

RESOLUTION AUTHORIZING CARY/APEX/WAKE COUNTY RADIO COMMUNICATION  
FACILITY GROUND LEASE AGREEMENT

RESOLUTION

WHEREAS, Lessors jointly own a parcel of property located at 3500 Reclamation Road, Apex, North Carolina (PIN# 0619796350) ("Property") which is the site of an improvement known as the Western Wake Regional Water Reclamation Facility (the "WWWRF"); and

WHEREAS, Wake County ("County") has conducted an infrastructure and needs assessment, a result of which the County has identified the Property as a desirable location for construction of a radio communications facility ("Radio Communications Facility") which will improve public safety radio communications in southwestern Wake County; and

WHEREAS, pursuant to N.C.G.S. 153A-349.51A, the County may plan for and regulate the siting of wireless facilities based upon consideration of public safety; and

WHEREAS, Lessors have determined that the portion of the Property identified by County for construction of Radio Communications Facility is not and will not be needed by Lessors for their operation of the water reclamation facility during the term of the proposed lease; and

WHEREAS, WHEREAS, Lessors have determined that installation and use of the Radio Communications Facility is consistent with and permitted by the terms of all permits and approvals for the WWWRF; and

WHEREAS, improving public safety communications in western Wake County shall result in a direct benefit to the residents of the Town of Cary and the Town of Apex; and

WHEREAS, pursuant to N.C.G.S. 160A-274, the Lessors are authorized to lease the Property to the County upon the terms and conditions contained herein.

NOW THEREFORE, the Town Council of the Town of Cary resolves that:

The Town Council hereby approves the attached "Ground Lease" and authorizes the Town Manager or Deputy Town Manager to execute a lease substantially like the Lease attached hereto and to provide such notices and take such actions as Lease contemplates.

This Resolution shall be effective upon adoption.

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Harold Weinbrecht, Jr., Mayor

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

**COUNTY OF WAKE**

**STATE OF NORTH CAROLINA**

**GROUND LEASE**

This Ground Lease (“Lease”) dated the \_\_\_ day of \_\_\_, 20 \_\_\_ (“Agreement”) between the Town of Apex (“Apex”), a North Carolina municipal corporation, the Town of Cary (“Cary”), a North Carolina municipal corporation (together “Lessors”), and Wake County, a body politic and corporate of the State of North Carolina (“County” or “Lessee”). Lessors and Lessee are sometimes referred to individually as “Party” and jointly as “Parties.”

**RECITALS**

WHEREAS, Lessors jointly own a parcel of property located at 3500 Reclamation Road, Apex, North Carolina (PIN# 0619796350) which is the site of an improvement known as the Western Wake Regional Water Reclamation Facility (the “Property”); and

WHEREAS, pursuant to N.C.G.S. 153A-349.51A, the County may plan for and regulate the siting of wireless facilities based upon consideration of public safety; and

WHEREAS, the County has conducted an extensive infrastructure and needs assessment, as a result of which the County has identified the Property as a desirable location for construction of a radio communications facility (“Radio Communications Facility”) which will improve public safety radio communications in southwestern Wake County and Lessors have determined that the portion of the Property identified by County for construction of Radio Communications Facility is not and will not be needed by Lessors for their operation of the water reclamation facility during the term of the proposed lease; and

WHEREAS, improving public safety communications in western Wake County shall result in a direct benefit to the residents of the Town of Cary and the Town of Apex; and

WHEREAS, pursuant to N.C.G.S. 160A-274, the Lessors are authorized to lease the Property to the County upon the terms and conditions contained herein.

**NOW THEREFORE**, for and in consideration of the Recitals and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

- 1. Incorporation of Recitals and Purpose.** The Recitals are true and are incorporated into this Agreement. The purpose of this Agreement is to set forth the terms and conditions on which Lessors will lease a portion of the Property to County for the construction and operation of a Radio Communications Facility

which serves a public purpose for the County, in a manner that does not interfere with the operation of the Western Wake Regional Water Reclamation Facility (“WWRWF”), which serves a public purpose for the Lessors.

