary agrees to cooperate and assist the Master Developers in connection with the Master Developers duties under section 3.2 above. Specifically, Cary agrees to:

a) Provide informal review of design sketches, preliminary plans, renderings, models and other similar documentation or information to facilitate efficient and effective accomplishment of the Master Developers’ duties established by section 3.2 of this Agreement, and

b) Provide information, suggestions and comments in a collaborative approach as to design, integration and harmony of the Private Mixed-Use Facilities with the Public Facilities, nearby supporting neighborhoods, the Downtown Park and other assets located in the SA Subarea, and

c) Provide updates to the Master Developers as to the status of the Public Facilities, the Downtown Park and other public initiatives and investments in the Downtown.

3.4 The Development Plan and Building Permits for the Private Mixed-Use Facilities. The Development Plan and Building Permits for the Private Mixed-Use Facilities shall include, regardless whether required by the LDO, the size and shape of buildings and other improvements that are designed and constructed of substantially the same materials and shall have substantially the same design, appearance, architectural style, characteristics and features depicted or described on Exhibit G attached hereto and incorporated herein by reference, which depicts streetscapes, areas generally available to the public, and building facades of the Private Mixed-Use Facilities as well as lists of approved materials,
treatments and textures used in these areas of the Private Mixed-Use Facilities. Compliance with Exhibit G shall be a requirement of the Development Plan under the LDO and as a binding term of this Agreement. APC I and APC II shall develop the Private Mixed-Use Facilities in accordance with the Development Plan and Building Permits except as modified by agreement of the Principal Parties and subject to Cary’s regulatory approval.

The purpose of Exhibit G is to ensure that the Private Mixed-Use Facilities are developed with a higher level of quality and an overall higher caliber of design than would otherwise be required by Cary’s existing Laws. The Private Mixed-Use Facilities shall be designed and constructed to create a vibrant and sophisticated environment, inviting visitors and residents to explore and linger throughout the development and adjacent Downtown Park; and shall utilize high quality materials to construct the buildings, architectural features, signage, fixtures, hardscaping, and landscaping.

Exhibit G contains renderings of the Private Mixed-Use Facilities prepared by the Master Developers, and plan sheets for the Development Plan and Building Permits prepared by the Master Developers. The Development Plan sheets included herein were submitted by the Master Developers to Cary on January 16, 2020; the Building Permit plan sheets included herein were submitted by the Master Developers to Cary on February 4, 2019. These renderings and plan sheets should be considered a “baseline” of design and materials quality; the final constructed Private Mixed-Use Facilities shall meet or exceed this baseline. The Master Developers shall address, to Cary’s satisfaction, all Development Review Committee or other Cary staff comments on the Development Plan and Building Permits prior to final approval of same. As such, Exhibit G may be amended from time to time based upon the Master Developers’ submittals to the Town and the Town’s review and approval of these submittals.

By entering into this Agreement, the Master Developers agree to perform its duties under Section 3.2 above to secure Cary’s approval of the Development Plan and so long as the Master Developers are performing their duties under Sections 3.2 and 3.4 Cary will perform its duties under Section 3.3 above.

ARTICLE 4. REGULATORY APPROVALS OF THE PRIVATE MIXED USE FACILITIES OF THE DDP

4.1 Regulatory Review and Approvals of the Private Mixed-Use Facilities. The Master Developers have submitted the Development Plan to Cary for regulatory review and if the Development Plan satisfies Cary’s laws, including without limitation the LDO and satisfies this Agreement, Cary will approve the Development Plan promptly. Before or at that time, application for more than one type of Local Development Permit may be made and Cary shall review such applications concurrently to the extent possible. Additionally, Cary shall, to the extent practicable expedite processing of all applications for regulatory approval of the Private Mixed-Use Facilities in accordance with the Development Plan approved by Cary, and subsequently expedite issuance of Building Permits and all other Local Development Permits for the Private Mixed-Use Facilities. Cary will assemble an inter-Cary Department team who will be assigned to review and approve the design and construction of the Private Mixed-Use Facilities for proper and consistent integration of the Private Mixed-Use Facilities with the Public Facilities and the Downtown Park for the purpose of accomplishing this Agreement and the Community Development Plan.
If at any time, either or both Master Developers withdraw their application for approval of the Development Plan or substantially change its application for approval of the Development Plan so that it fails to comply with Exhibit G, this Agreement shall terminate automatically and neither Master Developer shall have any rights under this Agreement.

4.2 Regulatory Fees. Because the Property is located in the BID, Cary will reimburse itself from BID funds for Cary’s system development fees and transportation development fees. APC I and/or APC II shall be responsible and pay any and all other fees of Cary and any fees assessed by any other governmental agencies other than Cary. For the sake of clarity, APC I shall be responsible and pay to Cary the multi-family recreation fund payment required by LDO Section 8.2.4(B).

ARTICLE 5. CONVEYANCE OF THE PROPERTY AND OTHER REAL PROPERTY INTERESTS FOR ESTABLISHMENT OF THE DDP

5.1 Conveyance of the Property. After execution and recordation of this Agreement, approval of the Development Plan, Cary’s receipt of notice from APC I that it has secured financing as provided in Section 6.2 of this Agreement and, contemporaneously with APC I’s and APC II’s payment of the Appraised Value to Cary, Cary shall sign and deliver to the Master Developers Special Warranty Deeds for the two lots of the Property in a form similar to the form attached to this Agreement as Exhibits C1 and C-2. In the event APC I and/or APC II withdraw their Development Plan application before approval, substantially alter their Development Plan application before approval, or fail to pay the Appraised Value to Cary and close the Property Transfers on or before the later of one-hundred and twenty (120) days after the Master Developers’ delivery of a fully signed DDPA to Cary or thirty (30) days after Cary’s approval of the Development Plan, time being an essential term, the Master Developers’ right to purchase the Property and this Agreement shall terminate automatically and this Agreement shall have no force or effect. At all times, the Master Developers shall diligently pursue approval of the Development Plan as required by Article 3 of this Agreement. Each Special Warranty Deed shall describe the applicable lot of the Property by reference to the Plat or the New Platt approved by Cary, shall contain the CC&Rs running with the Property for the benefit of Cary listed in Exhibits B1 and B2 and reserve rights and easements described in the Special Warranty Deeds, and convey the following real property interests to APC I and APC II:

5.1.1 Fee simple title to New Lot 1 to APC II and New Lot 2 to APC I, as shown on the New Plat, subject to the CC&Rs and easements and rights reserved to Cary in the Special Warranty Deeds, such easements and rights being noted or shown on the New Plat.

5.1.2 Easements for pedestrian and limited access for small vehicles, such as golf carts, used exclusively for moving equipment and furnishings into or out of leased space in the Private Mixed-Use Facilities for one or more above ground walkways constructed by the Master Developers that run from the Private Mixed-Use Facilities to the Parking Deck, a common wall easement on the Parking Deck structure for the portion of the Multi-Family Building that faces Walker Street, utility service easements, and stormwater and drainage easements identified on the Development Plan and all other easements and rights shown on the New Plat for APC I’s and APC II’s use and enjoyment, the Stormwater Easement attached as Exhibit E1, by way of the Special Warranty Deeds attached as Exhibits C1 and C2 of this Agreement or other documents approved by the Principal Parties.
The Principal Parties agree that the purpose of these various easements and rights is to integrate the Private Mixed-Use Facilities with the Public Facilities so Cary citizens, visitors and tenants of the Private Mixed-Use Facilities enjoy a seamless and harmonious experience when travelling from Walnut or Walker Streets through the Private Mixed-Use Facilities and Parking Deck to the Library and Downtown Park.

5.1.3 The Special Warranty Deeds shall convey the Property subject to the CC&Rs set forth in Exhibits B1 and B2, and the CC&Rs set forth in Exhibits B1 and B2 shall be real covenants touching and concerning the Property, running with the Property, binding all of APC I’s and APC II’s successors or assigns (regardless whether they are Permitted Successors or Assigns, Limited Developers, tenants or residents of the Private Mixed-Use Facilities) for the period of time specified in the CC&Rs and shall be for the sole benefit and enjoyment of Cary.

5.2 Parking Space License. Execution of the Parking Space License attached as Exhibit D by Cary and APC I.

5.3 Stormwater Agreement. Execution of the Stormwater Agreement attached as Exhibit E2 by the Principal Parties.

5.4 Easements, Licenses and Rights of Way. To the extent it is necessary or appropriate to accomplish the purposes of this Agreement, APC I and APC II agree jointly and individually to convey such easements, licenses and rights of way to Cary ensuring appropriate public access to the Public Facilities of the DDP.

5.5 Subdivision and Closing Costs. Cary shall be responsible for all subdivision or recombination regulatory approvals associated with the conveyance or granting of interests required by Article 5 of this Agreement. APC I and APC II shall be responsible for all closing costs, including without limitation recording costs, title insurance and other similar costs or fees. No revenue stamps shall be paid in connection of the Property Transfers.

ARTICLE 6. FUNDING AND CONSTRUCTION OF THE DDP

6.1 Financing and Construction of the Public Facilities. Cary shall finance and cause construction of the New Public Facilities of the DDP, all of which shall be legally and functionally available to all Cary citizens and exclusively controlled by Cary, as provided in this Agreement at no cost to the Master Developers and reimburse the Master Developers for their actual costs incurred to build the following Public Improvements:

1. Public sidewalks along Walker and Walnut Streets and associated streetscape improvements included in the Development Plan approved by Cary;

2. Public paths, walks and ways providing connections to, from and between the the Private Mixed-Use Facilities, Walker Street, Walnut Street, the Regional Library, the Parking Deck or the Downtown Park and included in the Development Plan approved by Cary; and
3. Construction of elements of the regional stormwater system which are incorporated as elements of the Downtown Park described in Exhibit E2.

6.2 Financing and Construction of the Private Mixed-Use Facilities. The Master Developers shall finance, construct or cause to be constructed the Private Mixed-Use Facilities as required in this Agreement and in accordance with the Development Plan at no cost to the Town, except to the extent the Town reimburses itself by way of BID funds pursuant to Paragraph 4.2 of this Agreement or otherwise finances Master Developers’ construction of the Public Improvements set forth in Section 6.1 of this Agreement.

APC I and APC II shall execute and deliver a fully signed DDPA within ten (10) days of Town Council Approval of this Agreement. After APC I and APC II have delivered a fully signed DDPA to Cary, APC I shall exercise its best efforts to secure financing for development and construction of the Multi-Family Building and shall notify Cary in writing of compliance with this condition within one hundred and twenty (120) days of delivery of a fully signed DDPA to Cary and that the Master Developers are otherwise ready, willing and able to perform all of the Master Developers’ obligations under this DDPA. In the event that the Town has not received written notice from APC I within the time specified above, time being an essential term, the DDPA shall not become effective at all in any regard, shall terminate automatically without any action by Cary, and the Principal Parties shall not possess any rights or duties under the DDPA or any related instrument or regulatory approval thereafter.

The Master Developers’ schedule for development of the Private Mixed-Use Facilities Project shall be:

6.2.1 APC I has filed a complete application with Cary for Cary’s approval of the Development Plan to develop the Multi-Family Building pursuant to the LDO. No later than thirty (30) days after the later of Cary’s approval of the Development Plan or APC I’s purchase of the Property, APC I shall file complete application(s) for a building permit and all other Development Permits required for construction of the entire Building. Within one hundred and twenty (120) days of issuance of all of these Development Permits, APC I shall commence vertical construction of the Building (at least erecting columns), and APC I shall complete construction of the Multi-Family Building and obtain a certificate of compliance for the shell of the Multi-Family Building and certificates of occupancy for the dwelling units in the Multi-family Building within twenty-four (24) months after commencing vertical construction of the Multi-Family Building. For the purpose of this Paragraph, the phrase “substantially the same” shall mean essentially the same or with little or no substantive difference.

6.2.2 APC II has filed a complete application with Cary for Cary’s approval of the Development Plan to develop the Commercial Building pursuant to the LDO. No later than one (1) year after the later of Cary’s approval of the Development Plan or conveyance of the Property to APC II, APC II shall file complete application(s) for a building permit and all other Development Permits required for construction of the entire Commercial Building. APC II shall not start any construction work on the Commercial Building or Commercial Building site until APC II also is ready to commence vertical construction of the Commercial Building upon completion of grading. Within one (1) year of issuance of all of the Development Permits described in this paragraph, APC shall commence vertical construction of the Commercial Building (i.e., at least erecting columns), and APC II shall complete construction and obtain a certificate of compliance for the shell of the entire Commercial Building no later than two (2) years after
construction of the Mixed-Use Multi-Family Building is completed ("Construction Completion Time"). For the purpose of this Paragraph, the phrase “substantially the same” shall mean essentially the same or with little or no substantive difference.

Time is an essential term of sections 6.2.1 and 6.2.2 and are subject to the force majeure provision in section 10.4 of this Agreement. The Master Developers’ failure to satisfy the development schedule set forth in these sections shall be a default under this Agreement, subject only to the force majeure provisions of Section 10.4.

6.3 **State Building Code and Unified Development.** Cary is responsible for administration of the North Carolina Building Code ("Building Code"). To the extent permitted by the Laws, Cary will expedite review and approvals of construction plans and construction work on the Property. The Building Code contains a number of technical requirements which may impede or prevent construction of the DDP, including the common areas or connections between the Private Mixed-Use Facilities and the Public Facilities. The Principal Parties recognize and agree that the DDP should be deemed a unified development if permitted by the North Carolina Building Code and the Principal Parties shall, if necessary to accomplish the DDP, use alternative materials, designs or methods of construction approved by Cary’s Building Code Enforcement Official pursuant to North Carolina Administrative Code and Policies (NCACP) Section 10.5.

6.4 **Stormwater Management of the DDP.** Cary will be responsible for designing, constructing, operating, maintaining and replacing the stormwater management system for the DDP that is located principally on Downtown Park which will be part of the Public Facilities of the DDP (the “DDP’s Stormwater Management System”). Cary will operate the DDP’s Stormwater Management System in accordance with all federal, state and Cary laws. The Principal Parties’ responsibilities for the DDP’s Stormwater Management System shall be as provided in Exhibits E1 and E2.

**ARTICLE 7. LEASING AND OPERATION OF DDP**

7.1 **Street Level Retail Leasing.** The Principal Parties recognize that selection and mix of retail tenants for the Private Mixed-Use Facilities is important to achieve the Community Development Plan. Cary, APC I and APC II have agreed to a marketing strategy plan for soliciting, selecting and mixing retail tenants and Cary shall have the right to review and comment on the marketing and leasing plan and efforts to identify and market to prospective retail tenants. Selection of retail tenants and retail uses of the retail portion of the Private Mixed-Use Facilities shall be limited by the CC&Rs and this Agreement, but the Master Developers shall have exclusive authority to market and lease the street level retail spaces located on the Property.

7.2 **Commercial Building Leasing.** The Principal Parties recognize that selection and mix of office tenants for the Private Mixed-Use Facilities is important to achieve the Community Development Plan. Cary and APC II agree to discuss selection of office tenants and Cary shall have the right to review and comment on the marketing and leasing plan and efforts to identify and market to prospective office tenants. APC II shall have exclusive authority to market and lease the office space located on the Property so long as such efforts are in compliance with this Agreement and all applicable Cary laws, the laws of the State of North Carolina and the laws of the United States of America.
7.3 Multi-Family Building Leasing. The Principal Parties acknowledge and recognize that marketing and selection of tenants of Multi-Family Building shall be undertaken and executed at all times with the intention that the Community Development Plan is accomplished in compliance with this Agreement, subject to all applicable Cary laws, the laws of the State of North Carolina and the laws of the United States of America.

7.4 DDP Operation. At all times, the DDP shall be operated by Cary and the Master Developers to cause the DDP, to the extent reasonably practicable, to be a vibrant destination that adds to the Downtown by providing live, work, play and learn opportunities and to fully accomplish the Community Development Plan:

7.4.1 The Master Developers shall be the exclusive Persons responsible for operating, maintaining, repairing, replacing and controlling the Private Mixed-Use Facilities in accordance with the Community Development Plan and this Agreement; and

7.4.2 Cary shall be the exclusive Person responsible for operating, maintaining, repairing, replacing and controlling the Public Facilities except for the Regional Library.

ARTICLE 8. THE DDP’S ROLE AND PARTICIPATION IN DOWNTOWN EVENTS AND DOWNTOWN BRANDING

8.1 The DDP’s Role in the Downtown. The Principal Parties intend the DDP to be an important and integral part of the revitalization of the Downtown and a part of the Downtown’s brand. The Master Developers shall participate in the Downtown business association and other community associations that promote the Downtown as a destination.

8.2 Promoting Downtown as a Destination. Cary and the Master Developers, their successors and assigns, agree to cooperate together and to integrate the Private Mixed-Use Facilities in the information on their respective websites or other informational and/or branding materials of the Downtown and the DDP, recognizing that branding the Downtown as a regional destination aids all enterprises located in the Downtown. The Principal Parties shall identify opportunities for the tenants of the Private Mixed-Use Facilities to participate in the many festivals and events occurring in the Downtown.

8.3 Frequent Communications. Cary and the Master Developers recognize that the success of the DDP as envisioned by Cary and the Master Developers rests upon frequent discussions, joint planning and dialogues where they explore options and decide on measures which enhance and promote the DDP and Downtown vibrancy generally. To this end, Cary and the Master Developers shall notify each other of developments, opportunities and events which could positively or adversely impact the vibrancy of the DDP and agree to work together cooperatively to improve, preserve and promote the Community Development Plan.

ARTICLE 9. TERM, AMENDMENT, TERMINATION, BREACH AND DEFAULT

9.1 Term, Amendment and Termination. The term of this Agreement shall commence upon the Effective Date and it shall expire upon expiration of the last of the CC&Rs to expire (“Term”) unless sooner terminated by mutual consent of Cary and Master Developers or pursuant to the terms and
conditions of this Agreement. The Agreement shall be amended only by a written amendment executed by Cary and the Master Developers. In the event Cary and the Master Developers desire to amend the Agreement in a manner inconsistent with the CC&Rs, the Principal Parties shall amend the Agreement and the CC&Rs and promptly record the amendment to the CC&Rs in the Registry. All amendments to this Agreement shall be recorded in the Registry. Unless otherwise extended by Cary and Master Developers, this Agreement shall terminate on the earlier of: (i) the expiration of the Term specified in 9.1 of this Agreement; (ii) a specific termination of this Agreement made by operation of the provisions of this Agreement; or (iii) by written agreement between Cary and the Master Developers. Expiration or termination of this Agreement shall not affect any Laws or governmental permits or approvals applicable to the Property, including any requirement, condition or restriction contained in any governmental permit or approval, or the Laws in effect on the date of the termination. All Principal Parties shall cooperate by signing amendments and otherwise work together to effectuate the purpose of this section.

9.2 Default and Breach by the Principal Parties. The Principal Parties agree that there are two categories of defaults by Principal Parties:

9.2.1 The first category of default is when one of the Master Developers assigns any of its duties under this Agreement without Cary’s advance written approval. In such an event, Cary shall serve the defaulting Master Developer and other Master Developer written notice of the default in accordance with section 10.8 of this Agreement (“Notice of Master Developer Assignment Default”). The defaulting Master Developer shall have fifteen (15) days to cure said default (which cure period shall not be extended), by providing Cary a copy of an agreement signed by the assignee and the Master Developer revoking transfer of the Master Developer’s duties and returning all duties to the Master Developer. The defaulting Master Developer’s failure to cure an unauthorized assignment shall result, in addition to Cary’s other rights and remedies, Cary having the right to void this Agreement by immediately terminating it in its entirety in Cary’s sole discretion.

9.2.2 The second category of default is any default in the performance of duties or obligations created by this Agreement by any of the Principal Parties other than the default described in section 9.2.1. In such an event, a non-defaulting Principal Party shall serve the defaulting Principal Party written notice of the default in accordance with section 10.8 of this Agreement (“Notice of Principal Party Default”) and shall specify a period of not less than sixty (60) days in which the defaulting Principal Party shall have a right to cure the default; provided, however, such cure period may be extended by the non-defaulting Principal Party provided that all of the following occur: (a) a default cannot reasonably be cured within the cure period provided in the Notice of Principal Party Default, (b) the curing Principal Party notifies the non-defaulting Principal Party of such fact by written notice served in accordance with Section 10.8 of this Agreement no later than the end of the cure period stated in the Notice of Principal Party Default and provides a written schedule for curing the default within the notice and evidence that the defaulting Principal Party had already taken steps to cure the default, and (c) the curing Principal Party, in such written extension notice, covenants to (and thereafter actually does) diligently pursue the cure to completion. In no event, shall the defaulting Principal Party have more than ninety (90) days to cure the default after service of Notice of Principal Party Default.

All time deadlines in section 9.2 are essential terms of the Agreement.
9.3 Remedies for Principal Party Breach. Except as otherwise provided in the CC&Rs, in the event the defaulting Principal Party fails to cure a default as provided herein, the non-defaulting Principal Party that provided notice of the default may declare breach of this Agreement and may enforce this Agreement by the remedy of declaratory judgment and specific performance only, but one or more defaults by one Master Developer shall not automatically be a default of the other Master Developer so long as the other Master Developer remains in full compliance with the DDPA and of its obligations established this Agreement, including all obligations established by the Exhibits of this Agreement. In the event the defaulting Principal Party is a Master Developer, Cary will send courtesy copies of any Notice of Principal Party Default to any other Master Developer at the addresses provided to Cary in this Agreement or the Recorded Assignment as applicable and to any lender who has requested in writing that Cary provide written notice. No non-defaulting Master Developer, Limited Developer or lender shall have any rights or obligations under this section and Cary’s failure to send such courtesy copies shall not affect any of Cary’s rights or remedies under this Agreement. The defaulting Master Developer shall indemnify and hold harmless Cary, its boards, officers and employees, from and against all claims, costs, civil penalties, fines, losses, and damages (including but not limited to professionals’ fees and charges and all court or other dispute resolution costs), by whomsoever brought or alleged, arising out of, resulting from, or in connection with any cause resulting from Cary’s delivery of, or failure to deliver, such courtesy copies to any non-defaulting Master Developer, Limited Developer or any other Person. This indemnification shall survive the termination of Agreement.

9.4 Informal Business Meeting. Recognizing that the Principal Parties have invested significant resources planning the DDP and forming this Agreement, and the benefits to the Principal Parties derived from the DDP and this Agreement are substantial and broad, Cary and the Master Developers agree that all issues or concerns identified as defaults under Article 9 of this Agreement shall be subject to at least one informal business meeting between the Town Manager and Principal Owners of each Master Developer along with such Limited Developers as one of the Principal Parties invite to the business meeting before a notice of default is served. Cary will send notice of the business meeting to each Master Developer at the address provided in this Agreement and any Recorded Assignment. Master Developer shall indemnify and hold harmless Cary, its boards, officers and employees, from and against all claims, costs, civil penalties, fines, losses, and damages (including but not limited to professionals’ fees and charges and all court or other dispute resolution costs), by whomsoever brought or alleged, arising out of, resulting from, or in connection with any cause resulting from failure of any person to receive notice of a business meeting. This indemnification shall survive the termination of Agreement.