2. **Lease of Premises.** Lessors hereby lease to County that portion of the Property as more specifically described in Exhibit A, Sheet L-1 and Sheet L-2, both attached hereto and made a part hereof (the “Premises”) for the Permitted Use described in paragraph 4. Additionally, County is granted the right of access to and from the Premises along a gravel access drive, not to exceed 20-feet in width, to run from the Premises to the existing pavement shown as the “Access Road” on Exhibit “A” and to have utilities run to Premises in location or locations to which Lessors consent. County is responsible for installation and maintenance of the Access Road. Exhibit A, Sheet L-1 and Sheet L-2, illustrate the location of all improvements to the Premises necessary for the Permitted Use, all of which shall be made and maintained at County expense. County shall conduct all construction, operations and maintenance in a manner that does not interfere with Lessors’ use and operation of the WWRWF. County shall maintain Premises and Radio Communications Facility in a safe, neat and tidy condition for the entire Term.

3. **Effective Date; Term and Termination.**

- A. Effective Date. This Agreement is conditioned upon proper authorization and execution by all the Parties and shall become effective upon the date it is executed by the last of all the Parties named in the introductory clause of this Agreement (“Effective Date”).
- B. Term. This Agreement shall have an initial term of Thirty (30) years, ending on the date which is 30 years from the Effective Date (“Initial Term”) and unless written notice of non-renewal is provided by any of the Parties prior to the expiration of the Initial Term, shall automatically renew for two (2) successive 10-year renewal terms (“Renewal Term”).
- C. Termination.
  - a. *For Cause During Initial Term or Renewal Terms.* Lessors or Lessee may terminate this Ground Lease for cause based upon the failure of the other party to comply with the material terms and conditions of the Lease; provided that the party desiring to terminate shall give the other party ninety (90) days written or electronic notice of the cause for termination. After receipt of such notice, if the other party has not corrected such cause in 90 days, or in the case of cause which cannot be corrected in 90 days, begun in good faith to correct such cause and thereafter proceeded diligently to complete such correction, then the party desiring to terminate may declare the Lease terminated.
  - b. *Without Cause During Term.* After the Initial Term, this Agreement may be terminated by Lessors or Lessee at any time during a Renewal

Term by either Lessors or Lessee providing written or electronic notice of intent to terminate at least eighteen (18) months prior to the effective date of termination. The 18-month notice period is a material term of this Agreement in recognition of the time required to make other arrangements for critical public safety infrastructure in the event of a termination.

- 4. Permitted Use.** County shall use the Premises for the sole purpose of constructing, maintaining, and operating Radio Communications Facility. Radio Communications Facility shall include substantially the following features, as modified or allowed by permitting authority:
- a. a free standing, self-supported lattice tower not greater in height than four hundred (400) feet (“Tower”);
  - b. an equipment shelter with a maximum size of 32-feet by 12-feet (“Equipment Shelter”). The Town managers, or their designees, may consent to additional Equipment Shelters;
  - c. a standby generator with enclosure and fuel tank up to a maximum size of 14-feet by 6-feet to be located adjacent to the Tower structure and outfitted with sound attenuation equipment and enclosure necessary to meet the more stringent of standards of the Town of Apex or Town of Cary, with sound pressure level limited to 65 dB at 7 meters from generator;
  - d. an 8ft, black vinyl coated perimeter fence with 3 strands of barb wire around the perimeter of the Premises enclosing the Tower, Equipment Shelter, generator and all appurtenances and accessories thereto. Said fence shall be constructed to match the existing fencing of WWRWRF; and
  - e. such activities as are necessary for the installation, operation and maintenance of Radio Communications Facility by County, its employees, contractors and agents.

**5. Roles and Responsibilities of each Party**

- a. **Roles and Responsibilities of Apex and Cary.**
  - i. **Town of Apex and Town of Cary.**
    - 1) The Town of Apex and the Town of Cary are joint Lessors of the Premises. Any action which may be taken by “Lessors” under this Lease requires the joinder of Town of Apex and Town of Cary.
    - 2) The Town of Cary and the Town of Apex must each assure that its respective employees, contractors, and agents comply with all federal, state and local laws and regulations

and possess insurance coverage required in paragraph 8 of this Agreement.

- ii. Town of Apex.** The Property is within the jurisdiction of Town of Apex. The County must obtain all required approvals for the construction of the Radio Communications Facility by submitting an application through the usual approval processes of the Town of Apex.
- iii. Town of Cary.** Cary shall be Lessors' Lead Agent ("Lead Agent") in administering this Agreement. As lead agency, Cary shall be the primary point of Lessors contact for County, its employees, contractors and agents. Lessors shall:
  - 1) **Permit Access to Premises.** Lead Agent shall permit County, its designated employees, contractors and agents reasonable access to the Premises to construct, operate, inspect, and maintain the Radio Communications Facility (sometimes "Facility"). Access to the Premises shall be through the main entrance gate to the WWRWRF. Access shall be permitted Monday through Friday, during normal business hours (8:00 am to 4:00 pm). In the event of an emergency requiring after-hours or emergency access to the Property, the County shall be permitted access and must contact the 24/7 after hours number for WWRWRF (919-535-5640).
  - 2) **Deny Access at Certain Times.** Lead Agent may deny access to the Premises if Lead Agent believes such denial is necessary in cases of emergency, or to ensure the safety of workers and the public; provided that Lead Agent shall provide Lessee with access equal to emergency access given to Lessors employees when necessary to immediately address a physical issue with the Radio Communications Facility.
  - 3) **Provide Temporary Construction Area.** Lessee shall be granted the right to use a temporary construction area ("TCA") as depicted on Exhibit A, Sheet L-2, for uses reasonably necessary or incidental to the construction, installation, and inspection of Project. Said uses include but are not limited to the stockpiling or storing of materials, the ingress and egress of County's employees, contractors, and agents, the movement and storage of vehicles and equipment, construction staging, and other construction related purposes. Following completion of construction of the Facility, TCA shall be graded and restored by Lessee, in accordance with Lessors' conventional engineering and landscaping methods and practices.

**6. Wake County Role and Responsibilities.** Wake County, as lessee, shall:

- a. Construct Radio Communications Facility, which shall be made up of the improvements referenced in Section 4 Permitted Use and more particularly shown in the final site drawings and plans approved by the permitting authority. All improvements constructed or placed on Premises by County shall be and remain the property of County.
- b. Insure that Radio Communications Facility is constructed and abides by the technical requirements of the Apex UDO and the final site drawings and plans approved by the permitting authority.
- c. Commence construction within a reasonable time of obtaining all required permitting and approvals and thereafter diligently pursue completion of construction.
- d. Provide complete plans and specifications for the Facility to Lessors for review and approval, to provide final plans and specifications prior to commencement of construction, and to provide as-built information to Lessors for the purposes of updating their record drawings for the WWRWR Facility. Lessors approval of such plans and specifications under this Agreement shall be in their capacity as Lessors and not in their regulatory capacity. If modification or improvements are made by County to Facility, County shall submit updated plans and specifications to Lessors for review and approval and thereafter provide updated as-built information. All costs and expenses associated with preparation of plans and specifications and as-built information as provided herein shall be borne by County.
- e. Construct, operate and maintain the Radio Communications Facility on the Premises in accordance with all federal, state and local laws and regulations (including but not limited to all procurement and bidding laws and noise ordinances) and in strict accordance with this Agreement.
- f. Assure that its employees, contractors, and agents comply with all federal, state and local laws and regulations and possess insurance coverage required in paragraph 8 of this Agreement.
- g. Maintain Facility and Premises in a safe, neat and tidy condition, without interference with the WWRWRF and without unreasonable disturbance to Lessors' employees who work in proximity to the Premise, including:
  - i. Operating Facility in compliance with applicable Town of Apex noise ordinances, and limiting noise generated from Facility equipment to less than 60 dB at the WWRWRF property line during daylight hours, and to less than 55 dB at the Property line at night. County shall provide exhaust

mufflers and sound-attenuating enclosures for Facility equipment at the request of Apex or Cary.

- ii. Operate and maintain Facility in compliance with applicable WWRWRF lighting standards and Town of Apex lighting ordinances. County shall light Facility at night only as required for safety and security. All lighting shall be directional to minimize light pollution.
- h. Respond immediately to notice from Cary or Apex that the Premises or Facility is in need of attention or repair and immediately repair damage to Facility or Premises. In the event that the Facility is damaged so that repairs would exceed 30% of its replacement value, the Lessee in its sole discretion may repair Facility within a reasonable amount of time to substantially the same condition as it existed prior to the casualty at its own expense or elect to terminate the Lease as of the date of the casualty.
- i. Obtain separate electrical service for the Facility. The Premises is within the Apex's electrical service area. County shall contract directly with the Town of Apex to obtain electrical service for operation of Facility. Said service shall be entirely separate from the electrical service to the WWRWRF. Electrical service lines shall be below-ground and service line routing and installation shall be closely coordinated with and approved by Lessors and shall not interfere with WWRWRF. County is solely responsible for the costs of electrical power used at the Premises.
- j. Not interfere with the operation of the WWRWRF. County shall not interfere with the daily or emergency operations of the WWRWRF and shall insure that its employees, contractors and agents cause no interference.
- k. Assure that a structural inspection of the Tower acceptable to the County and Lessors is performed every three (3) years that is signed and sealed by North Carolina Professional Engineer and provide Lessors with copies upon request. Should any component of the Radio Communications Facility fail inspection, County shall make any necessary corrections, improvements, or repairs within twelve (12) months and pass re-inspection.
- l. Obtain all necessary Federal, State, and local governmental approvals and licenses prior to commencing construction or operating the Radio Communications Facility. County shall be responsible for maintaining all required approvals and licenses for continuing operation of the Facility. County shall bear all costs associated with review and approval of all plans and specifications. County shall promptly provide Lessors with copies of all licenses and approvals.