All informal business meetings shall be held at Town Hall. Nothing herein precludes Cary or any Principal Party from requesting other business meetings to discuss and plan any aspect of the DDP.

ARTICLE 10. MISCELLANEOUS

10.1 No Unauthorized Exercise of Authority. The Principal Parties and each Person who becomes a Principal Party agree that Cary has not exercised any authority or made any commitment not authorized by general or local act and has not imposed any tax or fee not authorized by otherwise applicable law either in the terms of execution of this Agreement or in connection with execution of this Agreement, and all successors and assigns of any interest in the Property or of the Master Developers shall be bound by this Agreement as successors in interest of the Principal Parties.
10.2 **Agreement is Supplemental.** This Agreement is supplemental to the powers conferred on Cary. This Agreement does not effect, modify, preclude or supersede any Laws existing on the Effective Date of this Agreement or the Ground Lease. This Agreement shall not exempt any Person from compliance with the Laws, including without limitation, the LDO or the State Building Code.

10.3 **Recordation/Binding Effect.** Prior to Cary conveying the Property to the Master Developers, Cary shall record this Agreement in the Registry. The Agreement shall be recorded in the Registry prior to recordation of any mortgages or other liens encumbering the Property. The burdens of this Agreement shall be binding upon the Principal Parties and all of the Principal Parties’ successors and assigns (regardless whether the successor or assign is a Permitted Successor or Assign) having an interest in the Property at any time, and the benefits of this Agreement shall inure to the Principal Parties and all of the Principal Parties’ successors and assigns (regardless whether the successor or assign is a Permitted Successor or Assign) having an interest in the Property at any time, but only the Principal Parties shall have the right to enforce the Agreement.

10.4 **Force Majeure.** In addition to specific provisions of this Agreement, no Principal Party shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond the Principal Party’s reasonable control, including, but not limited to, actions or inactions of governmental authorities, epidemics, wars, embargoes, fires, hurricanes, unusual adverse weather, acts of God, or the default of a common carrier. In the event of a default, delay or failure to perform due to causes beyond a Principal Party’s reasonable control, the Principal Party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance and to complete its performance in as timely a manner as is reasonably possible. In no event shall the delayed performance be longer than the duration of a force majeure without the joint written approval of Cary and Master Developers. For the purpose of this Section, force majeure applies to all Principal Parties.

10.5 **Disclaimer of Joint Venture, Partnership and Agency and Commitment to Communicate and Cooperation.** This Agreement shall not be interpreted or construed to create a legal association, joint venture, or partnership under law between or among Cary and other Principal Parties, or to impose any fiduciary obligation or liability upon Cary toward the Principal Parties; however, the Principal Parties recognize and agree that cooperation and communication between them will be critical to the success of the DDP and accomplishing the Community Development Plan. In order to achieve a successful DDP and to accomplish the Community Development Plan, Cary and the Master Developers agree that frequent and informal meetings and discussions should occur and a formal review of the DDP should occur not less than annually in the form of a business meeting held at Town Hall between members of the Town Manager’s office and the Managing Members or controlling officers of the Master Developers to discuss current and future operations of the DDP.

10.6 **No Third Person Beneficiaries.** The Agreement is not intended to and does not confer any right, power or benefit on any Person other than the Principal Parties and only the Principal Parties may enforce, modify or terminate this Agreement as provided in the Agreement. Nothing in this Agreement requires any Principal Party to secure the consent of a Person other than other Principal Parties. No other successors or assigns of APC I or APC II shall be a beneficiary of this Agreement with any rights to enforce it.

10.7 **Applicable Law and Venue.** This Agreement shall be governed by the laws of the State of North Carolina and the only proper venue and court for litigation related to, arising out of or connected with this
Agreement or the relationships between the Principal Parties established by this Agreement shall be the Wake County Superior Court.

10.8 Notices. Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a Principal Party is required to serve or may give another Principal Party hereunder shall be in writing and shall be delivered or addressed to the other Principal Party at the address below set forth or to such other address as such Principal Party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be in writing and shall be given or served upon the other Principal Party or Principal Parties 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.

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

Town Manager  
316 N. Academy Street  
Cary, NC 27513  
Email: sean.stegall@townofcary.org

With a copy to (may be sent by email and first class mail only):  
Town Attorney  
316 N. Academy Street  
Cary, NC 27513  
Email: chris.simpson@townofcary.org

All notices, demands, requests, consents, approvals or communications to APC I and APC II shall be addressed to:

William F. Zahn  
113 Duncansby Court  
Cary, NC  27511  
Email: BillZahn@bellsouth.net

With a copy to (may be sent by email and first class mail only):  
Richard C. Stephenson  
Stephenson Law, LLP  
1100 Crescent Green, Suite 220
Notice of change in address for a Principal Party may be given by any notice method allowed herein. Notice of a change of address for a person to whom a copy is sent may be by first class mail and email. Any notice may be given on behalf of a Principal Party by the Principal Party’s attorney. For the purpose of this Section, Permitted Successors or Assigns of APC I and APC II shall be Principal Parties but no other successors or assigns of APC I or APC II shall be a beneficiary of this Agreement with any rights to enforce it.

10.9 **Entire Agreement.** This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between the Principal Parties including Laws existing on the Effective Date of this Agreement. There are no other promises, agreements, conditions or understandings, oral or written, expressed or implied, between or among the Principal Parties relative to the matters addressed herein.

10.10 **Construction.** To the extent there is a conflict between this Agreement on the one hand with the Ground Lease or Cary Laws existing as of the Effective Date of this Agreement on the other hand and no Principal Party is in default of this Agreement, the conflict shall be resolved by the provision and construction which most encourages, promotes, and enables the Community Development Plan, except in no event shall this Agreement be construed to cause Cary to be in default of the Ground Lease. Similarly, to the extent there is an ambiguity within this Agreement and no Principal Party is in default of this Agreement, the construction of this Agreement, including without limitation its [Exhibits](#), which most encourages, promotes and enables the Community Development Plan shall control (collectively the “[Fundamental Construction Rule](#)”).

So long as a construction recognizes and enforces the Fundamental Construction Rule, the following secondary construction and interpretation rules shall apply to this Agreement unless the context requires otherwise:

1. the Principal Parties agree that each Principal Party and its counsel has reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Principal Party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto;

2. the singular includes the plural and the plural the singular and the pronouns “it” and “its” include the masculine and feminine;

3. references to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation;

4. references to contracts and agreements shall be deemed to include all amendments to them and the words “include,” “including,” etc. mean include, including, etc. without limitation;

5. references to a “Section” or “section” or “paragraph” shall mean a section or paragraph of this Agreement;
(6) titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement;

(7) “duties” include obligations and “obligations” include duties;

(8) the word “shall” is mandatory; and

(9) normal business hours means Monday through Friday from 8:00 a.m. until 5:00 p.m. Eastern Standard Time or Eastern Daylight Savings Time as may be applicable.

10.11 Assignment of a Master Developer’s Rights and/or Duties. The Principal Parties agree that the overarching goal of Cary’s consideration of any proposed assignment of a Master Developer’s rights and duties is whether such assignment encourages, promotes, and facilitates full development of the DDP as set forth in this Agreement, the CC&Rs, the Parking Space License, the Stormwater Agreement and the Development Plan.

This section applies to all types or kinds of transfers, assignments, or delegations however denominated of a Master Developer’s rights or duties by either Master Developer, its successors or assigns. Every assignment proposed by a Master Developer approved by Cary to another Person of rights or duties originally owned by the Master Developer shall comply with the requirements of this section and be subject to the same review and approval by Cary as provided in this section. Those Persons who are assigned Master Developer rights and/or duties in accordance with 10.11.1a) and 10.11.1c) below are Permitted Successors or Assigns.

Except as otherwise provided herein, any transfer, assignment, or delegation by either Master Developer to any Person of any portion of its rights or duties established by this Agreement without the advance written approval of Cary shall be void and shall constitute a breach of this Agreement, allowing Cary, to immediately seek the remedies specified in Article 9.

The Principal Parties recognize that the participation and involvement of each Master Developer in the Development of the Private Mixed-Use Facilities is critical to accomplishing the purposes of this Agreement and the Community Development Plan. Specifically, the Master Developers (1) have the capacity to develop the Private Mixed-Use Facilities, (2) have the relationships with financial institutions, equity sources, general contractors, architects and civil engineers and prospective tenants sufficient to develop and operate the Private Mixed-Use Facilities, (3) possess the problem-solving and creativity to develop and operate the Private Mixed-Use Facilities in a first-class manner, (4) are committed to an exploratory process with Cary allowing Cary to play a significant role in design, construction and operation of the Private Mixed-Use Facilities beyond a traditional regulatory role and (5) are committed to ensuring that the Private Mixed-Use Facilities meet the vision, goals and community standards found in the ICCP and related development agreements and regulations. Each of these qualities were important factors considered by Cary when deciding to enter into negotiations with APC I and APC II and deciding to form this Agreement with APC I and APC II.

Recognizing that the Private Mixed-Use Facilities contain a mix of uses, including retail, residential and Class A office, and that in some instances assignment of a Master Developer’s rights and/or duties under this Agreement may be appropriate and promote full and timely development of the Private Mixed-Use
Facilities, Cary and the Master Developers have carefully crafted the rules and provisions governing assignment of a Master Developer’s rights and/or duties as follows:

10.11.1 Categories of Assignments. Except as specifically provided herein, a Master Developer shall not transfer, assign, or delegate any of its rights or duties established by this Agreement at any time without the advance written approval of Cary, which Cary may grant or withhold in its reasonable discretion. The categories of assignments and process for approving Requested Assignments shall be as follows:

a) Assignment to Major DDP Third-Party Lenders. At any specific point during Development of the Academy Street Project, either of the Master Developers may assign this Agreement for the limited and sole purpose of Development of a portion of the Academy Street Project, in whole or in part, for which the Master Developer controls and is primarily responsible for, or for refinancing of an existing loan on such portion of the Academy Street Project, or for additional improvements to or operation of such portion of the Academy Street Project, or, in the case of a Permitted Successor or Assign of a Master Developer, for a loan to acquire a portion of the Academy Street Project to certain third-party lenders ("Major DDP Third-Party Lender(s)") that satisfy one of the following requirements: (i) to one third-party lender who has a first deed of trust on the applicable lot in an original principal amount of not less than Ten Million Dollars ($10,000,000.00); and (ii) up to two (2) other third-party lenders who have deed(s) of trust of second or lesser lien priority in an original principal amount of One Million Dollars ($1,000,000.00) or more on the applicable lot. All other lenders of funds, work or services, including without limitation General Contractors, sub-contractors, suppliers and other entities to which the Master Developer may be in debt shall not be deemed Major DDP Third-Party Lenders and shall be merely "third party lenders." However, no such assignment to Major DDP Third-Party Lender(s) shall affect this Agreement, its order of priority or the CC&Rs.

No assignment to a Major DDP Third-Party Lender shall be approved by the Town Manager until the Master Developer has delivered to Cary documentation showing that the Major DDP Third-Party Lender has executed an agreement to loan or invest at least the minimum amount required above and for one of the purposes described in the immediately preceding paragraph on reasonable terms for betterment of the Academy Street Project or to strengthen the financial condition of the Academy Street Project.

Under such limited and special assignment for collateral, the Major DDP Third-Party Lender may possess, under the financial arrangement or agreement between a Master Developer and such lender, both of the following, as determined by the Major DDP Third-Party Lender:
(i) **Master Developer’s Default under this DDPA.** If a Master Developer defaults under the Agreement, the Major DDP Third-Party Lender has a limited right at its election, said election shall be made by delivery to Cary of a written assumption agreement in recordable form within thirty (30) days of Cary sending Notice of Breach to a Master Developer, to perform rights and duties of a Master Developer only to the extent necessary to cure in order to avoid impairment of this Agreement as collateral; or

(ii) **Default under Applicable Loan Documents.** If a Master Developer defaults under the applicable loan documents, the Major DDP Third-Party Lender shall provide Cary all notices of default sent to any Master Developer and upon election by the Major DDP Third-Party Lender, which shall be made by delivery to Cary of a written assumption agreement in recordable form within thirty (30) days of a Master Developer’s default, the Major DDP Third-Party Lender has all rights and duties of the Master Developer.

(iii) When exercising the rights under (i) or (ii) of this subsection, a Major DDP Third-Party Lender is subject to all terms of this Agreement that apply to the Master Developer. In the event a Major DDP Third-Party Lender becomes a Master Developer, the Major DDP Third-Party Lender shall be fully responsible to perform all of the Master Developer’s duties established by this Agreement, but may assign the Master Developer’s duties to an affiliate of the Major DDP Third-Party Lender by execution of a written assumption agreement in recordable form.

A Master Developer and a Major DDP Third-Party Lender shall hold harmless, indemnify and defend Cary of and from any demands, damages, costs, fees, including actual attorney fees, awards, judgments and all other sums due or claimed to be due and relating to any actions taken by Cary, the defaulting Master Developer, or the Major DDP Third-Party Lender based upon the default of a Master Developer under subsections 10.11.1(a)(i) or (ii). Cary may presume without investigation or any obligation to conduct investigation or inquiry that a Master Developer is in default of its obligations to the Major DDP Third-Party Lender, if the Major DDP Third-Party Lender takes any actions allowed under subsections 10.11.1(a)(i) or (ii). A Master Developer shall have no right to contest with Cary any action taken by the Major DDP Third-Party Lender, as all such recourse belongs exclusively between the Master Developer and the Major DDP Third-Party Lender. A Master Developer shall have no right to reimbursement or recoupment after default under this subsection for construction of any New Public Facilities.

Notwithstanding the foregoing, nothing in this subsection or Cary’s consent to an assignment to a Major DDP Third-Party Lender grants to any Major DDP Third-Party Lender rights, duties, or remedies greater or different than the rights, duties, or remedies of a Master Developer under this Agreement, nor relieves any Master
Developer from performing all of its duties under this Agreement, and no assignment to any Major DDP Third-Party Lender shall cause any agreement or understanding between the Major DDP Third-Party Lender and any other Person to alter, merge, or become part of this Agreement. Approval of this category of assignment by the Town Manager facilitates the Development of the DDP and the Academy Street Project and does not relieve the Master Developer from any of its duties to complete Development of the Academy Street Project.

The sole and exclusive remedy for challenging Cary’s refusal to approve a limited and special assignment to a Major DDP Third-Party Lender is a declaratory judgment brought in Wake County Superior Court by the then Master Developer. In no event are damages, costs, or attorneys’ fees recoverable against Cary, even if Cary’s refusal to approve the assignment is found to be in violation of the standards set forth herein. The Master Developers shall disclose the terms of this Agreement to every Person proposed as a Major DDP Third-Party Lender. In the event of a dispute between Cary and then Master Developer regarding Cary’s approval of a Major DDP Third-Party Lender, Cary and the Master Developer agree to expedite prompt resolution of the dispute by way of a declaratory judgment action.

b) **Assignment to Limited Developers.** A Master Developer may make a limited assignment of that Master Developer’s rights without any corresponding assignment of that Master Developer’s duties to a Limited Developer. Under this category of assignment, the Master Developer assigns the Master Developer’s rights for Development of either the street level retail leasable space or the Commercial Building leasable space in the Private Mixed-Use Facilities, but Master Developer remains solely and fully responsible to Cary for performance of this Agreement and any Development associated with the assignment of the Master Developer’s rights to a Limited Developer. By way of illustration, the Master Developer proposes to assign rights to develop to a retail tenant allowing the tenant to up-fit its space because the tenant has expertise and experience in up-fitting retail space for its use and the Master Developer remains responsible under this Agreement for the Development of the retail space complying with this Agreement, the CC&Rs and the approved Development Plan, as well as responsible for coordination and facilitation between Development of tenant’s up-fitting of its space and other components of the Private Mixed-Use Facilities. Because this type of assignment does not modify, alter, or limit a Master Developer’s duties to Cary, Cary’s prior approval or consent to such assignment is not required and is deemed granted. Except as specifically provided in the next paragraph or in Section 10.11.1(a)(iii) with respect to assignment by a DDP Third-Party Lender to an affiliate of the DDP Third-Party Lender, this is the only type of assignment of a Master Developer’s rights or duties that does not require Cary’s prior written approval. A Master Developer shall notify Cary of any assignments to a Limited Developer within ten (10) days of the assignment. The Master Developers agree that all Limited Developers are on record notice regarding the prohibition on assignment of duties under this Agreement to
Limited Developers. In addition, the Master Developers shall include in all applicable agreements with a Limited Developer express language stating that the agreement does not assign any duties under this Agreement to the Limited Developer. This category is not a modification of this Agreement and no assignment needs to be recorded in the Registry.

c) **Assignment to New Master Developer.** The final category is a total assignment of all of a Master Developer’s rights and duties to a Person causing a new Person to step into the shoes of the Master Developer as the new Master Developer of either the Commercial Building or Multi-Family Building of the Private Mixed-Use Facilities. This assignment may or may not relieve existing Master Developer of its duties under this Agreement. Without the written approval of Cary, no such total assignment shall occur prior to issuance of all certificates of occupancy for the entire Multi-Family Building and for the entire Commercial Building, including the street level retail space of the Private Mixed-Use Facilities. The intent of this prohibition is that the Master Developers selected by Cary to finance and construct the Academy Street Project remain responsible to finance and complete the entire Academy Street Project.

When a Master Developer proposes a new Master Developer to which to assign all of its rights and/or duties established by this Agreement (“**Proposed Assignee**”), the Master Developer shall submit to Cary information verified, by the Master Developer, demonstrating the financial strength of the Proposed Assignee and information demonstrating the Proposed Assignee’s prior development experience, status of the Proposed Assignee’s current development projects, and the Proposed Assignee’s litigation involving governments within the last five (5) years (“**Required Documentation**”). Upon review of Required Documentation, Cary may request and Proposed Assignee shall provide information regarding litigation involving governments with the last ten (10) years. For purposes of this Agreement, “financial strength” means that the Proposed Assignee has sufficient liquidity and solvency to complete the Development proposed to be assigned to it. In each Requested Assignment, the Master Developer shall provide evidence that if Cary approves the Requested Assignment, the Proposed Assignee has agreed to be bound by this Agreement including all of its **Exhibits** and all other ancillary agreements formed by Cary the Master Developers in connection with the Academy Street Project. This information shall be supplemented upon Cary’s request with any and all verified information requested by Cary.

When considering the Proposed Assignee, the Town Council will consider the Requested Assignment, the Required Documentation, whether approval of the assignment promotes and encourages full and timely Development of the DDP, whether there are sufficient safeguards to ensure maintain the Master Developer’s power and commitment to coordinate and facilitate between the Proposed Assignee’s Development and other components of the DDP, and any information discovered by Cary (the “**Major Assignment Standards**”).
Every total assignment will require Cary to undertake extensive review and study to determine, among other things, that such a proposed total assignment satisfies this Agreement, the CC&Rs and all of the Major Assignment Standards and the Proposed Assignee possesses a history of cooperation with governments and the capacity to perform the role of a Master Developer. All proposed assignments to a new Master Developer shall be subject to review by the Town Council and only approved by the Town Council.

Cary’s right to approve all assignments or attempted assignments of Master Developer rights and/or duties shall continue during the term of this Agreement no matter the number of assignments or attempted assignments.

Notwithstanding the above, either Master Developer, without advance approval by Cary, may convey any part or all of its ownership in the Property the respective Master Developer owns at any time after the first of the following to occur: (a) two (2) years following stabilization; or three (3) years after a certificate of compliance has been issued for the entire building that is the Master Developer’s duty to finance and construct under this Agreement. For purposes of this paragraph, “stabilization” means the point in time when at least seventy-five percent (75%) of the entire building that is the Master Developer’s duty to finance and construct under this Agreement has been leased to third-person tenants not owned or controlled by the Master Developer; nevertheless such Master Developer will remain the Master Developer with Master Developer rights and duties until it conveys all of its ownership in the lot it purchased from Cary in compliance with this Agreement and CC&Rs, at which time the Master Developer will no longer be a Master Developer.

10.11.2 Reasonable Terms and Conditions on Assignments. In connection with any proposed assignment of a Master Developer’s rights and/or duties under sections 10.11.1 of this Agreement, Cary may recommend in writing that restrictions, limitations, or conditions are imposed on the assignment as a means to address Cary’s concerns regarding the Proposed Assignment (“Cary’s Recommendation”). Upon the Master Developer’s acceptance of Cary’s Recommendation, such restrictions, limitations or conditions shall be material terms and conditions of any such assignment.

10.11.3 Recorded Assignment and Other Documents. No assignment requiring Cary Approval or consent, assumption agreement or other document changing the Master Developer shall be effective under this Agreement until documents evidencing such an assignment have been executed by the Master Developer, Cary, and the Proposed Assignee and such documentation has been recorded in the Registry (“Recorded Assignment”). In such documentation the Master Developer shall state whether the assignee is entitled to notice under Article 9 of this Agreement.

10.11.4 No Circumvention of Assignment Restrictions. The Principal Parties recognize that each of them and every other Person who becomes a Principal Party owe each other a duty of good faith and fair dealing under section 10.11 and that during the term of this Agreement, many factors beyond their control could occur. No Principal Party shall engage in a sale of assets, merger or share exchange, or reorganization, for the purpose of defeating or eroding section 10.11 or to undermine the purpose of Development and operation of the DDP.
Therefore, the Principal Parties agree that early, frequent, and forthright communications regarding possible requests to Cary to consent to assignments of a Master Developer’s rights and/or duties are appropriate and important to the success of this Agreement.

10.12 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

10.13 **Agreement to Cooperate.** In the event of any legal action instituted by a Person or governmental entity challenging the validity of any provision of this Agreement, the Principal Parties and all successors or assigns of APC I and APC II agree to cooperate in connection with such action; provided, however, each Principal Party shall retain the right to pursue its own independent legal defense. If Cary elects to take the lead on any joint defense, Cary shall have the right to choose counsel. In no event shall APC I, APC II, any of their successors or assigns, the Principal Owners, their heirs, successors or assigns or Cary, its successors or assigns, contest the approval, validity or legality of this Agreement or any provision herein.

10.14 **No Deemed Waiver.** Failure of a Principal Party to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of such Principal Party to exercise at some future time said right or any other right it may have hereunder, but no other successors or assigns of APC I or APC II shall be a beneficiary of this Agreement with any rights to enforce it.

10.15 **Invalidity.** If any term or provision of this Agreement, or its application to any Person is held to be unenforceable for any reason, this Agreement shall be adjusted as only by Town Council action rather than voided in order to achieve the intent of the Principal Parties to the fullest extent possible. In the event the Town Council fails to approve the adjusted agreement within ninety (90) days of this Agreement or any portion of this Agreement being held to be unenforceable, this Agreement shall be voided automatically and by operation of law without any further act by any Principal Party being necessary to terminate it. In such an event, the Principal Parties agree to execute a termination notice and record it in the Registry, but failure to execute or record a termination notice shall not affect the automatic termination of this Agreement by operation of law under this provision.

10.16 **Authority.** Each Principal Party represents that it has undertaken all actions necessary for approval of this Agreement, and that the Person signing this Agreement has the authority to bind each of the Principal Parties.

10.17 **Transparency and Public Involvement.** It is the intent of the Principal Parties that all aspects of the implementation of this Agreement shall be carried out in an open, transparent fashion with opportunities for effective and meaningful public involvement. The Principal Parties shall take reasonable steps to make information regarding the implementation of this Agreement fully available for public review with the exception of any information protected from disclosure by the North Carolina Public Records Act or other Laws.

10.18 **Public Records.** Cary may provide copies of public records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by the Master Developer, Cary will not disclose records that meet all of the requirements of a trade secret as set forth in N.C.G.S. § 66-152, that are specifically designated as a “trade secret” or “confidential” at the time of
initial transmittal by the Master Developer to Cary, and that are otherwise entitled to protection under N.C.G.S. § 132-1.2(1).

10.19 **Estoppel.** Each of the Principal Parties agree, from time to time, within twenty (20) days after request of the other Principal Party, to deliver to the requesting Principal Party or designee, an estoppel certificate substantially in the form attached hereto as **Exhibit F** or as may otherwise be reasonably requested by a third-party lender, tenant or owner of the Property or applicable portion thereof. Such estoppel shall not relieve any Principal Party of its duties under this Agreement or change any order of priority of this Agreement or the CCRs.

10.20 **Gifts and Favors.** All Persons shall be aware of and comply with the North Carolina Constitution and laws related to gifts and favors, conflicts of interest and the like, including without limitation N.C.G.S. §14-234, N.C.G.S. § 133-1, and N.C.G.S. § 133-32.

10.21 **Electronic Version of Contract.** Cary may convert a signed original of the Agreement 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 Agreement shall be deemed for all purposes to be an original signed Agreement.

10.22 **Verification of Work Authorization.** All Developers and all subcontractors shall comply with Article 2, Chapter 64, of the North Carolina General Statutes to the extent applicable.

10.23 **Pre-Audit Requirement.** This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by N.C.G.S § 159-28) has been affixed and signed by Cary’s Finance Officer or Deputy Finance Officer.

10.24 **Authority of Town.** All Persons, including without limitation, the Principal Owners, the Master Developers, Permitted Successors or Assigns and all other Persons, now or in the future, and all owners of the Property, now or in the future, and all these Persons’ heirs, successors or assigns, covenant that none of them, individually or collectively, will take any legal action against Cary in which it is alleged that Cary lacks authority to enter into any part of this Agreement or undertake the work or obligations contemplated herein.

10.25 **Absence of Duress.** The Master Developers, and all other Persons, now or in the future, and their heirs, successors or assigns, represent that each of them entered into or accepted this Agreement knowingly and voluntarily, not under duress and in pursuit of a desire to maximize the success of the DDP, the CCP, the Community Development Plan, the Public Facilities and the Private Mixed-Use Facilities of the DDP and all such Persons, now or in future, and their successors or assigns further covenant that none of them will take legal action against Cary in which it is alleged that any of them entered into this Agreement or any amendments to this Agreement under duress.

10.26 **Representations and Warranties of the Principal Parties.** The Principal Parties, and the persons executing this Agreement on their behalf, represent and warrant, as applicable, that (a) such Principal Party or person has the full power and authority to enter into this Agreement, to execute it on behalf of the Principal Party indicated on the signature page, and to perform the obligations hereunder, (b) each of the Master Developers is a limited liability company duly organized, validly existing and in good standing.
under the laws of the State of North Carolina, (c) such Principal Party is acting on its own behalf, (d) this Agreement is a valid and binding obligation, enforceable against the Principal Parties and all successors or assigns of the Principal Parties in accordance with its terms, (e) entering into this Agreement does not conflict with any other agreements entered into by either Principal Party, and (f) the execution, delivery, and performance of this Agreement has been duly and validly authorized by all necessary corporate or governmental action on its part. Specifically (and not as a limitation), Cary represents and warrants to the Master Developers that this Agreement has been pre-audited to ensure compliance with the budgetary accounting requirements (if any) that apply thereto. In the event that any of the obligations of Cary in this Agreement constitute debt, Cary has complied, at the time of the obligation to incur the debt and before the debt becomes enforceable against Cary, with any applicable constitutional and statutory procedures for the approval of the debt. Notwithstanding the foregoing, it is not the intent of subsection 10.26 to make any individual personally liable for the performance or nonperformance of this Agreement.

The Principal Parties agree that a provision substantially similar to the promises and representations made by the Principal Parties to each other in section 10.26 shall be required and included in any Recorded Assignment, amendment, modification or termination of this Agreement.
IN WITNESS WHEREOF, Cary, APC I and APC II hereby set their hands and seals, effective the date first above written.

TOWN OF CARY

By: ________________________________(SEAL)

Title: ________________________________

State of North Carolina
County of Wake

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that _________________ personally came before me this day and acknowledged that he or she is _________________ of the Town of Cary and acknowledged, on behalf of the Town of Cary, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the _____ day of _________________, 20120.

______________________________
Notary Public

My Commission Expires:

________________________________________

Certificate of Town of Cary Finance Officer

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

________________________________________
Deputy Finance Officer

________________________________________
Date
IN WITNESS WHEREOF, the Parties hereby set their hands and seals, effective the date first above written.

ACADEMY PARK CARY, LLC

By: ________________________________(SEAL)
Title:_____________________________________

State of North Carolina
County of Wake

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that ______________ personally came before me this day and acknowledged that he or she is ______________ of ACADEMY PARK CARY, LLC, a North Carolina limited liability company, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the _____ day of ___________________, 2020.

_____________________________________
Notary Public

My Commission Expires:
IN WITNESS WHEREOF, the Parties hereby set their hands and seals, effective the date first above written.

ACADEMY PARK COMMERCIAL, LLC

By: ________________________________(SEAL)
Title:___________________________________

==================================================================
State of North Carolina
County of Wake

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that
__________________________ personally came before me this day and acknowledged that he or she is
__________________________ of ACADEMY PARK COMMERCIAL, LLC, a North Carolina limited liability
company, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this
the _____ day of ___________________, 2020.

______________________________________________
Notary Public

My Commission Expires:

______________________________________________
Exhibit B1

Mixed-Use Multi-Family Building
Covenants, Conditions and Restrictions

The property described in this Special Warranty Deed (the “Property”) by and between the Town of Cary, its successors or assigns (“Cary”) and Academy Park Cary, LLC (“APC I”), its successors or assigns (collectively APC I and its successors or assigns shall be “Grantee”) shall be subject to the following covenants, conditions and restrictions (the “CC&Rs”) deemed by Cary to be in the public interest and for the purpose of benefitting near and adjacent property owned by Cary, particularly New Lots 3 and 4 as shown on that plat entitled “Recombination Plat for Cary Regional Library and Downtown Parking Deck for Town of Cary”, recorded in Book of Maps 2020, Page ________, Wake County Registry, the Downtown Park, Parking Deck and Regional Library, and for carrying out Cary’s Community Development Plan evidenced by the Downtown Development Project Agreement and its Exhibits executed by Cary, APC I, and Academy Park Commercial, LLC, a North Carolina limited liability company, on the ___ day of _____, 2020 and recorded in Book ___, Page ___, Wake County Registry (collectively the “DDPA”) as authorized by N.C.G.S. §§ 160A-457(4) and 160A-458.3, and Section 11.3 of Cary’s Charter for the development, construction and operation of the Private Mixed-Use Facilities that are part of the downtown development project known as the “Academy Park Project”:

1. Design and Construction of the Mixed-Use Multi-Family Building. The Property shall have only one building, which shall be the Mixed-Use Multi-Family Building described in the DDPA and includes all improvements required by the DDPA to be located on the Property (collectively the “Building”). The Building shall be of substantially the same shape and size shown and described in the DDPA; shall be designed and constructed of substantially the same materials shown, described and identified in the DDPA; and shall have substantially the same design and appearance as shown and described in the DDPA, including without limitation, the architectural features, characteristics, appearances and architectural style shown and described in the DDPA, including without limitation, Exhibit G of the DDPA. APC I has filed a complete application with Cary for Cary’s approval of a development plan to develop the Building (the “Development Plan”) pursuant to Cary’s Land Development Ordinance (the “LDO”). As required by the DDPA, no later than thirty (30) days after the later of Cary’s approval of the Development Plan or APC I’s purchase of the Property, APC I shall file one or more complete application(s) for one or more building permit(s) and all other Cary permits required for construction of the entire Building (the Development “Permits”). Within one hundred and twenty (120) days of issuance of all of the Development Permits necessary to commence construction of the Building, APC I shall commence vertical construction of the Building (at least erecting columns), and APC I shall complete construction of the Building and obtain a certificate of compliance for the shell of the Building and certificates of occupancy for the dwelling units in the Building within twenty-four (24) months after commencing vertical construction of the Building. The time deadlines in this Paragraph are essential terms and are subject to the force majeure provision in section 10.4 of the DDPA. For the purpose of this Paragraph, the phrase “substantially the same” shall mean essentially the same or with little or no substantive difference.
2. **Use of the Multi-Family Building.** The Building shall not be used, enjoyed or operated inconsistent with the DDPA and is intended by Cary and APC I to have a mixture of uses. Cary and APC I are setting forth guiding principles, general rules and specific restrictions applicable to uses at or in the Building:

A. **Guiding Principles.** The LDO effective as of the date of recordation of this Special Warranty Deed sets forth guidance as to uses appropriate for the Town Center District. Cary and APC I agree that the Building shall be leased and used in a manner that implements Cary’s Downtown related adopted laws, resolutions, policies, plans and guidelines (collectively “Downtown Policies”) and specifically in a manner that encourages pedestrian-friendly tenants with interesting and active storefronts integrated through urban design into adjacent streetscapes to foster a unique, attractive and memorable destination for visitors and residents and to establish a sense of place. To this end, Cary and APC I agree to consult with each other as to prospective non-residential tenants from time to time, and APC I shall operate, manage and regulate the Building to promote the peaceful enjoyment of the Building’s residents, other tenants and others, including visitors to Downtown Cary.

In the event APC I desires a preliminary determination by Cary as to whether a specific use, activity or tenant complies with these CC&Rs, APC I may request such a determination from the Town Manager or the Town Manager’s designee.

Because of changing tenant mix or marketplace conditions and evolving Downtown Policies, APC I may request Cary to approve exceptions to these CC&Rs (“APC I Proposal”). Every APC I Proposal must propose a use or uses permitted by the LDO for the Property at the time of the proposal and show that the APC I Proposal carries out the recommendations of Cary’s Downtown Policies existing at the time of the proposal.

Each APC I Proposal will be reviewed by the Town Manager or the Town Manager’s designee, and the Town Manager or the Town Manager’s designee may approve, disapprove or request additional information from APC I. In all cases in which the Town Manager’s approval is required or permitted, in lieu of deciding whether to approve or not approve any APC I Proposal, the Town Manager or Town Manager’s designee may, in his or her sole discretion, refer the request to the Town Council by placing it on the Town Council’s agenda for consideration and action. The Town Council may, in its sole discretion, consider, not consider, grant or deny the request for any or no reason. Every approval shall be in writing and until written, no verbal or oral indication or promise to approve shall be binding or effective, and the Town Manager or the Town Manager’s designee shall issue written approval of every APC I Proposal approved by the Town Council.

B. **Description of the Non-Residential Area, Residential Area and Accessory Area of the Building.** The Non-Residential Area and Residential Area of the Building are defined and described as follows:
i. The drawing by Michael Todd Mesnard, Registered Architect, dated 09-12-19, sealed on 01-31-20, and entitled “ONE WALKER – RESIDENTIAL”, attached hereto as Exhibit A and incorporated by reference, depicts the “First Floor Plan – Overall” of the Building. The first floor of the Building shall be referred to as the ground floor or bottom floor of the Building. The areas on Exhibit A depicted as “Retail” shall be referred as the “Non-Residential Area” of the Building, and each of those spaces may be occupied by one or more tenants of the Building; and

ii. The area on Exhibit A depicted as “Bike Storage,” “Dog Wash,” “Pool EQ,” “Mech,” “Women,” “Men,” “Fitness,” “Maint. Office,” “Electrical Room,” “Pool Courtyard,” “Elev,” “Stair 2,” “Stair 3,” “Elevator Lobby,” “Loading,” and “Elec” are areas for uses of the Building that are accessory to the dwelling units in the Building and these areas are referred to herein collectively as the “Accessory Area”.

iii. All other areas of the Building shall be deemed “Residential Area”, including the rooftop of the Building.

C. Prohibitions Throughout the Building. The following uses and activities are prohibited throughout the Building:

i. Every use or business that is an adult bookstore, adult establishment, adult live entertainment, adult motion picture theatre or adult mini motion picture theatre as these terms are defined in N.C.G.S. § 14-202.10 and any other use, activity or business that has as one of its purposes, or has, as a significant portion of its business, use or activity, an emphasis on matter and conduct depicting, describing or relating to specified anatomical areas and specified sexual activities as these terms are defined in N.C.G.S. § 14-202.10;

ii. Sexually oriented business, to the extent such business is not prohibited by Paragraph 2(C)(i) above;

iii. Sales of illegal drugs or illegal drug paraphernalia;

iv. Every use or activity illegal under any Federal, State, local or Cary rule, regulation or law; and

v. Hanging or attaching of clothes, towels, signage, lights and any other items to the façades, balconies, roofs, exterior railings, exterior window sills or exterior architectural features of the Building such that they are visible from the Regional Library, Downtown Park or the public right of way unless associated with a Cary sponsored entertainment event or approved by the Town Manager or the Town Manager’s designee. This prohibition shall not apply to signage of tenants of the Non-Residential Area or to signage of the fee simple owner of the Building that is in compliance with Cary laws and policies. The terms Regional Library and Downtown Park shall mean the same as they mean in the DDPA.
D. **Prohibited or Permitted Uses of the Non-Residential Area of the Multi-Family Building.**

Unless approved as provided in Paragraph 2(A) above, the following uses and activities described in the LDO are restricted, limited, or prohibited in the Non-Residential Area as described below:

i. All uses and activities not permitted at or in the Building by Cary laws, including the LDO, at the time a use is proposed to commence, are prohibited;

ii. All uses and activities permitted at or in the Building on the date of recordation of this Special Warranty Deed by Cary laws, including the LDO, are subject to these additional restrictions and limitations:

   a. All uses collected together as “Residential Uses” by the LDO’s Table of Permitted Uses for the Town Center (“Table”) are prohibited;

   b. All uses collected together as “Public/Institutional Uses” by the Table are prohibited except the following use types are permitted: (1) day care center, (2) governmental office, (3) museum, and (4) all educational uses (Pre-School, College and School);

   c. All uses collected together as “Commercial Uses” by the Table are prohibited except the following use types are permitted: (1) all Food and Beverage Service uses except that every nightclub and/or bar shall be clearly connected and incidental to a restaurant; (2) radio or TV broadcasting studios where the act of broadcasting is visible from the right-of-way or public access areas; (3) offices promoting Cary, such as a chamber of commerce office; (4) amusement establishments; (5) commercial indoor recreational facilities; (6) pool or billiard halls; (7) small theaters; (8) ABC stores; (9) convenience stores; (10) one moped rental service (may include sales if rental is also provided); (11) private postal centers (for example, a FEDEX store or UPS store); (12) personal service establishments; (13) breweries, distilleries or wineries that are open to the public and include either a tasting room or restaurant; (14) retail stores; and (15) manufacturing of art in stores that sell works of art; and

   d. All uses collected together as “Accessory Uses” by the Table are prohibited, except for a cluster-unit mailbox.

E. **Prohibited or Permitted Uses of the Residential Area of the Multi-Family Building.**

Unless approved as provided in Paragraph 2(A) above, and regardless whether permitted by the Table, all uses and activities described in the LDO are prohibited in the Residential Area of the Building, except for the following:

i. Apartments that are separate dwelling units leased to non-transient, long-term tenants who are not owners of the Property; and
ii. The following are permitted on the roof of the Building: (1) a restaurant serving the general public with or without a nightclub or bar that is clearly connected and incidental to the restaurant; and (2) accessory uses to the apartments for the exclusive benefit of Building residents and their family members and guests.

F. **Prohibited or Permitted Uses of the Accessory Area of the Mixed-Use Multi-Family Building.** Unless approved as provided in Paragraph 2(A) above, and regardless whether permitted by the Table, all uses and activities described in the LDO are prohibited in the Accessory Area of the Building, except for the following:

i. stair wells;

ii. a leasing/management office (or sales/management office if sales of dwelling units are permitted by the Town Manager or the Town Manager’s designee) for leasing (or selling, if permitted) dwelling units and managing the Building; and

iii. The following uses for the exclusive use or benefit of Building residents and their family members and guests: (1) swimming pool, hot tub or spa; (2) cluster box unit-mailbox; (3) laundry and similar utility areas, as accessory uses to the dwelling units; (4) gathering or recreational areas; and (5) other accessory uses to the apartments for the exclusive benefit of Building residents and their family members and guests. The foregoing uses in (4) and (5) immediately above are allowed on the roof of the Building.

3. **Parking Reservation Agreement.** The Academy Park Project Parking Reservation and License Agreement attached to the DDPA as Exhibit D shall be appurtenant to and non-severable from the Property when executed by Cary and APC I.

4. **APC I’s Duties and No Assignment or Conveyance without Cary Approval.** Until such time as APC I or a successor Master Developer conveys all of its ownership interest in the Property in compliance with the DDPA and these CC&Rs, excluding any conveyance of duties and responsibilities of the Master Developer of the Property or the Building in compliance with the DDPA to any Major Third-Party DDP Lender (as defined in the DDPA), APC I shall perform all of the duties and responsibilities of the Master Developer of the Property and the Building required by the DDPA for so long as Cary has not terminated the DDPA or the DDPA has not expired. Except for leases to tenants to occupy and use the Building, Deeds of Trust, Assignments of Rents, and other documents to secure repayment of loans to APC I or subsequent owner of the Property for acquisition of the Building, construction financing, short or long term permanent financing or refinancing, additional improvements to the Building, operation of the Property or the Building, acquisition of the Property or Building, and sales of residential units if the Building is converted from apartment use (but only after Cary’s written approval as required by Paragraph 2A of these CC&Rs) to some other type of residential ownership or use, such as, without limitation, condominiums, APC I or any subsequent owner of the Property or the Building shall not assign, convey or attempt to assign or convey any portion of or interest in the Property or the Building except with Cary’s advance written approval as required by the DDPA.
Notwithstanding the above, APC I, without Cary’s advance written approval, may convey any part or all of its ownership interest in the Building at any time after the first of the following to occur: (a) two (2) years following stabilization; or (b) three (3) years after certificates of occupancy have been issued for all of the residential dwelling units in the Building and a certificate of compliance has been issued for at least the shell of the Non-Residential Area. For this Paragraph, the word “stabilization” means that point in time when at least seventy-five percent (75%) of the residential dwelling units in the Building have been leased to third-person tenants not owned or controlled by APC I; nevertheless, APC I will remain the Master Developer with Master Developer rights and duties until it conveys all of its ownership interest in the Property and Building in compliance with the DDPA.

In the event APC I conveys all of its ownership interest in the Property and the Building in compliance with the DDPA (excluding any deed of trust or other conveyance as security for any loan to APC I), the Grantee of more than fifty percent (50%) ownership interest of the Property and the Building shall be deemed to be the Master Developer of the Property and the Building. If no Grantee owns more than fifty percent (50%) of the Property and the Building, then the Grantee owning the largest percentage of ownership of the Property and the Building shall be the Master Developer.

Any attempted assignment or conveyance of any portion of or interest in the Property or the Building by APC I not in compliance with this Paragraph 4 or the DDPA shall be void ab initio without any action by Cary being required to enforce this Paragraph 4 and in no event are these CC&Rs discharged or otherwise affected by any such assignment or conveyance.

5. **Real Covenants Running with the Property and Amendment.** These CC&Rs are real covenants, touch and concern the Property and the Building, appurtenant to Cary-owned land adjacent to or near the Property which land is benefitted by these CC&Rs and these CC&Rs are deemed necessary for the public interest and to carry out the purposes of Cary’s Community Development Plan which is defined in the DDPA and, including, without limitation, the following as defined in the DDPA: the Academy Park Project; the Downtown Park; the Parking Deck and the Regional Library. These CC&Rs shall run with the Property for ten (10) years after recordation of this Special Warranty Deed, at the end of which time they shall automatically terminate. These CC&Rs shall be binding upon any and all successors or assigns of APC I regardless whether approved by Cary. These CC&Rs shall be amended or terminated only upon Cary Town Council’s written approval and execution of such written amendment by Cary and the Master Developer of the Property and the Building at the time of the amendment or termination, except that no such written approval or execution of a written termination shall be required to evidence the automatic termination of these CC&Rs at the end of the ten (10) year term. At any time during the term of these CC&Rs and upon the request of Cary, Cary, the Master Developer and all successors or assigns of APC I shall take such actions as may be necessary to re-record these CC&Rs and such other provisions or amendments of the CC&Rs as they mutually agree to promote the Academy Park Project and the land owned by Cary that is benefitted by these CC&Rs.

6. **Remedies.**
A. **General Injunctive and Declaratory Enforcement Rights.** These CC&Rs are enforceable at law or at equity only by any of the following: Cary; APC I; any successor Master Developer of the Property and the Building; and any Major DDP Third-Party Lender (as these terms are defined in the DDPA) who requires written assignment by APC I of rights to enforce these CC&Rs by APC I or a successor Master Developer. Each of the foregoing Persons who alleges that a breach of these CC&Rs has occurred or who brings an action for such alleged breach is an “**Enforcing Party**”. For the purpose of interpreting, construing, applying or enforcing these CC&Rs through specific performance or for ending a violation, an Enforcing Party may bring a declaratory judgment action, with or without a request for injunctive relief at all times, or bring an action for injunctive relief, without seeking damages against any other Enforcing Party or any Grantee, including without limitation, tenants of the Building (“**Responding Party**”) for any violation of any provision of these CC&Rs.

B. **Specific Damage Enforcement Rights for Violations of Paragraph 2.** In addition to any additional rights or remedies established by the CC&Rs or the DDPA, either jointly or separately, an Enforcing Party may enforce Paragraph 2 of these CC&Rs in equity or law as follows:

i. **Liquidated Damages for Major and Minor Breaches of Paragraph 2 of the CC&Rs.** Prior to bringing any legal or equitable action against a Responding Party for breach of these CC&Rs, jointly or separately, the Enforcing Party alleging that a breach has occurred first shall notify the Responding Party in writing of the breach alleged to have occurred, and the Responding Party shall have not less than thirty (30) days in which to cure the breach after receiving notice of the alleged breach; provided, if the breach has not been cured within said thirty (30) day period and the Responding Party (1) is diligently and in good faith pursuing such action as reasonably necessary to remedy the breach, and (2) provides within the 30-day period a written plan and schedule to the Enforcing Party, this 30-day period shall be extended for up to sixty (60) additional days (a total of ninety (90) days after receipt of notice), time being an essential term. A breach of these CC&Rs by a Grantee other than APC I shall not constitute a breach of these CC&Rs by APC I, and a breach of these CC&Rs by a Grantee other than a successor Master Developer shall not constitute a breach of these CC&Rs by the successor Master Developer.