- 7. Co-location By Cary or Apex.** In the event that Cary or Apex desires to co-locate communication equipment on the Facility, it shall provide complete engineer stamped plans and specifications to Lessee for approval. Lessee shall permit Cary and/or Apex to co-locate communication equipment at the Facility if
- 1) the use is for a public purpose permitted by the applicable zoning and permitting regulations;
  - 2) the County determines that the co-location is structurally feasible;
  - 3) a Radio Frequency (RF) study acceptable to County is performed and indicates no interference;
  - 4) the requesting party does not assign, license, or permit further co-location on the permitted communication equipment;
  - 5) the party requesting co-location is responsible for all costs associated with review, RF study, approval, permitting, construction, maintenance, and repair of the co-located equipment;
  - 6) the party requesting co-location enters into an addendum to this Lease setting forth the terms and conditions of co-location.
- 8. Co-location by Private Carriers.** Lessors and Lessee agree that no private carriers shall be allowed to co-locate at the Facility without the agreement of the Lessors and Lessee and a written amendment to the Lease.
- 9. Insurance.** Lessee and Lessors shall each procure and maintain for the Full Term insurance for claims arising from their respective use, improvement, operation, or maintenance of the Property in the following limits:

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

Lessee shall procure and maintain Property Insurance against all risks of loss, including fire, to any structures, improvements, or betterments, including course of construction, on the "Premises;" Lessors shall procure and maintain Property Insurance against all risks of loss, including fire, to any structures, improvements, or betterments, including course of construction, on that portion of the Property exclusive of the "Premises."

General Liability, Automobile Liability and Excess/Umbrella can be satisfied through a combination of primary, excess, or self-insured coverage.

Any party maintaining a funded reserve pursuant to N.C. law and resolution of its governing board may satisfy the requirements set forth herein by providing a letter of self-insurance to the other party. Failure by any party to obtain and maintain in force the above-referenced insurance coverage shall constitute a default under the terms of this Agreement.

**10. Financial Responsibility.**

a. County shall be solely responsible and liable for the construction, maintenance and operation of the Premises and shall be responsible for any losses, costs or damages that may result from County's use, improvement, operation and maintenance of the Premises and Facility. County shall be solely responsible and liable for the acts and omissions of its employees, contractors and agents to the extent permitted by law and consistent with the terms of the 2003 Resolution Regarding Limited Waiver of Sovereign Immunity.

b. Lessors shall be solely responsible and liable for the maintenance and operation of the Property exclusive of the Premises, and shall be responsible for any losses, costs or damages that may result to Premises or Property from Lessors' use, improvement, operation and maintenance of the Property. Lessors shall be solely responsible and liable for the acts and omissions of its respective Town of Cary or Town of Apex employees, contractors and agents to the extent permitted by law and any applicable resolution of their respective governing boards.

**11. Rent.** Lessors and Lessee acknowledge that this is a lease of government property entered into pursuant to N.C.G.S. 160A-274, and no consideration in the form of rent shall be due from Lessee to Lessors, or in the event of co-location, from Lessors to Lessee.

**12. Removal of Communications Facility at Termination or Expiration of Agreement.** Unless Cary or Apex provide written notice that they desire County's improvements to remain, upon termination or expiration of the Agreement for any reason, County shall completely disassemble and remove all of the improvements, including the Tower and its appurtenances, driveways, concrete foundations, fences and associated structures, without cost or expense to Cary or Apex. Such disassembly and removal shall be completed within a reasonable time of the termination of the Lease, not to exceed eighteen months, and this Agreement shall remain in effect for the duration of that disassembly and removal. County shall surrender the Premises to Lessors in the same condition as at the commencement of this Agreement, normal wear and tear excepted. County shall be responsible for repair of all damage resulting from its use of the Premises. In the event County fails or refuses to repair damage to Premises or to disassemble and remove its improvements, Lessors may undertake the same and County shall be responsible for all costs and expenses, which shall be due upon presentation of a bill.