In the event the breach is not cured within the times described above, jointly or separately, the Enforcing Party may proceed as follows:

a. If the alleged breach is for any part of the Property being used for a use prohibited by these CC&Rs, it shall be a “major breach” and the Enforcing Party, separately or jointly, with another Enforcing Party, may bring any action or proceeding permitted by law or in equity against a Responding Party to enforce the CC&Rs; or if the alleged breach of these CC&Rs involves hanging or attaching prohibited items to the Building or other similar matters prohibited by Paragraph 2(C)(v), such breach shall be a “minor breach” and the Enforcing Party, separately or
jointly with another Enforcing Party, may bring an enforcement action against a Responding Party.

b. If a court of competent jurisdiction enters a final, non-appealable judgment against a Responding Party that a major breach or minor breach has occurred, such Responding Party shall be liable, in addition to any other remedy permitted by law, for payment of the following liquidated damages to compensate for damages to the Enforcing Party or Enforcing Parties bringing the enforcement action:

1) All of the Enforcing Party’s or Enforcing Parties’ court costs and reasonable attorneys’ fees in pursuing action against the Responding Party and obtaining the judgment against the Responding Party; and

2) If the breach is a major breach, a payment of liquidated damages to the Enforcing Party or Enforcing Parties who obtained the judgment against the Responding Party in the amount of $1,000.00 per day for each day that the major breach exists from the day the breach began, which has been determined by Cary and APC I to be a fair and reasonable estimate of the daily damages suffered by the Academy Park Project and Cary’s land that is benefitted by these CC&Rs as result of a major breach; or

3) If the breach is a minor breach, a payment of liquidated damages to the Enforcing Party or Enforcing Parties who obtained the judgment against the Responding Party in the amount of $250.00 per day for each day that the minor breach exists from the day the breach began, which has been determined by Cary and APC I to be a fair and reasonable estimate of the daily damages suffered by the Academy Park Project and Cary’s land that is benefitted by these CC&Rs as result of a minor breach.

4) Any liquidated damages paid to multiple Enforcing Parties shall be divided between or among them in equal amounts.

Nothing in this Paragraph 6(B) shall limit any rights or remedies possessed by the Enforcing Party to enforce the provisions of the CC&Rs other than Paragraph 2 of the CC&Rs, and any rights or remedies in the DDPA or other documents or laws, including, without limitation any restrictions, rules or regulations imposed on the Building by APC I or any successor Master Developer, and any Cary laws and regulations. With respect to enforcement of these CC&Rs, Cary and APC I or successor Master Developer agree to work together cooperatively and in good faith to take affirmative actions to address actual or anticipated breaches of Paragraph 2 of these CC&Rs.

C. **Right of Repurchase in Event of Bankruptcy, Receivership or Other Similar Event.** Upon the filing of any bankruptcy proceeding, receivership or other similar event causing the Property to become subject to such proceeding, Cary, at Cary’s sole election, shall have the right to repurchase the Property on the following terms and conditions:
i. Cary repurchases the Property at the greater of the purchase price as determined by
the fair market value determined by an appraisal rendered by a MAI appraiser
selected by Cary, or the unpaid balance of principal and interest (at pre-default rate)
on the loan secured by a first lien deed of trust on the Property to a Major DDP Third-
Party Lender (as that term is defined in the DDPA), excluding Major DDP Third-
Party Lender collection fees, costs, and expenses (‘Purchase Price’). If the
proceeding requires court approval of the appraiser selected by Cary, the appraiser
will be subject to court approval.

ii. Cary shall deposit cash with an escrow agent chosen by Cary in the amount of the
Purchase Price within sixty (60) days of the date of the appraisal in the bankruptcy
or other similar proceeding and upon Cary’s deposit, the Grantee who owns fee
simple title to the Property shall file a motion with the court to approve the sale of
the Property to Cary, if necessary under the rules of the proceeding, and the motion
to approve the sale shall be set promptly for hearing before the court having
jurisdiction over the Property. The Grantee who owns fee simple title to the Property
shall be deemed to waive any objection to the sale of the Property to Cary. In the
event the court approves the sale of the Property to Cary, the court shall order transfer
of the Property to Cary and the proceeds shall be distributed in accordance with the
orders of the court. In the event the court does not approve sale of the Property to
Cary, the cash deposited by Cary shall be returned to Cary.

iii. In the event the sale of the Property is not approved by the court having jurisdiction
over the Property within sixty (60) days of Cary’s deposit of the Purchase Price,
unless otherwise extended with the consent of Cary, Cary shall have the right (but
not the obligation) to withdraw the deposit, whereupon Cary’s right to repurchase the
Property by reason of that particular bankruptcy, receivership or other similar event
(but not with respect to any bankruptcy) shall terminate.

7. **Interpretation, Construction and Severability.** These CC&Rs shall be interpreted and
construed to accomplish the public interest and purpose of the Academy Park Project, the Regional
Library, the Downtown Park, the Parking Deck, and Cary’s Downtown Policies. Invalidation of
any one or more of these covenants, conditions or restrictions by judgment or court order shall in
no way affect any other provisions, which shall remain in full force and effect. Nothing in these
CC&Rs shall restrict, modify, or lessen Cary’s discretionary authority to enforce its laws and
regulations, including the LDO, in any manner provided by law.

8. **Exclusive Venue and Jurisdiction.** Except for matters required to be considered in a
bankruptcy court, all actions concerning these CC&Rs shall be commenced in Wake County
Superior Court and said Court shall be the exclusive venue and jurisdiction to determine any
dispute or controversy arising out of the CC&Rs.
1. The architectural drawings should be used in conjunction with the civil, structural, MEP, fire, and acoustic consultants.

2. The contractor should be advised that the contractor shall coordinate all of the trades in the area.

3. All penetrations of fire rated assemblies shall be coordinated with the fire protection consultant.

4. The failure to coordinate will be performed by the architect.

5. Owner.

6. All doors shall be mounted min. 4" from the interior face of wall to the edge of the door.

7. Contractor is responsible for installing all accessories, handrails, and millwork indicated in the drawings.

8. Blocking and reinforcing as required for the installation of toilet partitions, toilet blockings, and rebar for locations of sound attenuation insulation.

9. Wood in contact with masonry, concrete, or used in structural areas shall be treated.

10. Provide sealant between all dissimilar sections.

11. Wood in contact with masonry, concrete, or used in structural areas shall be treated.

12. Wood in contact with masonry, concrete, or used in structural areas shall be treated.

13. Wood in contact with masonry, concrete, or used in structural areas shall be treated.

14. Wood in contact with masonry, concrete, or used in structural areas shall be treated.

15. Wood in contact with masonry, concrete, or used in structural areas shall be treated.

16. Refer to partition types sheets (G1.31 - G1.33)

17. GWB @ restroom locations to be moisture treated.

18. The general contractor to provide fire extinguisher cabinets 42" above the floor to handle fire extinguishers as required by local code and local fire marshal.

19. The general contractor to provide Knox box as required by local code.

20. The general contractor to provide fire alarm system for all locations with architected prior to building.


22. The general contractor to provide fire alarm system for all locations with architected prior to building.

23. Televisions.

24. The general contractor to provide fire alarm system for all locations with architected prior to building.

25. Televisions.
Exhibit B2

Commercial Building
Covenants Conditions and Restrictions

The property described in this Special Warranty Deed (the “Property”) by and between the Town of Cary, its successors or assigns (“Cary”) and Academy Park Commercial, LLC, (“APC II”) its successors or assigns (collectively APC II and its successors or assigns shall be called the “Grantee”) shall be subject to the following covenants, conditions and restrictions (the “CC&Rs”) deemed by Cary to be in the public interest and for the purpose of benefitting near and adjacent property owned by Cary, particularly New Lots 3 and 4 as shown on that plat entitled “Recombination Plat for Cary Regional Library and Downtown Parking Deck for Town of Cary”, recorded in Book of Maps 2020, Page _______, Wake County Registry, the Downtown Park, Parking Deck and Regional Library, and for carrying out Cary’s Community Development Plan evidenced by the Downtown Development Project Agreement and its Exhibits executed by Cary, Academy Park Cary LLC, a North Carolina limited liability company, and APC II on the ___ day of ______, 2020 and recorded in Book ___, Page ___, Wake County Registry, (collectively the “DDPA”) as authorized by N.C.G.S. §§ 160-457(4) and 160-458.3, and Section 11.3 of Cary’s Charter for the development, construction and operation of the Private Mixed-Use Facilities that are part of the downtown development project known as the “Academy Park Project”:

1. **Design and Construction of the Commercial Building.** The Property shall have only one building, which shall be the Commercial Building described in the DDPA, and includes all improvements required by the DDPA to be located on the Property (collectively the “Building”). The Building shall be of substantially the same shape and size shown and described in the DDPA, shall be designed and constructed of substantially the same materials shown, described and identified in the DDPA, and shall have substantially the same design and appearance as shown and described in the DDPA, including without limitation the architectural features, characteristics, appearances and architectural style shown and described in the DDPA, including without limitation, Exhibit G of the DDPA. APC II has filed a complete application with Cary for Cary’s approval of a development plan to develop the Building (the “Development Plan”) pursuant to Cary’s Land Development Ordinance (the “LDO”). As required by the DDPA, not later than one (1) year after the later of Cary’s approval of the Development Plan or conveyance of the Property to APC II, APC II shall file one or more complete application(s) for one or more building permit(s) and all other Cary permits required for construction of the entire Building (“Development Permits”). APC II shall not start any construction work on the Property until APC II also is ready to commence vertical construction of the Building upon completion of grading. Within one (1) year of issuance of all of the Development Permits necessary to commence construction of the Building, APC II shall commence vertical construction of the Building (i.e., at least erecting columns), and APC II shall complete construction and obtain a certificate of compliance for the shell of the entire Commercial Building no later than two (2) years after construction of the Mixed-Use Multi-Family Building is completed on the Property (“Construction Completion Time”). The time deadlines in this Paragraph are essential terms and are subject to the force majeure provision in section 10.4 of the DDPA. For the purpose of this Paragraph, the phrase “substantially the same” shall mean essentially the same or with little or no substantive difference.
2. **Use of the Building.** The Building shall not be used, enjoyed or operated inconsistent with the DDPA and is intended by Cary and APC II to have a mixture of uses. Cary and APC II are setting forth guiding principles, general rules and specific restrictions applicable to the Building:

A. **Guiding Principles.** The LDO effective as of the date of recordation of this Special Warranty Deed sets forth guidance as to uses appropriate for the Town Center District. Cary and APC II agree that the Building shall be leased and used in a manner that implements Cary’s Downtown related adopted laws, resolutions, policies, plans and guidelines (collectively “Downtown Policies”) and, specifically in a manner that encourages pedestrian-friendly tenants with interesting and active storefronts integrated through urban design into adjacent streetscapes to foster a unique, attractive and memorable destination for visitors and residents and to establish a sense of place. To this end, Cary and APC II agree to consult with each other as to prospective tenants from time to time, and APC II shall operate, manage and regulate the Building to promote the peaceful enjoyment of the Building’s tenants, invitees and licensees of tenants, and visitors to Downtown Cary.

In the event APC II desires a preliminary determination by Cary as to whether a specific use, activity or tenant complies with these CC&Rs, APC II may request such a determination from the Town Manager or the Town Manager’s designee.

Because of changing tenant mix or marketplace conditions and evolving Downtown Policies, APC II may request Cary to approve exceptions to these CC&Rs (“APC II Proposal”). Every APC II Proposal must propose a use or uses permitted by the LDO for the Property at the time of the proposal and show that the APC II Proposal carries out the recommendations of Cary’s Downtown Policies existing at the time of the proposal.

Each APC II Proposal will be reviewed by the Town Manager or the Town Manager’s designee and the Town Manager or the Town Manager’s designee may approve, disapprove or request additional information from APC II. In all cases in which the Town Manager’s approval is required or permitted, in lieu of deciding whether to approve or not approve any APC II Proposal, the Town Manager or Town Manager’s designee may, in his or her sole discretion, refer the request to the Town Council by placing it on the Town Council’s agenda for consideration and action. The Town Council may, in its sole discretion, consider, not consider, grant or deny the request for any or no reason. Every approval shall be in writing and until written, no verbal or oral indication or promise to approve shall be binding or effective. and the Town Manager or the Town Manager’s designee shall issue written approval of every APC II Proposal approved by the Town Council.

B. **Prohibitions Throughout the Building.** The following uses and activities are prohibited throughout the Building:

i. Every use or business that is an adult bookstore, adult establishment, adult live entertainment, adult motion picture theatre or adult mini motion picture theatre as these terms are defined in N.C.G.S. § 14-202.10 and any other use, activity or
business that has as one of its purposes, or has, as a significant portion of its business, use or activity, an emphasis on matter and conduct depicting, describing or relating to specified anatomical areas and specified sexual activities as these terms are defined in N.C.G.S. § 14-202.10;

ii. Sexually oriented business, to the extent such business is not prohibited by Paragraph 2(B)(i) above;

iii. Sales of illegal drugs or illegal drug paraphernalia;

iv. Every use or activity illegal under any Federal, State, local or Cary rule, regulation or law; and

v. Hanging or attaching of clothes, towels, signage, lights and any other items to the façades, balconies, roofs, exterior railings, exterior window sills, or exterior architectural features of the Building such that they are visible from the Regional Library, Downtown Park or the public right of way unless associated with a Cary sponsored entertainment event or approved by the Town Manager or the Town Manager’s designee. This prohibition shall not apply to signage of tenants or to signage of the fee simple owner of the Building that is in compliance with the Cary law and policies. The terms Regional Library and Downtown Park shall mean the same as they mean in the DDPA.

C. Prohibited or Permitted Uses of the First Floor of the Building. Unless approved as provided in Paragraph 2(A) above, the use of the first floor of the Building shall be restricted as follows:

i. All uses and activities not permitted at or in the Building by Cary laws, including the LDO, at the time a use is proposed to commence are prohibited;

ii. All uses and activities permitted at or in the Building on the date of recordation of this Special Warranty Deed by Cary laws, including the LDO are subject to these additional restrictions and limitations:

a. All uses collected together as “Residential Uses” by the LDO’s Table of Permitted Uses for the Town Center (“Table”) are prohibited;

b. All uses collected together as “Public/Institutional Uses” by the Table are prohibited except the following use types are permitted: (1) day care center, (2) governmental office, (3) museum, and (4) all educational uses (Pre-School, College and School);

c. All uses collected together as “Commercial Uses” by the Table are prohibited except the following use types are permitted: (1) all Food and Beverage Service uses except that every nightclub and/or bar shall be clearly connected and incidental to a restaurant; (2) radio or TV broadcasting studios where the act of
broadcasting is visible from the right-of-way or public access areas; (3) offices promoting Cary, such as a chamber of commerce office; (4) amusement establishments; (5) commercial indoor recreational facilities; (6) pool or billiard halls; (7) small theaters; (8) ABC stores; (9) convenience stores; (10) one moped rental service (may include sales if rental is also provided); (11) private postal centers (for example, a FEDEX store or UPS store); (12) personal service establishments; (13) breweries, distilleries or wineries that are open to the public and include either a tasting room or restaurant; (14) retail stores; (15) manufacturing of art in stores that sell works of art; and (16) in addition to item (3) above, a maximum of 4,400 total square feet for uses allowed under Section 3(D)(i) of these CC&Rs. Only one bank use is allowed on the first floor, which shall not have a drive-through window or service, shall be accessed only within the Building through the Building’s lobby on the first floor of the Building, shall not be located at a corner of the first floor of the Building, and shall count towards the 4,400 square feet cap of item (16).

d. All uses collected together as “Accessory Uses” by the Table are prohibited, except for cluster-unit mailboxes; and

e. Notwithstanding the above limitations on uses, uses for the exclusive benefit of tenants of the Building or to lease or manage the Building are permitted so long as the total of these uses occupy no more 2,150 leasable square feet on the first floor of the Building.

D. Prohibited or Permitted Uses of Other Portions of the Building. Unless approved as provided in Paragraph 2(A) above, and regardless whether permitted by the Table, all uses and activities described in the LDO are prohibited in all portions of the Building not located on the first floor, except for the following:

i. Business, professional and governmental offices; and

ii. The following are permitted on the top floor and roof of the Building: (1) a restaurant serving the general public with or without a nightclub or bar that is clearly connected and incidental to the restaurant; (2) a bar, with or without food service; and (3) a special event center.

3. APC II’s Duties and No Assignment or Conveyance without Cary Approval. Until such time as APC II or a successor Master Developer conveys all of its ownership interest in the Property in compliance with the DDPA and these CC&Rs, excluding any conveyance of duties and responsibilities of the Master Developer of the Property or the Building in compliance with the DDPA to any Major Third-Party DDP Lender (as defined in the DDPA), APC II shall perform all of the duties and responsibilities of the Master Developer of the Property and the Building required by the DDPA for so long as Cary has not terminated the DDPA or the DDPA has not expired. Except for leases to tenants to occupy and use the Building, Deeds of Trust, Assignments of Rents, and other documents to secure repayment of loans to APC II or any subsequent owner of the Property for acquisition of the Building, construction financing, short or long term,
permanent financing or refinancing, additional improvements to the Building, or operation of the
Property or the Building, APC II or any subsequent owner of the Property or Building shall not
assign, convey or attempt to assign or convey any portion of or interest in the Property or the
Building except with Cary’s advance written approval as required by the DDPA.

Notwithstanding the above, APC II, without Cary’s advance written approval, may convey any
part or all of its ownership interest in the Building at any time after the first of the following to
occur: (a) two (2) years following stabilization; or (b) three (3) years after a certificate of
compliance has been issued for the shell of the entire Building. For this Paragraph, the word
“stabilization” means that point in time when at least seventy-five percent (75%) of the Building
has been leased to third-person tenants not owned or controlled by APC II; nevertheless, APC II
will remain the Master Developer with Master Developer rights and duties until it conveys all of
its ownership interest in the Property and the Building in compliance with the DDPA,

In the event APC II conveys all of its ownership interest in the Property and the Building in
compliance with the DDPA (excluding any deed of trust or other conveyance as security for any
loan to APC II), the Grantee of more than fifty percent (50%) ownership interest of the Property
and the Building shall be deemed to be the Master Developer of the Property and the Building. If
no Grantee owns more than fifty percent (50%) of the Property and the Building, then the Grantee
owning the largest percentage of ownership of the Property and the Building shall be the Master
Developer.

Any attempted assignment or conveyance of any portion of or interest in the Property or the
Building by APC II not in compliance with this Paragraph 3 or the DDPA shall be void ab initio
without any action by Cary being required to enforce this Paragraph 3 and in no event are these
CC&Rs discharged or otherwise affected by any such assignment or conveyance.

4. **Real Covenants Running with the Property and Amendment.** These CC&Rs are real
covenants, touch and concern the Property and the Building, appurtenant to Cary-owned land
adjacent to or near the Property which land is benefitted by these CC&Rs, and these CC&Rs are
deemed necessary for the public interest and to carry out the purposes of Cary’s Community
Development Plan which is defined in the DDPA and, including, without limitation, the following
as defined in the DDPA: the Academy Park Project; the Downtown Park; the Parking Deck and
the Regional Library. These CC&Rs shall run with the Property for ten (10) years after recordation
of this Special Warranty Deed, at the end of which time they shall automatically terminate. These
CC&Rs shall be binding upon any and all successors or assigns of APC II regardless whether
approved by Cary. These CC&Rs shall be amended or terminated only upon the Cary Town
Council’s written approval and execution of such written amendment by Cary and the Master
Developer of the Property and the Building at the time of the amendment or termination, except
that no such written approval or execution of a written termination shall be required to evidence
the automatic termination of these CC&Rs at the end of the ten (10) year term. At any time during
the term of these CC&Rs and upon the request of Cary, Cary, the Master Developer and all
successors or assigns of APC II shall take such actions as may be necessary to re-record these
CC&Rs and such other provisions or amendments of the CC&Rs as they mutually agree to promote
the Academy Park Project and the land owned by Cary that is benefitted by these CC&Rs.
5. **Remedies.**

A. **General Injunctive and Declaratory Enforcement Rights.** These CC&Rs are enforceable at law or at equity only by any of the following: Cary; APC II; any successor Master Developer of the Property and the Building; and any Major DDP Third-Party Lender (as these terms are defined in the DDPA) who requires written assignment of rights to enforce these CC&Rs by APC II. Each of the foregoing Persons who alleges that a breach of these CC&Rs has occurred or who brings an action for such alleged breach is an “Enforcing Party”. For the purpose of interpreting, construing, applying or enforcing these CC&Rs through specific performance or for ending a violation, an Enforcing Party may bring a declaratory judgment action, with or without a request for injunctive relief at all times, or bring an action for injunctive relief, without seeking damages against any other Enforcing Party or any Grantee, including without limitation tenants of the Building “Responding Party” for any violation of any provision of these CC&Rs.

B. **Specific Damage Enforcement Rights for Violations of Paragraph 2.** In addition to any additional rights or remedies established by the CC&Rs or the DDPA, either jointly or separately, an Enforcing Party may enforce Paragraph 2 of these CC&Rs in equity or law as follows:

i. **Liquidated Damages for Major and Minor Breaches of Paragraph 2 of the CC&Rs.** Prior to bringing any legal or equitable action against a Responding Party for breach of these CC&Rs, jointly or separately, the Enforcing Party alleging that a breach has occurred first shall notify the Responding Party in writing of the breach alleged to have occurred, and the Responding Party shall have not less than thirty (30) days in which to cure the breach after receiving notice of the alleged breach; provided, if the breach has not been cured within said thirty (30) day period and the Responding Party (1) is diligently and in good faith pursuing such action as reasonably necessary to remedy the breach, and (2) provides within the 30-day period a written plan and schedule to the Enforcing Party, this 30-day period shall be extended for up to sixty (60) additional days (a total of ninety (90) days after receipt of notice), time being an essential term. A breach of these CC&Rs by a Grantee other than APC II shall not constitute a breach of these CC&Rs by APC II, and a breach of these CC&Rs by a Grantee other than a successor Master Developer shall not constitute a breach of these CC&Rs by the successor Master Developer.

In the event the breach is not cured within the times described above, jointly or separately, the Enforcing Party may proceed as follows:

a. If the alleged breach is for any part of the Property being used for a use prohibited by these CC&Rs, it shall be a “major breach” and the Enforcing Party, separately or jointly, with another Enforcing Party, may bring any action or proceeding permitted by law or in equity against a Responding Party to enforce the CC&Rs; or if the alleged breach of these CC&Rs involves hanging or attaching prohibited items to the Building or other similar matters prohibited by Paragraph 2(B)(v) such breach shall be a “minor breach” and the Enforcing Party, separately or
jointly with another Enforcing Party, may bring an enforcement action against a Responding Party.

b. If a court of competent jurisdiction enters a final, non-appealable judgment against a Responding Party that a major breach or minor breach has occurred, such Responding Party shall be liable, in addition to any other remedy permitted by law, for payment of the following liquidated damages to compensate for damages to the Enforcing Party or Enforcing Parties bringing the enforcement action:

1) All of the Enforcing Party’s or Enforcing Parties’ court costs and reasonable attorneys’ fees in pursuing action against the Responding Party and obtaining the judgment against the Responding Party; and

2) If the breach is a major breach, a payment of liquidated damages to the Enforcing Party or Enforcing Parties who obtained the judgment against the Responding Party in the amount of $1,000.00 per day for each day that the major breach exists from the day the breach began, which has been determined by Cary and APC II to be a fair and reasonable estimate of the daily damages suffered by the Academy Park Project and Cary’s land that is benefitted by these CC&Rs as result of a major breach; or

3) If the breach is a minor breach, a payment of liquidated damages to the Enforcing Party or Enforcing Parties who obtained the judgment against the Responding Party in the amount of $250.00 per day for each day that the minor breach exists from the day the breach began, which has been determined by Cary and APC II to be a fair and reasonable estimate of the daily damages suffered by the Academy Park Project and Cary’s land that is benefitted by these CC&Rs as result of a minor breach.

4) Any liquidated damages paid to multiple Enforcing Parties shall be divided between or among them in equal amounts.

Nothing in this Paragraph 5(B) shall limit any rights or remedies possessed by the Enforcing Party to enforce the provisions of the CC&Rs other than Paragraph 2 of the CC&Rs, and any rights or remedies in the DDPA or other documents or laws, including, without limitation any restrictions, rules or regulations imposed on the Building by APC I or any successor Master Developer and any Cary laws and regulations. With respect to enforcement of these CC&Rs, Cary and APC II or successor Master Developer agree to work together cooperatively and in good faith to take affirmative actions to address actual or anticipated breaches of Paragraph 2 of these CC&Rs.

C. **Right of Repurchase in Event of Bankruptcy, Receivership or Other Similar Event.** Upon the filing of any bankruptcy proceeding, receivership or other similar event causing the Property to become subject to such proceeding, Cary, at Cary’s sole election, shall have the right to repurchase the Property on the following terms and conditions:
i. Cary repurchases the Property at the greater of the purchase price as determined by the fair market value determined by an appraisal rendered by a MAI appraiser selected by Cary or the unpaid balance of principal and interest (at pre-default rate) on the loan secured by a first lien deed of trust on the Property to a Major DDP Third-Party Lender (as that term is defined in the DDPA), excluding Major DDP Third-Party Lender collection fees, costs, and expenses (“Purchase Price”). If the proceeding requires court approval of the appraiser selected by Cary, the appraiser will be subject to court approval.

ii. Cary shall deposit cash with an escrow agent chosen by Cary in the amount of the Purchase Price within sixty (60) days of the date of the appraisal in the bankruptcy or other similar proceeding and upon Cary’s deposit, the Grantee who owns fee simple title to the Property shall file a motion with the court to approve the sale of the Property to Cary, if necessary under the rules of the proceeding, and the motion to approve the sale shall be set promptly for hearing before the court having jurisdiction over the Property. The Grantee who owns fee simple title to the Property shall be deemed to waive any objection to the sale of the Property to Cary. In the event the court approves the sale of the Property to Cary, the court shall order transfer of the Property to Cary and the proceeds shall be distributed in accordance with the orders of the court. In the event the court does not approve sale of the Property to Cary, the cash deposited by Cary shall be returned to Cary.

iii. In the event the sale of the Property is not approved by the court having jurisdiction over the Property within sixty (60) days of Cary’s deposit of the Purchase Price, unless otherwise extended with the consent of Cary, Cary shall have the right (but not the obligation) to withdraw the deposit, whereupon Cary’s right to repurchase the Property by reason of that particular bankruptcy, receivership or other similar event (but not with respect to any subsequent bankruptcy) shall terminate.

D. Right of Repurchase Upon Expiration of Construction Completion Time. Upon expiration of Construction Completion Time (defined in Paragraph 1), APC II shall have no obligation to construct the Building and Cary, at Cary’s sole election, shall have the option to repurchase the Property on the following terms and conditions:

i. If construction has not commenced, the repurchase price shall be equal to the price paid by APC II to Cary for the Property (“Option Price”). In addition, Cary shall have the option to purchase from APC II the rights to all design, engineering, and construction documents and information, which APC II shall assign to Cary and APC II shall sign such other agreements and other documents as necessary to effectuate full assignment of such construction documents and information upon payment by Cary to APC II of the amount paid by APC II for such design, engineering, and construction documents and information.

ii. If construction has commenced but a certificate of compliance for the shell of the entire Building has not been issued, the repurchase price shall be equal to the Option Price plus APC II’s actual out of pocket costs for design, engineering, and
construction, but excluding payments made to lenders in connection with any loans to APC II; and at the closing APC II shall assign all rights to design, engineering, and construction documents and information to Cary and APC II shall sign such other agreements and other documents as necessary to effectuate full assignment of such design, engineering, and construction documents and information.

With respect to assignment of design, engineering, and construction documents and information to Cary under i. or ii. above, APC II will obtain execution of all documents reasonably required to effectuate such assignments.

iii. Cary shall exercise the option to repurchase within one hundred and twenty (120) days of the expiration of Construction Completion Time and will close within thirty (30) days of exercise of the option.

iv. In the event APC II notifies Cary in writing that it shall commence construction or continue construction immediately, and if such notice is received before Cary publishes on its website an agenda item for Town Council consideration related to the repurchase of the Property, APC II shall be permitted to proceed under the terms and conditions of the DDPA and all other applicable agreements. If construction does not commence or continue within ten (10) days of notice to Cary, Cary shall again have 120 days to exercise its option to repurchase. Provided, however, and notwithstanding anything to the contrary herein, APC II’s rights under this paragraph shall be limited to two (2) such notices each for commencement of construction and for continuation of construction.

v. In the alternative, upon expiration of Construction Completion Time, Cary may, within 120 days, assign its option to a substitute developer of Cary’s choosing and shall notify APC II of the assignment. If substitute developer exercises option within 90 days of the date of the assignment, APC II shall sell the Property to substitute developer at the Option Price actual out of pocket costs for design, engineering, construction, and other fees and cost, but excluding payments made to lenders in connection with any loans to APC II.

6. **Interpretation, Construction and Severability.** These CC&Rs shall be interpreted and construed to accomplish the public interest and purpose of the Academy Park Project, the Regional Library, the Downtown Park, the Parking Deck, and Cary’s Downtown Policies. Invalidation of any one or more of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect. Nothing in these CC&Rs shall restrict, modify, or lessen Cary’s discretionary authority to enforce its laws and regulations, including the LDO, in any manner provided by law.

7. **Exclusive Venue and Jurisdiction.** Except for matters required to be considered in a bankruptcy court, all actions concerning these CC&Rs shall be commenced in Wake County Superior Court and said Court shall be the exclusive venue and jurisdiction to determine any dispute or controversy arising out of the CC&Rs.
Exhibit C1

(New Lot 2 – Mixed-Use Multi-Family Building Lot)

NORTH CAROLINA SPECIAL WARRANTY DEED

Excise Tax: $  
Real Estate ID No. 0469489

Deed prepared by and mail to: Kenneth L. Eagle, 105 Weston Estates Way, Cary, NC 27513

Brief description for the Index: New Lot 2, Book of Maps 2020, Page _____________

THIS DEED made this _________ day of _________________________________, 2020, by and between

GRANTOR

TOWN OF CARY,  
a North Carolina municipal corporation  
315 N. Academy Street  
Cary, NC 27513

GRANTEE

ACADEMY PARK CARY, LLC,  
a North Carolina limited liability company  
113 Duncansby Court  
Cary, NC 27511

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the Town of Cary, Cary Township, Wake County, North Carolina and more particularly described as follows (the “Property”):

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED BY REFERENCE.


All or a portion of the Property does not include the primary residence of a Grantor.
A map showing the Property is recorded in Book of Maps 2020, Page _________.

TO HAVE AND TO HOLD the Property and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

The Property is conveyed together with the rights and easements described in Exhibit B attached hereto and incorporated by reference and is conveyed subject to the rights and easements reserved by Grantor described in Exhibit C attached hereto and incorporated by reference.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, other than the following exceptions:

1. Ad valorem property taxes for 2020 and subsequent years.
2. Rights of way and easements affecting the Property that are recorded in the office of the Register of Deeds for Wake County, North Carolina.

IN WITNESS WHEREOF, the Grantor has caused this deed to be signed in its name by its duly authorized official and attested by its ________________ Town Clerk, as of the day and year first above written.

TO WOF CARLY,
a North Carolina municipal corporation

Attested By:

______________________________________ _________________________ _________________________
Name: _______________________________ Name: ___________________ _________________________
Title: ___________________ Town Clerk  Title: ___________________ ____________________________

(affix Town seal here)

WAKE COUNTY
NORTH CAROLINA

I, the undersigned Notary Public of the County and State aforesaid, certify that ________________________ Personally appeared before me this day and acknowledged that he/she is the ________________ Town Clerk of the Town of Cary, a North Carolina municipal corporation, and that by authority duly given as the act of the Town of Cary, the foregoing deed was signed in the Town’s name by its ________________ Town Clerk, sealed with its official seal, and attested by himself/herself as its ________________ Town Clerk.

Date: _______________________________  ________________________ __________________________

(affix seal or stamp here)  Notary Public

Printed/Typed Name: ________________________________

My Commission Expires: ______________________________
EXHIBIT A
DESCRIPTION OF PROPERTY

All of New Lot 2 as shown on a map recorded in the office of the Register of Deeds for Wake County, North Carolina, in Book of Maps 2020, Page ____________, said map being incorporated by reference as if fully set out herein.
EXHIBIT B
RIGHTS AND EASEMENTS CONVEYED WITH THE PROPERTY

The Property is conveyed to Grantee together with the following rights and easements:
Grantor reserves the following rights and easements in the Property:
Exhibit C2

(New Lot 1 – Commercial Building Lot)

NORTH CAROLINA SPECIAL WARRANTY DEED

Excise Tax: $  
Real Estate ID No. 0469488

Deed prepared by and mail to: Kenneth L. Eagle, 105 Weston Estates Way, Cary, NC 27513

Brief description for the Index: New Lot 1, Book of Maps 2020, Page _____________

THIS DEED made this _________ day of _________________________________, 2020, by and between

GRANTOR      GRANTEE

TOWN OF CARY,  ACADEMY PARK COMMERCIAL, LLC,
a North Carolina municipal corporation  a North Carolina limited liability company
315 N. Academy Street  113 Duncansby Court
Cary, NC 27513       Cary, NC 27511

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the Town of Cary, Cary Township, Wake County, North Carolina and more particularly described as follows (the “Property”):

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED BY REFERENCE.

The Property was acquired by Grantor by instruments recorded in Book 10778, Page 1207, Book 13047, Page 231, Book 14824, Page 2507, Book 14824, Page 2511, and Book 14824, Page 2525.

All or a portion of the Property does not include the primary residence of a Grantor.
A map showing the Property is recorded in Book of Maps 2020, Page ___________.

TO HAVE AND TO HOLD the Property and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

The Property is conveyed together with the rights and easements described in Exhibit B attached hereto and incorporated by reference and is conveyed subject to the rights and easements reserved by Grantor described in Exhibit C attached hereto and incorporated by reference.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, other than the following exceptions:

1. Ad valorem property taxes for 2020 and subsequent years.
2. Rights of way and easements affecting the Property that are recorded in the office of the Register of Deeds for Wake County, North Carolina.

IN WITNESS WHEREOF, the Grantor has caused this deed to be signed in its name by its duly authorized official and attested by its _________________ Town Clerk, as of the day and year first above written.

TOWN OF CARY, a North Carolina municipal corporation

Attested By:

Name: _______________________________ Name: _______________________________
Title: ___________________ Town Clerk  Title: _______________________________

(affix Town seal here)

WAKE COUNTY
NORTH CAROLINA

I, the undersigned Notary Public of the County and State aforesaid, certify that Personally appeared before me this day and acknowledged that he/she is the _________________ Town Clerk of the Town of Cary, a North Carolina municipal corporation, and that by authority duly given as the act of the Town of Cary, the foregoing deed was signed in the Town’s name by its _________________, sealed with its official seal, and attested by himself/herself as its _________________ Town Clerk.

Date: ________________________________
Notary Public
Printed/Typed Name: ________________________________
My Commission Expires: ________________________________
EXHIBIT A
DESCRIPTION OF PROPERTY

All of New Lot 1 as shown on a map recorded in the office of the Register of Deeds for Wake County, North Carolina, in Book of Maps 2020, Page ____________, said map being incorporated by reference as if fully set out herein.
EXHIBIT B
RIGHTS AND EASEMENTS CONVEYED WITH THE PROPERTY

The Property is conveyed to Grantee together with the following rights and easements:
EXHIBIT C
RIGHTS AND EASEMENTS RESERVED BY GRANTOR

Grantor reserves the following rights and easements in the Property:
EXHIBIT D

NORTH CAROLINA

WAKE COUNTY

ACADEMY PARK PROJECT PARKING SPACE RESERVATION AND LICENSE AGREEMENT

THIS ACADEMY PARK PROJECT PARKING SPACE RESERVATION AND LICENSE AGREEMENT (“Agreement”) by and between the TOWN OF CARY, NORTH CAROLINA (“Cary”) and ACADEMY PARK CARY, LLC, a North Carolina limited liability company (“APC I”), is made this ___ day of ______________, 2020 (“Effective Date”). Cary and APC I also may be referred to herein individually as a “party” or “Party” and together as “parties” or “Parties”. For purposes of this Agreement, APC I includes its Permitted Successors and Assigns as defined by the Downtown Development Project Agreement (“DDPA”), recorded in Book _______, Page _______, Wake County Registry. ACADEMY PARK COMMERCIAL, LLC, a North Carolina limited liability company (“APC II”) joins this Agreement for the limited purpose stated in Paragraph 6 and is not an intended third-party beneficiary of this Agreement and has no rights to enforce this Agreement; and

WHEREAS, Cary’s comprehensive master plan proposed establishing a Cary Center Park as the visual and cultural focal point for the Downtown (“Downtown Park”); and

WHEREAS, the DDPA establishes a downtown development project known as Academy Park Project which includes development, construction, financing and operation of New Public Facilities and New Private Mixed-Use Facilities (“Private Mixed-Use Facilities”) that are further described and defined in the DDPA; and

WHEREAS, the Private Mixed-Use Facilities are to be located adjacent to a parking deck comprised of 608 parking spaces that is wholly owned, controlled, managed, and operated by Cary (the “Parking Deck”) and will consist of two buildings (1) a Mixed-Use Multi-Family Building (“Multi-Family Building”), as further defined in the DDPA, composed of 153 apartment dwelling units and other uses, such as ground-floor retail (shopping and services), restaurant, entertainment or other activity-generating space, and (2) a Mixed-Use Commercial Building, as further defined in the DDPA, composed of approximately 103,000 square feet of leasable office space and other uses, such as ground-floor retail (shopping and services), restaurant, entertainment or other activity-generating space (“Commercial Building”) that are adjacent to the Parking Deck and wrap the Parking Deck along South Walker and Walnut Streets, and the Academy Park Project faces the Downtown Park; and

WHEREAS, Cary has caused construction of the Parking Deck and the Parking Deck is available for public use; and
WHEREAS, the Academy Park Project is likely to have a significant effect on the continuing revitalization of Downtown and will advance the Imagine Cary Community Plan’s vision and Cary’s Community Development Plan (as defined in the DDPA) for Downtown; and

WHEREAS, the Private Mixed-Use Facilities are subject to the DDPA and the covenants, conditions and restrictions (the “CC&Rs”) imposed by Cary to aid and assist the Private Mixed-Use Facilities’ compliance with the purposes of the DDPA and Cary’s Community Development Plan; and

WHEREAS, the CC&Rs restrict the Multi-Family Building to a maximum of 153 apartment dwelling units and Cary’s current Land Development Ordinance (“LDO”) requires a minimum of one parking space per apartment dwelling unit for the Multi-Family Building; and

WHEREAS, the current LDO does not require off-street parking for the other uses permitted by the CC&Rs at the Private Mixed-Use Facilities; and

WHEREAS, the land on which the Private Mixed-Use Facilities will be constructed as required by the CC&Rs and the DDPA is not large enough for parking spaces in addition to the Multi-Family Building and the Commercial Building; and

WHEREAS, Section 7.8.3 of the LDO authorizes Cary’s Planning Director to approve various off-street parking alternatives for the Multi-Family Building, and the Planning Director has approved this Agreement as an alternative off-street parking agreement satisfying the requirements of the LDO and APC I’s rights to reserves parking spaces in Parking Deck vests on the Effective Date, subject to the terms and conditions of this Agreement; and

WHEREAS, pursuant to the terms and conditions of this Agreement, Cary has agreed to initially reserve 250 parking spaces for APC I as provided herein and not less than 153 of these parking spaces shall be for use by the tenants of the apartment dwelling units in the Multi-Family Building (“Residential Tenants”); and

WHEREAS, Cary may reserve for APC I up to 238 additional parking spaces in the Parking Deck for the as provided herein; and

WHEREAS, Cary entered into a ground lease with Wake County for operation of a regional public library (“Regional Library”) on Cary property (“Ground Lease”) and the Ground Lease includes the lease and reservation of parking spaces in the Parking Deck for the Regional Library; and

WHEREAS, this Agreement is not intended to deny, abridge, or infringe Wake County’s rights or entitlements under the Ground Lease; and

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties above hereby agree to the following terms and conditions:
1. Recitals. The above recitals are incorporated as terms of this Agreement.

2. Reserved Parking Spaces. Subject to the terms and conditions of this Agreement, Cary will reserve 250 parking spaces for APC I in the Parking Deck ("Reserved Parking Spaces") to serve the Private Mixed-Use Facilities as provided and limited by subsection 2e below. APC I shall pay to Cary a monthly payment for each Reserved Parking Space in the amount provided for herein, but nothing herein limits APC I from charging the tenants of the Private Mixed-Use Facilities for Reserved Parking Spaces.

a. The monthly payment for the Reserved Parking Spaces shall commence on the date APC I is issued a Certificate of Occupancy permitting one or more Residential Tenants to live in the Multi-Family Building and shall be due no later than the 10th day of each and every month thereafter. Provided, if the Certificate of Occupancy is issued on any day other than the first day of a month, a pro-rated amount of the monthly payment is due and payable to Cary for the month in which the Certificate of Occupancy is issued, and the Initial Monthly Payment (as defined in the subsection 2b) shall commence with the month immediately following the month in which the Certificate of Occupancy is issued.

In the event APC I or its Permitted Successors or Assigns is not issued a Certificate of Occupancy permitting one or more Residential Tenants to live in the Multi-Family Building within four (4) years of the Effective Date of this Agreement, then this Agreement shall automatically terminate and have no force or effect whatsoever.

b. The initial monthly payment per parking space for the Reserved Parking Spaces shall be $75.00 ("Initial Monthly Payment"). In Cary’s sole discretion, the monthly payment rate may be increased up to a maximum of three percent (3%) per year beginning with the twelve (12) month payment period that starts with Monthly Payment number thirteen (13).

Notwithstanding the foregoing, the cumulative increase may not exceed five percent (5%) of the Initial Monthly Payment for monthly payments number thirteen (13) through one hundred and twenty (120) ("Year 10 Maximum Monthly Payment"); may not exceed ten percent (10%) of the Year 10 Maximum Monthly Payment for monthly payments number one hundred and twenty-one (121) through two hundred and forty (240) ("Year 20 Maximum Monthly Payment"); and may not exceed fifteen percent (15%) of the Year 20 Maximum Monthly Payment for monthly payments number two hundred and forty-one (241) through three hundred and sixty (360) ("Year 30 Maximum Monthly Payment").

c. Beginning with monthly payment number three hundred and sixty-one (361), monthly payments for Reserved Parking Spaces shall be recalculated. The monthly payments for Reserved Parking Spaces for Months 361-480 shall be calculated as follows: (i) for all Reserved Parking Spaces required for the Multi-Family Building,
the monthly payment shall be the Year 30 Maximum Monthly Payment or the local average monthly rate at that time for leases of parking spaces in downtown Cary ("Local Average"), whichever is less; and (ii) for all other Reserved Parking Spaces, the monthly payment shall be the Year 30 Maximum Monthly Payment or the Local Average, whichever is greater. The monthly payment rate calculated pursuant to this subsection 2c may be increased up to a maximum of three percent (3%) per year to be effective the first day of January each year, not to exceed a maximum cumulative increase of five percent (5%) during months 361-480. For monthly payments four hundred and eighty-one (481) through six hundred (600), and for each 120-month period thereafter, the monthly payments for Reserved Parking Spaces shall be recalculated using the same methodology including using the up-to-date decennial maximum monthly payment provided in this subsection c for calculating monthly payments three hundred and sixty-one (361) through four hundred and eighty (480).

d. Whenever the Local Average is used in calculating or recalculating any Monthly Payment and the parties disagree as to the Local Average, then each party shall obtain an appraisal from a licensed appraiser and the average of the two appraisals shall be the Local Average. Until the parties agree on the Local Average or the average of two appraisals, the Maximum Monthly Payment existing at the time of the dispute shall be the payment due Cary.

e. At all times under this Agreement, the number of Reserved Parking Spaces including all recalculations of Reserved Parking Spaces as provided in subsections 2c and 2d, shall comply with the LDO (taking into account vested rights, if any). APC I may allow use of some or all of the Reserved Parking Spaces not required by the LDO for the Private Mixed-Uses Facilities, and may allow Additional Parking Spaces, to be used by tenants, employees of tenants, and clients, customers, and visitors of offices and retail uses in the Private Mixed-Use Facilities, and by employees of any rental agent or property manager for any part or all of the who maintain an office in the Private Mixed-Use Facilities, except no car or vehicular rental company shall use the Parking Deck as its car rental pick-up or return and no Reserved Parking Spaces shall be reserved for any person, firm, company or corporation not living or directly doing business in the Private Mixed Use Facilities.

f. From the date payment commences for the Reserved Parking Spaces and in conjunction with all subsequent monthly payments, APC I shall provide to Cary (except for those spaces designated for clients, customers, and visitors) up-to-date lists of the names of the current Residential and non-residential tenants, their license plate numbers, their address within the Private Mixed-Use Facilities, and the Reserved Parking Space reserved for each tenant.

g. Methods for the marking of Reserved Parking Spaces and removal of markings for Reserved Parking Spaces no longer reserved in the Parking Deck shall be determined and applied in the sole discretion of Cary. APC I shall reimburse Cary for all expenses incurred by Cary to designate, not designate or re-designate Reserved Parking Spaces
including, but not limited to, striping and costs for signs identifying Reserved Parking Spaces as reserved, within thirty (30) days of receipt of any invoice from Cary for these expenses.

3. **Additional Parking Spaces for the Private Mixed-Use Facilities.** Upon one or more requests by APC I for more reserved parking spaces (“**Additional Parking Spaces**”), Cary may grant or deny, in its sole discretion, for any or no reason, any and all APC I requests. In the event, Cary grants a request by APC I under this Paragraph 3, Cary in its sole discretion shall set the terms upon which Additional Parking Spaces are reserved, including but not limited to, the amount of the monthly payment for Additional Parking Spaces, allowed uses and times of use for such Additional Parking Spaces, requirements for the identification of the tenant(s) or individual(s) using each Additional Parking Space, and reimbursement to Cary for marking and removal of markings for Additional Parking Spaces.