In the event Cary and Apex provide written notice that they desire for the improvements to remain, disposition of the Communications Facility shall be as follows:

- a. County shall remove all County owned electronics and electrical equipment.

- b. County shall leave the steel tower structure and concrete building pad AS IS on the site for the use of the Lessors, at no additional cost to Lessors.
- c. County at its sole option may:
  - i. Completely disassemble and remove all of the other improvements (“Other Improvements”), including the building, generator, UPS system, any appurtenances previously used with the Communications Facility. Such disassembly and removal shall be without cost or expense to Cary or Apex and completed within a reasonable time of the termination of the Lease, not to exceed eighteen months.
  - ii. If the County chooses not to retain the Other Improvements, the County may offer the Other Improvements for sale AS IS to Lessors using a straight-line method of depreciation to determine purchase price. The Lessee shall split the cost of appraisal 50/50 with Lessors, Lessee’s share to be deducted from purchase price. If Lessors accept the County’s offer, Cary and Apex shall determine how each shall split the costs at the time the offer is accepted. Cary and Apex shall be under no obligation to accept County’s offer and, if the offer is rejected, County shall disassemble and remove the Other Improvements as outlined above.

**13. Holding Over.** If County remains in possession of the Premises after expiration of the term hereof, County shall be a tenant at sufferance and there shall be no renewal of this Agreement by operation of law.

**14. Lessors' Entry of Premises.** Lessors may enter the Premises upon prior notice to County at reasonable hours to inspect Premises. Lessors may enter the Premises at any time without prior notice, in the event of an emergency or to make emergency repairs to the Premises. Upon request of Lessors, County shall provide Lessors with a functioning key and/or valid entry codes to the Premises and shall replace such key or provide new codes if the locks to the Premises are changed.

**15. Environmental Laws.** Except as permitted herein, neither Lessors nor Lessee shall bring any Hazardous Materials onto Premises. The term Hazardous Materials means those substances, materials, and wastes, including, but not limited to those substances, materials and wastes (hereafter jointly “substances”) listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, and such substances which are or become regulated under any applicable local, state or federal law, including, without limitation, any substance which is (I) petroleum (ii) asbestos (iii) polychlorinated biphenyls (iv) designated as a “Hazardous Substance “ pursuant to Section 331 of the Clean water Act, 33 USC Sec. 1251, *et. seq.* (33 USC Sec 1321) or listed pursuant to Section 307 of the Clean Water Act (33 USC Sec. 1371), (v) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 USC Sec 6901, *et. seq.* (42 USC

Sec 6903) or (vi) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Sec 9601 *et. seq.* (42 USC 9601).

Lessors covenants and warrants that no known Hazardous Substances are on the Premises at the execution of the Lease.

To the extent necessary for the construction or operation of Facility, County may bring necessary Hazardous Materials onto Premise upon the following conditions:

- a. County shall comply with any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to Hazardous Substances including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, any other legal requirement concerning Hazardous Materials, and any amendments to the foregoing (collectively, all such matters being "Hazardous Materials Requirements"). County shall remove from the Premises and the Property, all Hazardous Materials that were brought onto or placed on the Premises by County or County's employees, agents, invitees or contractors, at the earlier of completion of their use in construction or operations or upon the expiration or earlier termination of this Agreement. Such removal shall be in compliance with all Hazardous Materials Requirements.
- b. County shall be responsible for obtaining all necessary permits in connection with its use, storage and disposal of Hazardous Materials, and shall develop and maintain, and where necessary file with the appropriate authorities, all reports, receipts, manifest, filings, lists and invoices covering those Hazardous Materials and County shall provide Lessors with copies of all such items upon request. County shall provide within five (5) days after receipt thereof, copies of all notices, orders, claims or other correspondence from any federal, state or local government or agency alleging any violation of any Hazardous Materials Requirements by County, or related in any manner to Hazardous Materials. In addition, County shall provide Lessors with copies of all responses to such correspondence at the time of the response.