4. **Reduced Reserved Parking Spaces and Additional Parking Spaces for the Private Mixed-Use Facilities.** The number of Reserved Parking Spaces and Additional Parking Spaces may be reduced as provided in the following subsections a and b.

   a. **Permissive Reduction of Reserved Parking Spaces and Additional Parking Spaces.** Upon one or more requests by APC I to reduce the number of Reserved Parking Spaces or Additional Parking Spaces, Cary may grant or deny, in its sole discretion, for any or no reason, any and all APC I requests. In the event Cary grants a request by APC I under this Paragraph 4a, Cary in its sole discretion shall set the terms upon which the number of Reserved Parking Spaces or Additional Parking Spaces are reduced.

   b. **Mandatory Reduction of Reserved Parking Spaces.** Within sixty (60) days after the 360th monthly payment is due to Cary, APC I may submit a written request to Cary for a reduction in the number of Reserved Parking Spaces so long as the number of Reserved Parking Spaces after the reduction complies with the LDO at the time APC I submits its request. Upon receipt of APC I’s written request, Cary will reduce the number of Reserved Parking Spaces as requested by APC I. In the event APC I does not submit a written request within sixty (60) days after the 360th monthly payment is due to Cary, time being an essential term, Cary shall have no duty to grant APC I’s request for a reduction of Reserved Parking Spaces until after the 480th monthly payment is due to Cary.

Within sixty (60) days after the 480th monthly payment is due to Cary, APC I may submit a written request to Cary for a reduction in the number of Reserved Parking Spaces so long as the number of Reserved Parking Spaces after the reduction complies with the LDO at the time APC I submits its request. Upon receipt of APC I’s written request, Cary will reduce the number of Reserved Parking Spaces as requested by APC I. Thereafter, at increments of additional 120 monthly payments, APC I may submit a written request for a reduction of the number of Reserved Parking Spaces on the same terms and with the same deadlines as stated above and Cary will grant the reduction requested by APC I.
In the event APC I submits a written request for the reduction of Reserved Parking Spaces other than pursuant to this subsection 4b, the request will be processed by Cary under subsection 4a above as a permissive reduction of Reserved Parking Spaces.

5. **Agreement to Cooperate.** Recognizing that the Parking Deck serves the Downtown Park, Regional Library and the Academy Park Project, Cary and APC I agree to work cooperatively and to establish practical and efficient procedures to achieve the purposes of the Academy Park Project stated in the DDPA and to ensure that Cary meets its obligations under the Ground Lease. At the request of APC I, Cary, in its sole discretion, will consider establishing a validation system allowing clients, customers, and visitors of office, retail, and service tenants of the Private Mixed-Use Facilities to utilize one or more parking spaces without paying on exit, all as may be more particularly set forth in a separate agreement.

6. **Obligations During Construction.** At all times, APC I and, for the limited purpose of this paragraph, APC II, recognize that they will be causing excavation around, near or in the vicinity of the Parking Deck and penetrating the walls of the Parking Deck and are strictly liable to Cary for any damage to the Parking Deck resulting from activities or loss of use due to any of these activities. APC I and APC II shall ensure that one entrance to the Parking Deck remains open during construction of the Private Mixed-Use Facilities, and shall otherwise avoid undue disruption to the Parking Deck due to construction of the Private Mixed-Use Facilities, unless otherwise requested in advance by APC I and APC II and permitted in writing by Cary. APC I, and APC II for the limited purpose of this paragraph, shall ensure that at all times during construction of the Private Mixed-Use Facilities, at least 200 spaces are available for use in the Parking Deck, of which 120 spaces are available to the Regional Library consistent with the terms and conditions of the Ground Lease, and that service vehicles of Cary and Wake County have access to the Parking Deck. APC I will reimburse Cary for any out-of-pocket costs incurred by Cary in connection with the Parking Deck due to construction of the Private Mixed-Use Facilities.

All cutting, modifying, altering of any component, element or member of the Parking Deck (“**Deck Work**”) shall be done only in accordance with the plan and design prepared by the North Carolina registered structural professional engineer retained by APC I and APC II. APC I and APC II shall provide a copy of the evaluation and report prepared by APC I’s and APC II’s registered structural professional engineer for Town review and comment, and no Deck Work shall commence prior to the Town’s approval of the plan and design. Promptly upon completion of any approved Deck Work, APC I and APC II shall provide the Town with “as built” record drawings and documentation approval, completely describing and documenting the actual Deck Work undertaken. These “as built” record drawings and documentation shall include report prepared by a professional engineer report suitable for the Town to attach as an addendum and amendment to the Town’s current record documentation for the Parking Deck.

The obligations during construction stated in paragraph 6 of this Agreement shall apply and impose obligations on both APC I and APC II.
7. **Management, Operation, Control, Maintenance, Safety, Security, and Repair of the Parking Deck.** Cary shall have exclusive control over the Parking Deck and shall be solely responsible for management, operation, control, maintenance, safety, security, and repair of the Parking Deck, and nothing in this Agreement shall interfere with Cary’s exclusive control over the Parking Deck. Cary may adopt or repeal, in its sole discretion, ordinances, rules, regulations and policies governing use of any portion of the Parking Deck by APC I, its tenants, other Private Mixed-Use Facilities tenants, clients, customers, and visitors, and the general public ("Parking Deck Rules"), provided that the Parking Deck Rules do not divest APC I of its reservation of parking spaces as permitted in this Agreement. In order to perform operation, maintenance or repair of the Parking Deck or for public safety, Cary may, in its sole discretion, temporarily re-locate all or a portion of Reserved and Additional Parking Spaces within the Parking Deck or to other Cary-owned property in the vicinity of the Private Mixed-Use Facilities. Nothing in this Agreement prevents Cary from entering into a parking agreement or agreements for spaces that have not been specifically reserved pursuant to this Agreement, APC I shall have no responsibility under this Agreement for security, safety, and protection of patrons or other persons in the Parking Deck.

8. **Insurance.** If Cary contracts with a third-party to operate or manage the Parking Deck, as part of any such contract, Cary will require the third-party to add APC I as an additional insured on its liability insurance policy associated with its operation and/or management of the Parking Deck and to provide to APC I, at least annually, evidence that APC I is named as an additional insured on its liability insurance policy. To the extent APC I obtains liability insurance in connection with use of the Parking Deck, APC I shall be required to add Cary as an additional insured on such an insurance policy and at least annually provide evidence to Cary that it is named as an additional insured.

9. **Negation of Partnership or Joint Venture.** Nothing in this Agreement shall constitute or be construed to constitute or create a partnership, joint venture, or lease between Cary and APC I. This Agreement is a reservation and license to use on a monthly basis parking spaces in the Parking Deck allowing the Private Mixed-Use Facilities to comply with the LDO and to encourage the success of Academy Park Cary and the Downtown Park.

10. **Enforcement.** Enforcement of this Agreement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate this Agreement, and the aggrieved party may request restraint of the violation or damages resulting from said violation. In addition to the foregoing, failure of APC I to pay any monthly payment in full on or before the 10th day of the month for which it is due shall constitute a default of this Agreement. A late payment charge in an amount equal to five percent (5%) of the unpaid amount of the past due monthly payment shall be due and payable in addition to the monthly payment. Upon any such default, Cary may notify APC I in writing that this Agreement is terminated unless the amount of the monthly payment, together with the late payment charge, is received by Cary within ninety (90) days after APC I receives written notice of the default. No further notice of termination is required and termination may occur in Cary’s sole discretion if such monthly payment, together with the late payment charge, is not received by Cary within said ninety (90) day period.
11. **Indemnification.** APC I shall indemnify, defend and hold Cary, its officers, employees and agents (collectively, the “**Indemnified Parties**”) harmless from and against any and all claims, damages, liabilities, losses, costs and expenses, including reasonable attorneys’ fees, (collectively, “**Damages**”) suffered or incurred by any of the Indemnified Parties as a result of any inaction or action taken by the Indemnified Parties in the management, operation, or control, of the Parking Deck based upon any breach of this Agreement by APC I, including the provision of incomplete or inaccurate information to Cary by APC I under Paragraph 2c. This indemnification extends to, and shall be binding upon, APC I, its successors and permitted assigns, and shall inure to the benefit of, and may be enforced by Cary and any other Indemnified Parties, their heirs, successors and assigns.

12. **Waiver.** No consent or waiver, express or implied, by any signatory of this Agreement or of any breach or default by a signatory of this Agreement in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party hereunder. Except as otherwise provided herein, failure on the part of any such party hereto to complain of any act or failure to act by the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

13. **Notices.** Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a Party is required to serve or may give another Party hereunder shall be in writing and shall be delivered or addressed to the other Party at the address set forth below, or to such other address as such Party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be in writing and shall be given or served upon the other Party or Parties both by email and by personal service through (i) first class 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.

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

Town Manager  
316 N. Academy Street  
Cary, NC  27513  
Email: sean.stegall@townofcary.org

*With a copy to (may be sent by email and first class mail only):*  
Town Attorney  
316 N. Academy Street  
Cary, NC  27513  
Email: chris.simpson@townofcary.org
All notices, demands, requests, consents, approvals or communications to APC I shall be addressed to:

William F. Zahn  
113 Duncansby Court  
Cary, NC 27511  
Email: BillZahn@bellsouth.net

With a copy to (may be sent by email and first class mail only):
Richard C. Stephenson  
Stephenson Law, LLP  
1100 Crescent Green, Suite 220  
Cary, NC 27518  
Email: rcs@stephenson-law.com

Notice of change in address may be given by any notice method allowed herein. Any notice may be given on behalf of a Party by the Party’s attorney.

14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall be construed as a single instrument.

15. **Governing Law and Venue.** This Agreement shall be governed by and construed under the laws of the State of North Carolina. Exclusive venue for any action or proceeding arising out of or related to this Agreement shall be the Superior Court of Wake County, North Carolina.

16. **Amendments and Termination.** This Agreement may be modified, amended or terminated only by mutual, written agreement of APC I, or its Permitted Successors and Assigns as owner of the Multi-Family Building, and by Cary or its successors and assigns as owner of the Parking Deck.

17. **Nondiscrimination.** Neither APC I nor its officers or employees will discriminate in any manner on the basis of age, handicap, sex, race, color, creed, sexual orientation or national origin with respect to the subject matter of this Agreement, no matter how remote. This provision shall be binding on all successors and assigns of APC I.

18. **Beneficiaries.** Cary and APC I are the only intended beneficiaries of this Agreement and there are no third-party beneficiaries, including APC II. This Agreement is coupled with the Multi-Family Building and this reservation and license shall be appurtenant to and non-severable from such property.
19. **Subordination and Assignment.** To protect Cary and the public at large, all deeds of trust, mortgages or liens encumbering property conveyed by Cary to APC I described in DDPA, other than property tax liens for the current tax year, shall be subordinate to this Agreement. Cary consents to the collateral assignment of this Agreement by APC I to APC I’s construction lender and permanent financing lender (including refinancing) in accordance with the assignment provisions in the DDPA and provided that written notice of any such collateral assignment shall be delivered to Cary promptly. APC I may assign this Agreement only in the manner permitted by the DDPA.

20. **Mortgagee Protection.** Notwithstanding anything to the contrary contained herein, prior to terminating this Agreement, Cary shall notify all mortgagees of APC I against whom enforcement is to be sought, to the extent such mortgagees have provided written notice to Cary requesting notice. Any such mortgagee shall have the right, but not the obligation, to remedy the default for which enforcement is to be sought within thirty (30) days after being notified thereof by Cary, by paying the amount owed or performing the defaulted obligation; provided, however, if any default is susceptible of being cured but cannot reasonably be cured by such mortgagee within such thirty (30) day period, the mortgagee shall have such additional time as may reasonably be required to cure such default. If any mortgagee cures the default within such time frame, Cary shall not be entitled to exercise further remedies for the default. The foregoing is intended to give any mortgagee the opportunity to compel APC I to comply with its obligations under this Agreement or to enable such mortgagee to make protected advances or take other appropriate actions so as to minimize the amount of any claim that could take priority over its mortgage.

21. **Verification of Work Authorization.** APC I, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.

22. **Performance of Government Functions.** Nothing contained in this Agreement shall be deemed or construed so as to restrict or inhibit Cary’s police powers or regulatory authority; specifically, and without limitation, Cary has the authority to enforce the Parking Deck Rules and nothing in this Agreement shall restrict or inhibit Cary’s authority to manage, operate, control, maintain, and repair the Parking Deck.

23. **No Waiver of Governmental or Qualified Immunity.** Nothing in this Agreement shall be construed to mandate purchase of insurance by Cary pursuant to N.C.G.S. § 160A-485 or to in any way waive Cary’s defense of sovereign or governmental immunity from any cause of action alleged or brought by or against any person or Party for any reason if otherwise available as a matter of law. No officer, agent or employee of Cary shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

24. **Conflict with DDPA.** If there is any conflict between the provisions of this Agreement and the provisions of the DDPA, the DDPA shall control.
25. **Pre-Audit Requirement.** This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by N.C.G.S. § 159-28) has been affixed and signed by Cary’s Finance Officer or Deputy Finance Officer.

26. **Execution.** A Party may convert a signed original of this Agreement, 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 this Agreement shall be deemed for all purposes to be an original signed Agreement.

IN WITNESS WHEREOF, Cary and APC I each has caused this document to be executed by its duly authorized official, effective the date first above written.

*[SIGNATURE PAGES FOLLOW]*
THE TOWN OF CARY

(Town Seal)

By: ____________________________________

Title: __________________________________

ATTEST: ____________________________

Virginia H. Johnson, Town Clerk

===================================================================== 

STATE OF NORTH CAROLINA 
COUNTY OF WAKE 

The undersigned, a Notary Public of the County and State aforesaid, hereby certify that Virginia H. Johnson personally came before me this day and acknowledged that she is the Town Clerk of the Town of Cary, a North Carolina municipal corporation, and that by authority duly given as an act of said Town of Cary, the foregoing instrument was signed in its name by its _______________ Town Manager, sealed with its official seal, and attested by herself as its Town Clerk.

Witness my hand and official stamp or seal, this the _____ day of ______________, 2020.

________________________________________

Notary Public

________________________________________

Printed Name of Notary

(Notary Seal)

My Commission Expires: ____________________

Certificate of The Town of Cary Finance Officer

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

________________________________________

Deputy Finance Officer

________________________________________

Date
ACADEMY PARK CARY, LLC

By: ________________________________
Title: ______________________________

=================================================================================

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, a Notary Public of the County and State aforesaid, hereby certify that
__________________________ personally came before me this day and acknowledged that
he/she is the _________________ of ACADEMY PARK CARY, LLC, a North Carolina limited
liability company, and that by authority duly given and as the act of Academy Park Cary, LLC, the
foregoing instrument was signed by him/her as its _________________________.

Witness my hand and official stamp or seal, this the _____ day of _______________, 2020.

________________________________________
Notary Public

(Notary Seal)

Printed Name of Notary

My Commission Expires: ______________
IN WITNESS WHEREOF, Academy Park Commercial, LLC has caused this document to be executed by its duly authorized official, effective the date first above written, for the limited purposes stated in Paragraph 6.

ACADEMY PARK COMMERCIAL, LLC

By: ______________________________________
Title: _____________________________________

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, a Notary Public of the County and State aforesaid, hereby certify that __________________________ personally came before me this day and acknowledged that he/she is the __________________ of ACADEMY PARK COMMERCIAL, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of Academy Park Commercial, LLC, the foregoing instrument was signed by him/her as its ____________________.

Witness my hand and official stamp or seal, this the _____ day of ____________, 2020.

________________________________________
Notary Public

(Notary Seal)

Printed Name of Notary

My Commission Expires: _______________
EXHIBIT E1

EXCISE TAX: $ ---
INSTRUMENT PREPARED BY: ______________ WITHOUT TITLE EXAMINATION
MAIL AFTER RECORDING TO:
BRIEF DESCRIPTION FOR INDEX:

STATE OF NORTH CAROLINA

COUNTY OF WAKE

THIS DEED OF NON-EXCLUSIVE EASEMENT FOR STORMWATER DISCHARGE ("Easement") made this ____ day of ____ 2020 by the TOWN OF CARY, a municipal corporation of the State of North Carolina, ("Grantor" or "Cary") and Academy Park Cary, LLC, a North Carolina limited liability company, whose address is 113 Duncansby Court, Cary, North Carolina 27511 ("APC I") and Academy Park Commercial, LLC, a North Carolina limited liability company, whose address is 113 Duncansby Court, Cary, North Carolina 27511, ("APC II") APC I and APC II are collectively referred to as "Grantee" and shall be jointly and severally responsible and liable for either or both APC I’s and APC II’s obligations under this Easement. The designation Grantor, APC I, APC II and Grantee as used herein shall include said parties, and their Permitted Successors and Assigns as defined in the Downtown Development Project Agreement by and between Cary and Grantee recorded in Book ___, Page ___, Wake County Registry (the "DDPA"), and shall include the singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH:

WHEREAS, Cary owns New Lot 3 ("New Lot 3") shown on that plat entitled "Recombination Plat for Cary Regional Library and Downtown Parking Deck for Town of Cary," recorded in the Wake County Registry at Book of Maps 2019, Page 1376 ("Plat") or such other plat as approved by Grantor and Grantee; and

WHEREAS, New Lot 3 is adjacent to and is or was part of a larger tract of land owned by Cary ("Tract"), part of which Tract will be used to construct Cary’s Downtown Park; and
WHEREAS, Cary intends to establish a regional stormwater control device ("Park SCD") on the Tract that, together with related channels, pipes, appurtenant appliances and improvements located on the Tract that are necessary or appropriate to direct stormwater to the Park SCD, will constitute the Downtown Park stormwater management system ("Park SMS"); and

WHEREAS, the Park SMS is designed to serve the Tract including Cary’s Downtown Park and to receive stormwater drainage from privately-owned properties that may adjoin or abut the Tract as may be permitted by one or more written agreements with Cary; and

WHEREAS, Cary conveyed to Grantee certain real property that was formerly part of the Tract, consisting of 1.561 acres conveyed to APC I and described in Book ____ , Page ____ , Wake County Registry ("New Lot 2"), and consisting of .821 acres conveyed to APC II and described in Book ____ , Page ____ , Wake County Registry ("New Lot 1"), New Lot 1 and New Lot 2 being referred to herein together as “Grantee’s Property,” on which Grantee shall construct the Private Mixed-Use Facilities of the Academy Park Project which are defined and described in the DDPA. The Private Mixed-Use Facilities of the Academy Park Project will include a Mixed-Use Multi-Family Building with total impervious coverage of 60,554.6 square feet ("Multi-Family Building"), and a Mixed-Use Commercial Building with total impervious coverage of 30,777.3 square feet ("Commercial Building") and such other privately-owned facilities and improvements shown on the Development Plan approved by Cary which is defined and described in the DDPA; and

WHEREAS, APC I and APC II jointly and severally have legal duties to manage the stormwater caused by natural precipitation falling on or naturally flowing over Grantee’s Property from time to time (“Grantee’s Stormwater”) under North Carolina civil law and under federal, state and local laws, rules and regulations, including without limitation, complying with Cary’s Land Development Ordinance ("LDO") and Cary’s Stormwater Best Management Practices Manual (collectively “Laws and Regulations”); and

WHEREAS, such legal duties require constructing, operating and maintaining a privately-owned stormwater management system, including one or more stormwater control structures on Grantee’s Property to manage Grantee’s Stormwater ("Grantee’s Stormwater System"); and

WHEREAS, because of the size, shape and intensity of development on Grantee’s Property required by the DDPA, the best means and method for managing Grantee’s Stormwater in accordance with the Laws and Regulations is to collect Grantee’s Stormwater and direct it to the Park SMS; and

WHEREAS, APC I and APC II requested Cary to allow each to discharge Grantee’s Stormwater to the Park SMS and Cary is willing to permit APC I and APC II to discharge Grantee’s Stormwater to the Park SMS subject to the terms and conditions set forth in this Easement, the DDPA and the Downtown Park Regional Stormwater Management System Agreement executed by Cary and the Grantee ("Stormwater Management Agreement").

NOW THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, Grantor does give, grant, bargain, sell and convey unto APC I and APC II the following stormwater drainage right, privilege and easement:
A non-exclusive easement to discharge Grantee’s Stormwater from one or more points located on Grantee’s Property to a point or points on New Lot 3 (the “Discharge Point”). Discharge Point is the Easement Area and shall be located on New Lot 3 in the location shown on the Approved Stormwater Plans as hereafter defined governing collection and discharge of stormwater from Grantee’s Property. This Easement is subject to the following conditions:

1. At all times, Grantee’s Stormwater shall be discharged at the Discharge Point in strict compliance with the Laws and Regulations, including without limitation, complying with the LDO and Cary’s Stormwater Best Management Practices Manual, as they may change from time to time, but nothing herein deprives Grantee of vested rights recognized and enforced by the Laws and Regulations;
2. At all times, Grantee’s Stormwater shall be discharged at the Discharge Point in strict compliance with all applicable sediment and erosion control plans and temporary or longer term stormwater management plans approved by Cary applicable to Grantee’s Property (collectively “Approved Stormwater Plans”); and
3. At all times, Grantee shall remain in compliance with the Stormwater Management Agreement recorded in Book ____, Page ___, Wake County Registry and in compliance with the DDPA.

In the event that either ACP I or ACP II fails to comply with any of the terms and conditions stated above at any time, then upon Grantor sending written notice to ACP I and ACP II and such non-compliance with any of the above conditions and terms continues for fourteen (14) calendar days after Grantor sends such written notice, unless the non-compliance cannot be reasonably cured within that time period, Grantor shall have, in addition to any other remedies or rights, the right to automatically and unilaterally terminate or suspend this Easement. If the non-compliance is of such a nature that it cannot be reasonably cured within fourteen (14) calendar days, such cure period may be extended by Grantor provided all of the following occur: (a) the Grantee notifies the Grantor of such fact by written notice served in accordance with Section 10.8 of the DDPA no later than the end of the fourteen (14) day cure period, (b) provides a written schedule for curing the non-compliance within the notice together with evidence that the Grantee has already taken steps to cure the non-compliance, and (c) the Grantee, in such written extension notice, covenants to and thereafter actually does diligently pursue the cure to completion. In no event shall the Grantee have more than ninety (90) days to cure the non-compliance after service of Grantor’s original written notice of non-compliance. Grantor shall have, in addition to any other remedies or rights, the right to automatically and unilaterally terminate or suspend this Easement upon termination of any extended cure period.

This Easement is granted for the life of the Private Mixed-Use Facilities of the Academy Park Project as set forth herein and the life of the Academy Park Project shall be deemed over and this Easement shall automatically terminate and revert to the Grantor without any action required by the Grantor:

1. In the event that the DDPA does not become effective as provided in Section 6.2 of the DDPA;
2. In the event both the Commercial Building and Multi-Family Building required by the DDPA are not constructed; or
3. In the event both the Commercial Building and Multi-Family Building required by the DDPA are demolished.
Additionally, the life of the Academy Park Project shall be deemed to be partially over and this Easement shall automatically terminate for either APC I or APC II and its Permitted Successors and Assigns upon the happening of either of following events:

1. In the event the Commercial Building located on New Lot 1 is not constructed as required by the DDPA, or the Commercial Building is demolished, any and all of ACP II’s rights and interests, including without limitation, its Permitted Successors or Assigns rights and interests, in this Easement shall automatically terminate and revert to Grantor without any action taken by the Grantor; or

2. In the event the Multi-Family Building located on New Lot 2 is not constructed as required by the DDPA, or if Multi-Family Building is demolished, any and all of ACP I’s rights and interests, including without limitation, its Permitted Successors or Assigns rights and interests in this Easement shall automatically terminate and revert to Grantor without any action taken by the Grantor.

The Grantor shall in all respects remain the fee owner of the Tract and Easement Area and may make all lawful uses of such area not inconsistent with the Grantee’s non-exclusive rights granted hereunder. This Deed of Non-Exclusive Easement for Stormwater Discharge does not grant any interest in the Park SMS to Grantee.

This Easement is subject to all easements and encumbrances of record.

This Easement interest herein conveyed does not include a primary residence.

TO HAVE AND TO HOLD the aforesaid Easement and all privileges and appurtenances thereunto belonging to the said Grantee for the life of the Academy Park Project as defined herein.

IN WITNESS WHEREOF, the Grantor and Grantee hereto have executed this Easement to be effective as of the date set forth above.

[SIGNATURE PAGES FOLLOW]
TOWN OF CARY

(Town Seal)

By: _____________________________ (SEAL)

Title: ____________________________

ATTEST:
Virginia H. Johnson, Town Clerk

============================================================================

STATE OF NORTH CAROLINA

COUNTY OF WAKE

The undersigned, a Notary Public of the County and State aforesaid, hereby certify that Virginia H. Johnson personally came before me this day and acknowledged that she is the Town Clerk of the Town of Cary, a North Carolina municipal corporation, and that by authority duly given as an act of said Town of Cary, the foregoing instrument was signed in its name by its__________________________ Town Manager, sealed with its official seal, and attested by herself as its Town Clerk.

Witness my hand and official stamp or seal, this the _____ day of __________________, 2020.

Notary Public

Printed Name of Notary

My Commission Expires:

Certificate of Town of Cary Finance Officer

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

Deputy Finance Officer __________________________ Date __________________________
ACADEMY PARK CARY, LLC

By: __________________________ (SEAL)

Title: __________________________

====================================================================

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, a Notary Public of the County and State aforesaid, hereby certify that
__________________________ personally appeared before me this day and acknowledged that
he/she is the _________________________ of Academy Park Cary, LLC, a North Carolina
limited liability company, and that by authority duly given and as the act of Academy Park Cary,
LLC, the foregoing instrument was signed by him/her as its _________________________.

Witness my hand and official stamp or seal, this the _____ day of _____________, 2020.

Notary Public

Printed Name of Notary

My Commission Expires:
NORTH CAROLINA
WAKE COUNTY

DOWNTOWN PARK REGIONAL STORMWATER MANAGEMENT SYSTEM AGREEMENT

THIS DOWNTOWN PARK REGIONAL STORMWATER MANAGEMENT SYSTEM AGREEMENT ("Stormwater Management Agreement" or "Agreement"), made this ____ day of _____________, 2020, by and between the Town of Cary, a municipal corporation of the State of North Carolina, hereinafter referred to as “Cary” or “Grantor”, and Academy Park Cary, LLC, a North Carolina limited liability company, whose address is 113 Duncansby Court, Cary, North Carolina 27511, hereinafter referred to as “APC I” and Academy Park Commercial, LLC, a North Carolina limited liability company, whose address is 113 Duncansby Court, Cary, North Carolina 27511, hereinafter referred to as “APC II” (APC I and APC II are, individually and collectively, hereinafter referred to as “Grantee” and shall be jointly and severally responsible and liable for both or either APC I’s and/or APC II’s performance of this Agreement). The designation Grantee as used herein shall include Grantee and their Permitted Successors or Assigns as defined in the Downtown Development Project Agreement (“DDPA”) executed by Cary and Grantee, and shall include the singular, plural, masculine, feminine or neuter as required by context.

RECITALS:

WHEREAS, Cary owns certain real property located in its downtown ("Tract") and intends to establish Cary’s Downtown Park ("Downtown Park") on a portion of the Tract; and

WHEREAS, the Tract, seven acres of which will be the Downtown Park, is identified by the map attached as Exhibit A of this Agreement; and

WHEREAS, Cary has long planned to support the establishment of a stormwater management system to serve the Tract and adjacent properties surrounding the Tract and to locate a regional stormwater control device ("Park SCD") to receive stormwater drainage from most of the Tract and such adjacent properties. The term “Park SMS” is the Downtown Park stormwater management system, and includes the Park SCD and all related channels, pipes, appurtenant appliances, and improvements on the Tract owned by Cary necessary or appropriate to direct stormwater to the Park SCD; and
WHEREAS, the Park SCD is imaginatively designed to function not only as a stormwater control device but as a beautiful and entertaining feature of the Downtown Park; and

WHEREAS, Cary may grant permission for privately-owned properties abutting the Tract to utilize the Park SMS by forming written agreements with owners of these properties, now or in the future; and

WHEREAS, Cary conveyed to Grantee certain real property that was formerly part of the Tract, consisting of 1.561 acres conveyed to APC I and described in Book ___, Page ___, Wake County Registry ("New Lot 2"), and consisting of .821 acres conveyed to APC II and described in Book ___, Page ___, Wake County Registry ("New Lot 1"), New Lot 1 and New Lot 2 being referred to herein together as “Grantee’s Property,” on which Grantee shall construct the Private Mixed-Use Facilities that are a part of the Academy Park Project as described and defined by the Downtown Development Project Agreement ("DDPA") recorded at Book ___, Page ___, Wake County Registry. The Private Mixed-Use Facilities consisting of a Mixed-Use Multi-Family Building with total impervious coverage of 60,554.6 square feet ("Multi-Family Building"), a Mixed-Use Commercial Building with total impervious coverage of 30,777.3 square feet ("Commercial Building") and privately-owned improvements and facilities located on Grantee’s Property; and

WHEREAS, APC I and APC II jointly and severally have legal duties to manage the stormwater caused by natural precipitation falling on Grantee’s Property or flowing over Grantee’s Property from time to time ("Grantee’s Stormwater") under North Carolina civil law and under federal, state and local laws, rules and regulations, including without limitation, complying with Cary’s Land Development Ordinance ("LDO") and Cary’s Stormwater Best Management Practices Manual (collectively “Laws and Regulations”); and

WHEREAS, such legal duties require constructing, operating and maintaining a stormwater management system, including one or more stormwater control structures on Grantee’s Property to manage Grantee’s Stormwater ("Grantee’s Stormwater System"); and

WHEREAS, because of the size, shape and intensity of development on Grantee’s Property required by the DDPA, the best means and method for managing Grantee’s Stormwater in accordance with the Laws and Regulations is to collect Grantee’s Stormwater and direct it to the Park SMS and Park SCD; and

WHEREAS, Grantee requested Cary to allow it to discharge Grantee’s Stormwater to the Park SMS and Cary is willing to permit Grantee to use the Park SMS for the purpose of discharging Grantee’s Stormwater to the Park SCD subject to the terms and conditions set forth in this Agreement, the Deed of Non-Exclusive Easement for Stormwater Discharge signed by Cary and the Grantee ("Easement") and the DDPA; and
NOW, THEREFORE, in consideration of the sum of one dollar ($1.00) and other good and valuable consideration, the receipt of which is acknowledged, and in further consideration of the mutual covenants, terms, conditions, and restrictions set forth in this Agreement, the Easement and the DDPA, Grantor and Grantee agree as follows:

1. The Recitals in this Agreement are incorporated by reference and are terms and conditions of this Agreement.

2. At all times, Grantee’s Stormwater shall be discharged to the Park SMS in strict compliance with all Laws and Regulations and any and all applicable sediment and erosion control plans approved by the State of the North Carolina (“SEC Plans”) and stormwater management plans approved by Cary (collectively “Approved Stormwater Plans”). Prior to the completion of the Park SMS by Cary, Grantee shall construct and use temporary stormwater control structures and devices pursuant to an approved SEC Plan and a right of entry to be granted by Cary.

3. At all times, Grantee’s Stormwater and Grantee’s Stormwater System shall be in compliance with the applicable Approved Stormwater Plans, all Laws and Regulations, including without limitation, any permits or approvals issued by the State of North Carolina allowing construction and use of the Park SMS, and in accordance with rules, policies and regulations as Cary may from time to time establish to manage, maintain, repair, or replace the Park SMS, but nothing herein deprives Grantee of vested rights recognized and enforced by the Laws and Regulations. Without the prior written consent of Cary, Grantee agrees that Grantee shall not contract with or agree to accept stormwater on Grantee’s Property from any third-party (this does not prohibit stormwater from New Lot 1 flowing over or through New Lot 2 prior to entering the Park SMS). At all times, Grantee’s Stormwater shall be limited to stormwater that naturally and actually falls or flows directly through or over Grantee’s Property and shall not include stormwater not accounted for in the Approved Stormwater Plans.

4. Grantee shall be solely responsible for designing, constructing, installing, maintaining, repairing and replacing Grantee’s Stormwater System in accordance with any applicable Approved Stormwater Plans and all Laws and Regulations. Grantee shall have exclusive responsibility and possession, custody and control of Grantee’s Stormwater until it is discharged into the Park SMS at the point(s) designated on the applicable Approved Stormwater Plans (“Easement Area”). Grantee shall actively monitor Grantee’s Stormwater and Grantee’s Stormwater System. Grantee shall take reasonable efforts to prevent non-compliance with the applicable Approved Stormwater Plans and to prevent discharge of debris, toxic or hazardous substances, petroleum or petroleum products, and nutrients and materials into the Park SMS and discharges of Grantee’s Stormwater to the Tract at any location(s) other than the Easement Area. Grantee shall include in all leases with tenants in the Academy Park Project a provision prohibiting discharge of debris, toxic or hazardous substances, petroleum or petroleum products, and nutrients and materials into the Grantee’s Stormwater System or the Park SMS and stating that such discharge is a breach of the lease (“Lease Provision”). Grantee shall make best efforts to enforce the Lease Provision. If either Grantor or
Grantee becomes aware of repeated violations of Approved Stormwater Plans or Laws or Regulations by third parties, Grantor and Grantee shall work collaboratively to remedy such violations. Grantee shall prevent discharge of sediment exceeding the levels Cary may establish from time to time for the purpose of promoting and preserving the aesthetics and functionality of the Park SMS. Nothing herein lessens or reduces Grantee’s responsibility under any applicable Approved Stormwater Plans, whether temporary or longer term, or under any Laws and Regulations. Grantee shall not cause Cary to fail to be in compliance with any permit or approval or any Laws and Regulations applicable to the Park SMS. In the event of a conflict between any applicable Approved Stormwater Plans or Laws and Regulations on the one hand and this Agreement on the other hand, the most restrictive provision shall control.

5. Cary reserves the right to temporarily and unilaterally suspend discharges under this Agreement in the event that Grantee fails to comply with any of the terms and conditions set forth in this Agreement for more than seven (7) continuous days after receipt of written notice from Cary of non-compliance or the Park SMS becomes subject to an enforcement action by the State of North Carolina as a result of Grantee’s failure to comply with the terms and conditions of this Agreement or with the Laws and Regulations. This Agreement will be reinstated when Grantee demonstrates compliance with the terms and conditions of this Agreement and with the Laws and Regulations.

6. Upon delivery of the Grantee’s Stormwater to the point(s) designated on the applicable Approved Stormwater Plans in accordance with the terms and conditions of this Agreement, and with the Laws and Regulations, Cary will be responsible for Grantee’s Stormwater. Cary shall have sole authority to determine the adequacy of appearance of the Park SMS, including the Park SCD, and has no responsibility to Grantee or any other person regarding the condition, maintenance or appearance of the Park SMS or the Park SCD.

7. Upon execution of this Agreement, Grantee shall owe Cary $405,000.00 as Grantee’s total contribution to the operation, maintenance, and capital repairs of the Park SMS for the term of this Agreement as set forth in Paragraph 19, subject to a credit for improvements made by Grantee on the Tract that will be used and incorporated by Cary into the Park SMS. Credit shall be based on actual costs incurred by Grantee for construction of sediment basin number 1 with skimmer to dimensions shown on the approved Phase 2 SEC Plan attached as Exhibit B and installation of riser outlet, pipe outlet, bypass pipe system, construction entrance on Park Street, temporary diversion and berms and skimmer as shown on Exhibit B (collectively “Improvements”) and based upon the following estimates: (1) $100,000.00 – $150,000.00 for sediment basin number 1 with skimmer, baffles, riser outlet, and riser outlet piping to connect to existing storm drain system; (2) $90,000.00 for temporary bypass piping; and (3) $25,000.00 for diversions, berms and Park Street construction entrance on the Downtown Park. Grantee shall install all Erosion Control devices per Exhibit B and sediment basin number 1, riser outlet, pipe outlet, and skimmer shall meet the needs of Grantor. To assure their construction at a reasonable price, Grantor shall be given the opportunity to review all construction estimates and Grantee shall exercise best management practices to minimize
construction costs and satisfy Exhibit B. Grantee’s payment ($405,000.00 – (minus) credit) shall be due to Cary within thirty (30) days from the date of Cary’s written acceptance of the Improvements described above as being suitable for use and incorporation by Cary into the Park SMS.

8. In addition to enforcing the applicable Approved Stormwater Plans and Laws and Regulations, Cary shall have a right to enforce this Agreement in law or in equity, including by a decree of specific performance jointly or severally against Grantee. Recognizing serious and adverse consequences to Cary, the Downtown Park, and the Park SMS could arise as a result of Grantee’s joint or separate non-compliance with the terms and conditions of this Agreement, Grantee, jointly and severally, acknowledges that such losses, costs, and expenses are foreseeable and are recoverable by Cary in full.

9. Neither Grantor nor Grantee shall be deemed to have breached this Agreement based upon delays in or failures of performance due to causes beyond the party’s reasonable control, including, but not limited to, actions or inactions of governmental authorities, epidemics, wars, embargoes, fires, hurricanes, unusual adverse weather, acts of God, the default of a common carrier, or any extraordinary rain events or series of rain events causing stormwater flow to significantly exceed the design of the Grantee’s Stormwater System, the Park SCD, or the Park SMS. However, the occurrence of any of the events identified above shall not relieve the Grantee or Cary from performing their duties under this Agreement or under their respective governmentally Approved Stormwater Plans in good faith in as timely a manner as reasonably possible, including without limitation, taking all such temporary remedial actions and exercising all reasonable efforts to avoid and minimize human safety risks and damage to property which may arise from any of these events. In no event shall the delayed performance be longer than the duration of a force majeure without the written approval of Grantor.

10. Grantee, jointly and severally, shall indemnify, defend and hold Cary, its officers, employees and agents (collectively, the “Indemnified Parties”) harmless from and against any and all damages, liabilities, losses, costs and expenses, including reasonable attorneys’ fees, (collectively, “Damages”) suffered or incurred by any of the Indemnified Parties as a result of Grantee’s use of the Park SMS in any manner other than as contemplated and authorized by this Agreement. This indemnification extends to, and shall be binding upon, Grantee and Permitted Successors or Assigns, and shall inure to the benefit of, and may be enforced by, Cary and any other Indemnified Parties, their heirs, successors and assigns.

11. To protect Cary and the public at large, all deeds of trust, mortgages or liens encumbering Grantee’s Property, other than property tax liens for the current tax year, shall be subordinate to this Agreement.

12. This Agreement does not grant any rights to Grantee that excludes or impedes Cary’s power and ability to form similar agreements with others owning property now or in the future within or adjacent to the Tract, but Cary has no obligation
to do so. Cary has no obligation to extend the same terms or conditions as set forth herein to other grantees.

13. Cary may use the Tract, Park SCD, and Park SMS for all purposes not inconsistent with this Agreement. Nothing in this Agreement limits Cary’s regulatory authority as provided by any applicable federal, state and local laws, regulations, and ordinances. In the event federal, state or Cary laws or regulations change after this Agreement has been entered into and the change prevents or precludes compliance with one or more provisions of this Agreement, Cary may modify the affected provisions of this Agreement, upon a finding that the change in federal, state or Cary law has a fundamental effect on this Agreement. In such event, Cary will provide Grantee advance notice of the change it intends to make to this Agreement and allow Grantee to comment on the change.

14. Except in emergency situations, Cary will provide advance notice to Grantee prior to exercising its rights to temporarily suspend this Agreement, and Cary shall provide Grantee a reasonable opportunity to take actions to perform required maintenance as provided in this Agreement before suspending this Agreement.

15. This Agreement shall be amended only by a written amendment executed by Cary and the then owner(s) of Grantee’s Property.

16. If any provision of this Agreement shall be deemed invalid by a judgment, order or decree of any court of competent jurisdiction, such invalidity shall not affect money due under Paragraph 7 and shall not alter any of the remaining provisions of this Agreement.

17. If there is any conflict between the provisions of this Agreement on the one hand and the applicable Approved Stormwater Plans or Laws and Regulations on the other hand, the most restrictive shall apply. If there is any conflict between the provisions of this Agreement in an area not addressed by the applicable Approved Stormwater Plans or Laws and Regulations on the one hand and the provisions of the DDPA on the other hand, Section 10.10 of the DDPA shall control interpretation and construction of this Agreement.

18. This Agreement shall be binding upon and only inure to the benefit of the Grantor and Grantee, Cary’s successors or assigns, and Grantee’s Permitted Successors or Assigns as defined in the DDPA.

19. The term of this Agreement is thirty (30) years beginning on the date of this Agreement first written above and shall automatically terminate thereafter. The Grantor and Grantee acknowledge that typical stormwater control devices and management systems are replaced approximately every thirty (30) years. Prior to the termination of this Agreement, the Grantor and Grantee will jointly plan for the future control and management of Grantee’s Stormwater.
20. This Agreement 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. Either Grantor or Grantee may convert a signed original of this Agreement, 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 this Agreement shall be deemed for all purposes to be an original signed Agreement.

21. Grantee, and all contractors and subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.

22. This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by N.C.G.S. § 159-28) has been affixed and signed by Cary’s finance officer or deputy finance officer.

IN WITNESS WHEREOF, Cary has hereunto caused this Agreement to be signed by its Mayor or other person authorized by Cary’s Town Council to sign this Agreement and attested to by Cary’s Town Clerk, and Academy Park Cary, LLC and Academy Park Commercial, LLC have caused this Agreement to be signed by its ______________________ the day and year written above.

GRANTOR: TOWN OF CARY

By: __________________________
Title: ________________________

ATTEST:

By: Virginia H. Johnson
Town Clerk

GRANTEE: Academy Park Cary, LLC

By: __________________________
Title: ________________________

GRANTEE: Academy Park Commercial, LLC

By: __________________________
Title: ________________________

TOWN SEAL
The undersigned, a Notary Public of the county and State aforesaid, hereby certify that Virginia H. Johnson personally appeared before me this day and acknowledged that she is the Town Clerk of the Town of Cary, a North Carolina municipal corporation, and that by authority duly given and as the act of said Town of Cary, the foregoing instrument was signed by its __________ Town Manager, sealed with its official seal and attested by herself as its Town Clerk.

Witness my hand and notarial seal this _____ day of _______, 2020.

Notary Public

Printed Name of Notary

My Commission Expires: 

NORTH CAROLINA
WAKE COUNTY

The undersigned, a Notary Public of the county and State aforesaid, hereby certifies that _______________________ personally appeared before me this day, and acknowledged that he/she is the ______________ of Academy Park Cary, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of Academy Park Cary, LLC, the foregoing instrument was signed by him/her as its ______________.

Witness my hand and notarial seal this _____ day of _______, 2020.

Notary Public

Printed Name of Notary

My Commission Expires: 

NORTH CAROLINA
WAKE COUNTY

The undersigned, a Notary Public of the county and State aforesaid, hereby certifies that ______________ personally appeared before me this day, and acknowledged that he/she is the ______________ of Academy Park Cary, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of Academy Park Cary, LLC, the foregoing instrument was signed by him/her as its ______________.

Witness my hand and notarial seal this _____ day of _______, 2020.

Notary Public

Printed Name of Notary

My Commission Expires: 

NORTH CAROLINA
WAKE COUNTY

The undersigned, a Notary Public of the county and State aforesaid, hereby certified that _______________________ personally appeared before me this day, and acknowledged that he/she is the ________________ of Academy Park Cary, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of Academy Park Cary, LLC, the foregoing instrument was signed by him/her as its ________________.

Witness my hand and notarial seal this _____ day of ______, 2020.

____________________________________
Notary Public

My Commission Expires:

____________________________________
Printed Name of Notary

Certificate of Town of Cary Finance Officer

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

____________________________________  ________________
Deputy Finance Officer                Date
ACADEMY PARK COMMERCIAL, LLC

By: __________________________ (SEAL)
Title: __________________________

==================================================================

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The undersigned, a Notary Public of the County and State aforesaid, hereby certify that __________________________ personally appeared before me this day, and acknowledged that he/she is the _________________ of Academy Park Commercial, LLC, a North Carolina limited liability company, and that by authority duly given and as an act of Academy Park Commercial, LLC, the foregoing instrument was signed by him/her as its ____________________.

Witness my hand and official stamp or seal, this the _____ day of ______________, 2020.

_____________________________________
Notary Public

My Commission Expires:

_____________________________________
Printed Name of Notary
"Tract"

- Library & Parking Deck
- Remaining Town Property, 7 Acres of which to be used for future town park
ESTOPPEL CERTIFICATE

To: [Name and Address of Other Principal Party to Downtown Development Project Agreement Entitled to Request an Estoppel]

Re: Downtown Development Project Agreement, Cary, NC

The undersigned, as a Principal Party to the “Downtown Development Project Agreement” dated __________, between the Town of Cary and Academy Park Cary, LLC and Academy Park Commercial, LLC (the “DDPA”), hereby certifies, to its actual knowledge, that:

1. A true and complete copy of the DDPA is attached hereto.

2. The DDPA has not been amended or modified, except as follows: __________________. [signatory to confirm if accurate] To the actual knowledge of the undersigned, the DDPA is full force and effect.

3. [signatory to confirm if accurate] The undersigned has not defaulted in its obligations under the DDPA.

4. [signatory to confirm if accurate] To the actual knowledge of the undersigned, without any inquiry of any other party and without any due diligence as to such matters, no other Principal Party is in default under the DDPA.

The foregoing Estoppel Certificate is provided solely for the purpose of confirming the terms, conditions and agreements set forth in the DDPA. This certificate is not intended to, and shall not, amend or modify any of the terms, conditions and agreements set out in the DDPA or affect any of the undersigned’s rights and remedies under the DDPA. In the event of any conflict or discrepancy between the terms, conditions and agreements set forth in this certificate and those in the DDPA, the terms, conditions and agreements set forth in the DDPA shall govern.