In the event of a prohibited release of Hazardous Materials on Premises, the responsible party shall be responsible for all necessary clean up and mitigation. If said clean up or mitigation is regulated by a Federal, State, or Local regulation, the responsible party shall insure that all clean up and mitigation is done in compliance with any such regulation.

The warranties and indemnities contained in this paragraph shall survive the termination of this Agreement.

**16. Notices.** Unless otherwise provided, all notices provided for herein shall be in writing and shall be sent properly addressed by first class mail to the parties at the addresses shown below:

Town of Apex  
PO Box 250  
Apex, North Carolina 27502-0250  
Attention: Drew Havens, Town Manager  
Email address: [drew.havens@apexnc.org](mailto:drew.havens@apexnc.org)

With a copy to the Director of Water Resources:

Town of Apex  
PO Box 250  
Apex, North Carolina 27502-0250  
Attention: Marty Stone, Director of Water Resources  
Email address: [marty.stone@apexnc.org](mailto:marty.stone@apexnc.org)

Town of Cary  
PO Box 8005  
Cary, North Carolina 27512-8005  
Attention: Jamie Revels, Utilities Director  
Email address: [jamie.revels@townofcary.org](mailto:jamie.revels@townofcary.org)

Town of Cary  
PO Box 8005  
Cary, North Carolina 27512-8005  
Attention: Nicole Raimundo, Information Technology Chief Information Officer  
Email address: [nicole.raimundo@townofcary.org](mailto:nicole.raimundo@townofcary.org)

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

With a copy to the Information Technology Director/Chief Technology Officer:

Wake County  
P.O. Box 550  
Raleigh, NC 27602  
Attention: John Higgins  
Email address: [john.higgins@wakegov.com](mailto:john.higgins@wakegov.com)

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

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

All notices shall be effective three (3) days after having been deposited, properly addressed and postage prepaid, in the US Postal Service. Any party hereto may change the person to whom or the address to which notices should be provided by giving written notice to the other parties of the change.

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

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

- a. Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement has been authorized by Resolution spread upon the minutes of each Party's governing body. This Agreement is a valid and binding obligation of each Party.
- b. Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, will result in a breach of the terms, conditions and provisions of any agreement or instrument to which a Party is now a party or by which either is bound, or constitutes a default under any of the foregoing.
- c. To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such Party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither such Party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

- d. The Parties have not dealt with any real estate broker or brokerage firm regarding transactions relating to the Property, and no person or firm has a claim for real estate commissions arising out of the lease of Property.
- e. To the best of Apex's and Cary's knowledge, there are no disputes concerning the boundaries of the Premises.
- f. Quiet Enjoyment. So long as County observes and performs the covenants and agreements contained herein, it shall at all times during the full Term peacefully and quietly have and enjoy possession of the Premises, subject to the terms hereof.

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

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

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

**22. Assignment.** Neither Lessors nor Lessee may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other party.

**23. Liability of Officers and Agents.** No officer, agent or employee of any Party will be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This section will not relieve any such officer, agent or employee from the performance of any official duty provided by law.

- 24. Execution in Counterparts/Electronic Version of Agreement.** 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. A Party may convert a signed original of the 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 the Agreement shall be deemed for all purposes to be an original signed Agreement.
- 25. Verification of Work Authorization.** The Parties, and all contractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.
- 26. No third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 27. Time.** Time is of the essence in this Agreement and each and all of its provisions.
- 28. Further Assurances/Corrective Instruments; Good Faith/Due Diligence.** The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the purpose of this Agreement. The Parties agree to work together in good faith and with all due diligence to provide for and carry out the purpose of this Agreement.
- 29. Memorandum of Lease.** The parties agree that a Memorandum of Lease shall be signed by each party and duly recorded in the Wake County Registry.

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

**ATTEST:**

**TOWN OF CARY:**

---

Virginia Johnson  
Town Clerk

---

Harold Weinbrecht, Jr.  
Mayor, Town of Cary

**ATTEST:**

**TOWN OF APEX:**

---

Donna Hosch  
Town Clerk

---

Lance Olive  
Mayor, Town of Apex

---

Vance Holloman  
Finance Officer, Town of Apex

**ATTEST:**

**COUNTY OF WAKE:**

---

Denise Hogan

Clerk to the Board

---

Jessica N. Holmes, Chair

Wake County Board of Commissioners

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

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Emily Lucas  
Interim Finance Officer, Wake County