[name of entity providing the estoppel]

By: ___________________________
Exhibit G begins on the following page.
1" DEPTH X 1/4" WIDE SCORE JOINT, CLASS 'A3' CONCRETE PAVING, 1"
WATERPROOFING AND DRAINAGE BOARD

PEDESTRIAN CONCRETE PAVING

SEAT - PLANTER WALL

Scale: 1" = 1'-0"

CONTRACTION JOINT

1" DEPTH X 1/8" WIDE SAW-CUT SCORE JOINT, TYP. (REFER TO PLAN FOR
INFORMATION CROSS SLOPE MIN., REFER TO GRADING PLANS FOR MORE
VARIES, SEE MATERIALS PLAN)

NOTE: ALL RETAINING WALLS TO BE APPROVED BY STRUCTURAL ENGINEER

1/2" PREMOLDED EXPANSION JOINT FILLER, FULL DEPTH
BACKER ROD SEALANT TOOLED EDGE

SECTION

SLIP DOWEL 1" DEPTH X 1/2" WIDE SCORE JOINT, TYP.
6" 4"
1" 1'

RESTRAINT 1/4" EVERY 5' EXPANSION BOLT @ 4'-0" DRILL HOLES. GAP EDGE
O.C. APPLY GALVANIZED STEEL ANGLE IRON EDGE

CAST-IN-PLACE CONCRETE WALL

GEOTEXTILE FILTER FABRIC SEPARATOR

WASHED #57 STONE

COMPACTED BACKFILL

REBAR REINFORCEMENT, REFER TO STRUCTURAL DRAWINGS FOR WIDTH X DEPTH
ON LOW SIDES ADJACENT SURFACE (SEE MATERIALS PLAN)

DIPPED GALV. 2-1/2" X 3/8" STEEL ANGLE IRON EDGE

RESTRAINT 1/4" EVERY 5'

EXPANSION BOLT @ 4'-0" DRILL HOLES. GAP EDGE

O.C. APPLY GALVANIZED STEEL ANGLE IRON EDGE

4" PERFORATED PVC WALL DRAIN

WATERPROOFING AND DRAIN TILE

3" TYP. (REFER TO STRUCTURAL FOR BELOW GRADE REINFORCING (TYP.)
REFER TO STRUCTURAL DRAWINGS FOR WIDTH X DEPTH
ON LOW SIDES ADJACENT SURFACE (SEE MATERIALS PLAN)

BRICK PAVER EDGE @ FLUSH
12" X 12" GEOTEXTILE FABRIC AT GAPS RESTRAINT AND OVER RESTRAINT SECTIONS; BETWEEN EDGE TURN ONTO TOP OF WEEP HOLES BETWEEN EDGE OF CONCRETE AND DRILLED HOLE
BETWEEN EDGE OF BRICK PAVER SECTION ON-GRADE UNIT PAVER EDGE @ POINTS; COVER WITH 12" SQ. FILTER FABRIC AND GRAVEL @ 8'-0" O.C. SINGLE ROW AT LOW SECURE WITH CONCRETE NAILS

2" Ø PVC WEEPS FILLED WITH WASHED PEA GRAVEL

8" 6"
4" 4"
1" 1'

1" BITUMINOUS SETTING BED PAVERS WITH HAND TIGHT POLYMERIC SAND SWEPT JOINTS, SEE SCHEDULE 1/2" EXPANSION JOINT MATERIAL, IN SLAB ONLY, REFER PLAN FOR LOCATIONS

CONCRETE PAVING 1" BITUMINOUS SETTING BED PAVERS WITH HAND TIGHT POLYMERIC SAND SWEPT JOINTS, SEE SCHEDULE 1/2" EXPANSION JOINT MATERIAL, IN SLAB ONLY, REFER PLAN FOR LOCATIONS

UNIT PAVER EDGE @ FLUSH
GRANITE COBBLES UNIT PAVER EDGE @ FLUSH

ONE WALNUT (555 WALNUT ST)
TOC DEVEL. PLAN 20-DP-2171

NOTES:
1. INSTALL 1/2" EXPANSION JOINT WITH SEALANT WHEN PAVING IS ADJACENT TO VERTICAL FACES, CURBS, STEPS, ANY FIXED OBJECT, OR OTHER RIGID PAVING MATERIAL, AND AT A MAXIMUM 20' O.C. UNLESS OTHERWISE NOTED ON PLANS.

REFERENCE TO HARDSCAPE DETAILS D-1:

1. PROVIDE EXPANSION JOINT WHERE WALKS ARE POURED AGAINST VERTICAL SURFACES AND/OR DIFFERENT PAVING MATERIALS AND AS CONCRETE SIDEWALK SCORING FOR LANDSCAPE ARCHITECTS APPROVAL. MOCK-UP CAN BE USED AS PART OF FINAL PROJECT. SPECIFIED ON PLANS OR 30'-0" MAX. O.C.

2. SCORE (CONTRACTION) JOINT AT 5' INTERVALS UNLESS OTHERWISE NOTED (SEE PLAN). CONTRACTOR TO PROVIDE MOCK-UP OF SAW-CUT SCORE JOINT PATTERN)

NOTES:
1. PROVIDE EXPANSION JOINT WHERE WALKS ARE POURED AGAINST VERTICAL SURFACES AND/OR DIFFERENT PAVING MATERIALS AND AS CONCRETE SIDEWALK SCORING FOR LANDSCAPE ARCHITECTS APPROVAL. MOCK-UP CAN BE USED AS PART OF FINAL PROJECT. SPECIFIED ON PLANS OR 30'-0" MAX. O.C.

2. SCORE (CONTRACTION) JOINT AT 5' INTERVALS UNLESS OTHERWISE NOTED (SEE PLAN). CONTRACTOR TO PROVIDE MOCK-UP OF SAW-CUT SCORE JOINT PATTERN)
F.R.T. SHEATHING WHERE FIRE WALL INTERSECTS F.R.T. ROOF SHEATHING 4'-0" EACH SIDE AT ROOF.

- EXPANSION JOINTS IN BRICKWORK
- STOREFRONT DETAILS

SHEET A6.03 FOR WINDOW SCHEDULE AND DOOR SCHEDULE.

SEE ELEVATIONS FOR SYMBOL LEGEND

- MASONRY

- METAL CANOPY

- SINGLE SKIN METAL ACCENT PANEL

- METAL SCREEN WALL @ POOL COURTYARD

- ALUMINUM CONDUCTOR HEAD AND DOWNSPOUTS

- SEE ALUMINUM CLAD WOOD WINDOW - KOLBE VISTALUXE

- PREFINISHED METAL COPING

- COLOR TO MATCH ADJACENT SURFACE, (TYP)

- EXHAUST VENTS, (TYP) LOCATE AS SHOWN.

- VERIFY FLOOR ELEVATIONS WITH CIVIL/SITE DRAWINGS.

- DATUM DENOTED IN BUILDING ELEVATIONS ARE

- CORNER TRIM - 5/4X6 FIBER CEMENT TRIM TO BE USED IN ALL LAP SIDING AND FIBER CEMENT PANEL FIELDS,

- THE BUILDING CODE.

- ADDRESS NUMBERS TO BE ILLUMINATED.

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BRICK FRAME DETAIL.

0" 0" 1 1/2" 0" 0" 4.

ENTERED DOOR TYPE (SEE SHEET A6.00 FOR EXTERIOR WALLS.
F.R.T. SHEATHING WHERE FIRE WALL INTERSECTS NO OPENINGS OR PENETRATIONS AT ROOF.
F.R.T. ROOF SHEATHING 4'-0" EACH SIDE AT ROOF.

- DENOTES 2 HOUR FIRE WALL LOCATION. PROVIDE EXPANSION JOINTS IN BRICK ENTRANCES.

SEE ELEVATIONS FOR SYMBOL LEGEND.

THESE 2 COURSES TO SILL & HEAD LENGTH BE STACKED BOND.

2" = 1'-0"
3" = 1'-0"
3/4" PROJECTION

A3.01 A2.16 B4 E5 B2 E8 B2 E8 A2.16

5 BRICK SHAPE @ WINDOWS

METAL CANOPY

INSULATED METAL PANEL

ALUMINUM CONDUCTOR HEAD AND DOWNSPOUTS - SEE ALUMINUM CLAD WOOD WINDOW - KOLBE VISTALUXE

NOT USED

PREFINISHED METAL COPING

FIBER CEMENT TRIM

ACM FASCIA

METAL PANEL BALCONY RAIL @ COURTYARD

CONCRETE TUNNEL (EXISTING CONSTRUCTION BY FIBER CEMENT SLAB EDGE

CAST STONE CAP

CAST STONE HEADER/SILL

MASONRY MATERIAL COLORS

PARKING

P2 - PAINT COLOR 2

B5 - TAYLOR CLAY - CUSTOM BRICK SHAPE - #3118 CREAM, WIRECUT

P1 - PAINT COLOR 1

M3 - BOK MODERN - B21 PANEL

M2 - CENTRIA CONCEPT SERIES W/ MICROSEAM CORNERS - CS-260

M1 - COLOR TO MATCH DARK BRONZE ANODIZED METAL

S1 - DARK BRONZE ANODIZED

B3 - ARRISCRAFT - RENAISSANCE - CHAMPAGNE, SATIN/ROCKED COMBINATION

B2 - TAYLOR CLAY - UTILITY 1/2 RUNNING BOND - #3118 CREAM, WIRECUT

B1 - TAYLOR CLAY - UTILITY 1/2 RUNNING BOND - #3118 CREAM, V-SCRATCH

1ST FLOOR

4TH FLOOR

5TH FLOOR

ROOF BEARING HEIGHT

THE BUILDING CODE.

FOR REFERENCE PURPOSES ONLY.

THE PRIMARY MOISTURE BARRIER.

U.O.N.

MARSHAL. ADDRESS NUMBERS TO BE ILLUMINATED.
NOTE: RENDERING PROVIDE FOR GENERAL UNDERSTANDING OF MATERIAL EXTENTS. SEE ELEVATIONS FOR SPECIFIC MATERIAL LOCATIONS & UP TO DATE MASSING. FOR ANY DISCREPANCIES, ELEVATIONS OVERIDE RENDERINGS.
MATERIAL CALCULATIONS

TOTAL FACADE AREA (WxH):

AREA OF WINDOWS AND DOORS: 25,407 SF

TOTAL WALL AREA FOR MATERIAL CALCULATIONS:

AREA OF MASONRY: 8,226 SF

AREA OF OTHER: 17,181 SF

TOTAL WALL AREA FOR MATERIAL CALCULATIONS: 17,181 SF

REQUIRED MASONRY (x0.75): 9,307 SF

MASONRY AREA PROVIDED: 7,874 SF

11% - 0%

SCREEN WALL

ROOF BEARING HEIGHT: 559' - 1 1/2"
**MATERIAL CALCULATIONS (RIGHT - A1)**

**TOTAL FACADE AREA (WxH):**

**AREA OF WINDOWS AND DOORS (WxH):**

**TOTAL WALL AREA FOR MATERIAL CALCULATIONS:**

**AREA OF MASONRY:**

**AREA OF OTHER:**

**TOTAL WALL AREA FOR MATERIAL CALCULATIONS REQUIRED MASONRY (x0.75):**

**MASONRY AREA PROVIDED:**

- **8,575 SF**
- **3,310 SF**
- **5,265 SF**
- **3,000 SF**
  - **57%**
- **2,265 SF**
  - **43%**
- **5,265 SF**
- **3,825 MIN. SF**
- **3,000 SF**

---

**MATERIAL CALCULATIONS (LEFT - A2)**

**TOTAL FACADE AREA (WxH):**

**AREA OF WINDOWS AND DOORS (WxH):**

**TOTAL WALL AREA FOR MATERIAL CALCULATIONS:**

**AREA OF MASONRY:**

**AREA OF OTHER:**

**TOTAL WALL AREA FOR MATERIAL CALCULATIONS REQUIRED MASONRY (x0.75):**

**MASONRY AREA PROVIDED:**

- **14,430 SF**
- **5,830 SF**
- **8,600 SF**
- **6,590 SF**
  - **77%**
- **2,010 SF**
  - **23%**
- **8,600 SF**
- **6,370 MIN. SF**
- **6,590 SF**

---

**NOTE:**

1. ALL BUILDING PERMITS TO BE CONSISTENT WITH THE APPROVED SITE PLAN. IT IS THE DEVELOPER'S RESPONSIBILITY TO ENSURE THAT ELEVATIONS SUBMITTED IN THE BUILDING PERMIT SET MATCH THOSE APPROVED DURING THE SITE PLAN REVIEW PROCESS. IF THE ELEVATIONS DO NOT MATCH THOSE IN THE SITE PLAN, IT WILL DELAY THE ISSUANCE OF A BUILDING PERMIT, OR THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY AT THE END OF CONSTRUCTION, AND MAY NECESSITATE MODIFICATIONS TO THE CONSTRUCTED BUILDING.

2. ALL VENT PIPES, ETC. EXTENDING ABOVE THE ROOF SURFACE MUST BE PAINTED A COLOR THAT BLENDS WITH THE ROOF COLOR.

3. ALL ROOFTOP MECHANICAL EQUIPMENT SHALL BE SCREENED FROM OFFSITE VIEWS.
2ND FLOOR
505' - 0"

1ST FLOOR
487' - 0"

3RD FLOOR
516' - 0"

4TH FLOOR
527' - 0"

5TH FLOOR
538' - 0"

6TH FLOOR
549' - 0"

ROOF BEARING HEIGHT
559' - 1 1/2"

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3. Verify floor elevations with civil/site drawings. Datum denoted in building elevations are the primary moisture barrier.

4. All penetrations, including windows and doors, will need to be sealed to the backup wall at the building code.

- MATERIAL RETURNS AROUND BAYS:

111. 6. MATERIAL RETURNS AROUND BAYS:

- EXPANSION JOINTS IN BRICKJ

- VIVA RAILINGS, SHOE, EMBEDDED

- CW1 DARK BRONZE

- PROJECTION POINTS ON REG"R condenb"ating h"n-sides (see window s"chule and balcony door types).

- MODULATUS OUTDOOR CONCEPT SERIES - CS-260

- A3.11

- CS1 COLOR TO BE SELECTED BY ARCHITECT

- A3.01

- M1 CLEAR ANODIZED

- M3 COLOR TO MATCH ADJACENT STOREFRONT

- 102/1

- TRIANGLE REAL ESTATE COMPANY

- PHONE: 919/836-1280 FAX: 919/752-0569

- TRIPLEX CONSTRUCTION COMPANY

- PHONE: 919/836-1280 FAX: 919/752-0569

- 12.02.19

- DATE

- EXPRESSIONS: CHECKED BY:

- DRAWN BY:

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1. ADDRESSING SIGNAGE TO BE LOCATED ON THE SIDE OF THE BUILDING FROM WHERE THE BUILDING IS ADDRESSED (ONE SIDE ONLY). PROVIDE BUILDING ADDRESS IN 6" HIGH LETTERS TO BE APPROVED BY FIRE MARSHAL. ADDRESS NUMBERS TO BE ILLUMINATED.

2. SEE WALL SECTIONS & ENLARGED ELEVATIONS FOR GUARDRAIL HEIGHTS. ALL EXTERIOR WALKING SURFACES ELEVATED MORE THAN 30" IN VERTICAL RISE TO HAVE MINIMUM 3'-6" HIGH GUARDRAILS AS PER THE BUILDING CODE.

3. VERIFY FLOOR ELEVATIONS WITH CIVIL/SITE DRAWINGS. DATUM DENOTED IN BUILDING ELEVATIONS ARE FOR REFERENCE PURPOSES ONLY.

4. ALL PENETRATIONS, INCLUDING WINDOWS AND DOORS, WILL NEED TO BE SEALED TO THE BACKUP WALL AT THE PRIMARY MOISTURE BARRIER.

5. PROVIDE CONT. SEALANT WHERE TRIM OVERLAPS OCCUR.

6. MATERIAL RETURNS AROUND BAYS:

7. MATERIAL (A) AND COLOR AT FACE OF BAY RETURNS AROUND THE SIDES AND BACK TO THE BUILDING. (TYP)
NOTE: RENDERING PROVIDE FOR GENERAL UNDERSTANDING OF MATERIAL EXTENTS. SEE ELEVATIONS FOR SPECIFIC MATERIAL LOCATIONS & UP TO DATE MASSING. FOR ANY DISCREPANCIES, ELEVATIONS OVERIDE RENDERINGS.
2. All vent pipes, etc. extending above the roof shall be screened from offsite views.

With the roof color, the surface must be painted a color that blends with the roof color. Modifications to the constructed building, and may necessitate issuance of a building permit, or the issuance of a certificate of occupancy at the end of construction, and may necessitate issuance of a building permit, or the issuance of a certificate of occupancy at the end of issuance of a building permit. If the elevations do not match those approved during the site plan review submitted in the building permit, they do not match those approved during the site plan review submitted in the building permit. It is the developer's responsibility to ensure that elevations match the approved site plan. It is the developer's responsibility to ensure that elevations match the approved site plan.

One Walnut - Commercial Everett, WA 08.19.19 South Elevation 12.02.02

Building B - South elevation - Articulation

Building B - South elevation - Expression

Color Palate


CHAPTER 6: SHAPE

SOUTH ACADEMY SUBAREA

Context
The South Academy Subarea is located south of the railroad lines and the Central Chatham Subarea, and is centered around South Academy Street. Home to important historic structures and public, institutional, and cultural arts anchors, the South Academy Area serves as Cary’s cultural and historic center. This area encompasses important buildings and streetscapes that together create a unique sense of place for the Cary community.

Issues and Opportunities
The South Academy Subarea provides opportunities to preserve and enhance the unique sense of place found in this part of downtown.

The map on the next page, and the captions below identify several of the most significant planning issues and opportunities for the South Academy subarea.

1 Streetscape Improvements
The streetscape along South Academy Street and Dry Avenue between Chatham and Walnut Streets has been improved to enhance pedestrian spaces, upgrade sidewalks, and incorporate unique streetscape elements, landscaping, and utilities. These improvements will support the street as a setting for street festivals and other activities designed to attract visitors to Downtown Cary.

2 New Downtown Park and Library
A new Wake County Regional library is planned to be located diagonally opposite – and northeast of – the Cary Arts Center. Adjacent to the library, and facing Walnut and Walker Streets, sites are also being reserved for future infill multistory office, housing, or mixed-use buildings. All are planned to be served by a central public parking structure. Immediately north of the library site, a new Downtown Park is planned as a visual and focal point for downtown. This park will serve nearby neighborhoods and provide opportunities for special cultural and community events.

3 Opportunities for Development of Properties Lining the Park
Several sites exist on the north side of the Downtown Park, fronting onto East Park Street. There are opportunities to create higher density residential properties that frame the new park and provide attractive housing options and park views for future downtown residents.

4 Former Library Site
The current Cary Community Library site, located on S. Academy Street, is owned by the Town, and will become available for redevelopment after the new regional library is completed. This prime site will provide a key redevelopment opportunity.

5 Potential Extension of Harrison Avenue to Kildaire Farm Road
The Planned Roadway Widths Map in Chapter 7, Move, includes the potential extension of S. Harrison Avenue to Kildaire Farm Road, south of Cary Elementary School, creating another north-south connector through Downtown Cary. The specific alignment for this street extension has not been determined. This street would open up infill development opportunities for undeveloped land in this area.

6 Historic Properties
The South Academy subarea is home to numerous historic structures and resources, both within the Downtown Cary National Register Historic District (described in the “Core Issues” section at the beginning of this SPA section), and outside of it. Examples within the district include the Guess-Ogle House, and outside the district include the Ivy Ellington House.

These sites should be protected, and adjacent redevelopment or infill should be sensitive to the historic character, massing, and setbacks of these structures, to create a unified and context-sensitive pattern of development.
South Academy Subarea Existing Conditions, Issues, and Opportunities
**VISION FOR SOUTH ACADEMY: A CULTURAL ARTS ANCHOR**

South Academy will continue to be the cultural center of Cary. The South Academy Subarea will provide a built environment that supports art, cultural activities, and community gatherings. South Academy will remain the part of downtown that retains Cary’s historic small town character and charm. Residents and visitors will flock to this area to stroll along its streets, attend enriching events, and people watch. Many visitors will be inspired by the deep historic context of the area as they walk south from the regional transit hub at the Cary Depot. Inviting streetscapes and interesting architectural patterns will complement the historic built environment and foster a strong sense of place.

A beautiful centralized park, framed by homes and businesses, will inspire visitors and residents and provide an active gathering place for people to recreate, organize events, or simply relax. The new library will be a community focal point and attract people seeking to expand their knowledge, with books and technology at their fingertips.

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**General Character**

As the historic and cultural core, this area consists of attractive parks, cultural centers, schools, historic structures, neighborhoods, and some smaller scale commercial uses. Public spaces are enhanced by sidewalks, street trees and compatible buildings with a mix of uses that help activate the street. The view of the Arts Center along South Academy is framed by a consistent line of buildings and trees along the corridor. Short blocks and pedestrian-oriented streets indicate for drivers to slow down and watch for people. Building setbacks from the fronting street should generally retain the historic patterns for the particular street.

**Building Height**

Along S. Harrison Ave., S. Academy St., Park St., and Dry St., building heights should complement and reinforce the historic built environment and small-town character, and will therefore be primarily 2 stories, except for landmark public and institutional buildings, such as the churches, Arts Center, and County Library. Buildings of 2-4 stories may be appropriate along Walnut and S. Walker Streets, in order to facilitate redevelopment, and since these areas are further away from the historic core of downtown. There will be cases where taller buildings can be accommodated, as long as designs are compatible with the predominant character of the street and adjacent and nearby properties, especially historic properties.

**Opportunities**

- Provide new housing choices along the edges of the new Downtown Park
- Explore new uses for Town-owned sites to activate the Subarea
- Harrison Avenue extension should be designed to continue the downtown connected grid pattern
- Consider shared parking, and plan for new centrally located surface and structured parking to serve the subarea, while limiting on-site surface parking.
- Enhance streetscapes by providing wider sidewalks that can accommodate sidewalk dining, and potentially on-street vendors during festivals and events
The shaded areas on this map highlight some of the general locations that might offer particular opportunities for future infill development, redevelopment, or re-use that could help to achieve the vision for South Academy. The following page presents some typical types of uses and development forms that might be considered for these shaded areas.

Change is anticipated to occur slowly over time, as individual property owners elect at their own discretion to undertake changes to their properties to better align with this vision. Additional sites not highlighted in this subarea are expected to be maintained as is, or not change significantly, over the planning horizon.
Walkable Context-Sensitive Development

Mixed use development shielding parking from the street and better framing public space. Parking decks that serve the area.

Supporting Neighborhoods

Attached single family and context-sensitive multifamily housing increase density and frame the new park.

Walkable mixed use directly accessing park space

Townhomes frame the edge of the park

Human scale mixed use buildings and attractive signage

Street trees, sidewalks, and townhomes

Hidden parking behind buildings

A variety of housing options with high quality architecture