

NORTH CAROLINA        )  
                                  )  
FORSYTH COUNTY        )     PUBLIC/PRIVATE PARTNERSHIP AGREEMENT  
                                  )     AND NINETY-NINE YEAR LEASE  
                                  )     for the DEVELOPMENT, CONSTRUCTION,  
                                  )     COMMUNITY USAGE and 99-YEAR LEASE of a  
                                  )     NEW WELCOME & VISITORS CENTER for the  
                                  )     HISTORIC TOWN of KERNERSVILLE, NORTH  
                                  )     CAROLINA

This **Agreement** and **Ninety-nine year Lease** is made and entered into by and between the **TOWN OF KERNERSVILLE**, a North Carolina Municipality located in Forsyth and Guilford Counties, North Carolina, "**Lessor**," and Party of the First Part, sometimes also referred to as "the **TOWN**" or "**TOWN**", and the **KÖRNER'S FOLLY FOUNDATION**, a North Carolina 501(c)3 Nonprofit Corporation located at 413 South Main Street, Kernersville, Forsyth County, North Carolina, "**Lessee**," and Party of the Second Part, sometimes also referred to as "the **Foundation**", "the **FOLLY**" or "**FOLLY**", to create and continue to act as a Public/Private Partnership to carry out the intent of the herein described Project (sometimes referred to herein as the "**Project**") for the benefit of the **Körner's Folly Foundation** and the Citizens of the **Town of Kernersville**.

### **BACKGROUND**

For the better understanding of this Agreement and Ninety-Nine-year lease, the parties feel it appropriate to include the following background:

The **Town of Kernersville** is a thriving and growing municipality of approximately 25,000 citizen/residents, and over 1000 business/corporate citizens within the corporate limits of the Town. The efforts of Town Government, the Chamber of Commerce, Civic Nonprofits, and individual citizens have enhanced the town to a point that it is befitting that Kernersville have a **Visitors Center** that will serve the citizens of the town, those individuals and entities that visit the town, and those who may consider relocating to the Town. Spurred by the efforts of the Körner's Folly Foundation, the Kernersville Museum, the Paul J. Ciener Botanical Garden, the Kernersville Chamber of Commerce, Town Government, the Kernersville Historical Preservation Society, and individual/business citizens, Kernersville has become a major source of tourism and in need of a **Visitors Center** for use by The Körner's Folly Foundation and citizens of the Town, and to attract and serve tourism.

**The Körner's Folly Foundation**, is a North Carolina 501(c)3 Nonprofit Corporation,

with its mission “To foster an appreciation for history, the arts, and enterprise through the preservation and interpretation of **Körner’s Folly.**” **Körner’s Folly** has the reputation of being the icon of Kernersville. The **Körner’s Folly Foundation** has brought **Körner’s Folly** to a height of a significant, regularly visited tourist attraction locally, regionally, state-wide, nationally, and internationally.

The Board of Aldermen of the **TOWN**, in 2017, purchased for \$287,500 approximately 1.27 acres of vacant property adjoining that property owned by the **Körner’s Folly Foundation** with the foresight to “protect” **Körner’s Folly** for at least the next 100 years. **Körner’s Folly Foundation** contributed \$25,000 towards the purchase of this property. In August of 2018, the **Körner’s Folly Foundation** presented to the Kernersville Board of Aldermen a potential plan for the development of a **Visitors Center** by way of a Public/Private Partnership between the **Körner’s Folly Foundation** and the **TOWN**; and that the Parties of the First and Second Part would together construct, maintain, and operate a **Visitors Center** that would not only enhance **Körner’s Folly** as a tourist attraction but also would provide for the entire Town a central point of delivery of tourism information, meeting facilities, and parking area serving both the **Visitors Center** and **Körner’s Folly**.

The above concept was approved by the Board of Aldermen in 2018 as well as by The Board of Directors of the **FOLLY**. The parties entered a Memorandum of Understanding setting forth basic concepts of a Public/Private Partnership for the **Project**. A Committee, appointed by the Board of Alderman and the Board of Directors of **Körner’s Folly Foundation**, was established, two members representing each Party hereto. The purpose of the **Folly/TOK** Partnership Committee was to recommend to the Alderman and Directors terms for this Agreement and Ninety-Nine Year Lease.

Following is the document, Agreement and Ninety-Nine Year Lease, recognized by both the **Körner’s Folly Foundation** and the **Town of Kernersville** as representing the Public/Private Partnership designed and implemented to carry out the intentions of both parties hereto. It is the understanding of both parties that this document will almost certainly require revisions through future Memorandums of Understanding, and Amendments to this document, reflective of the anticipated changing times throughout the tenure of the next ninety-nine years. The parties pledge and agree to work with each other over the next ninety-nine years in the fulfillment of the terms of this document as well as the intent of this Agreement and Ninety-Nine Year Lease.

## **SUBJECT PROPERTY**

The property governed by this Agreement and Lease:

BEING known and designated as Lots Numbered 1, 2, 3, 4, 5, 6, 7, 22, 23, 24, 25, and 26 and depicted on the "Map of J. J. Körner Estate and C. L. and R. D. Körner" recorded in the Office of the Register of Deeds of Forsyth County, North Carolina in Plat Book 7 at Page 61, reference to which is hereby made for a more particular description.

SAVE AND EXCEPT that southern portion of Lot 26 as conveyed by warranty deed recorded in Deed Book 1146, Page 832, Forsyth County Registry.

The foregoing is referred to herein throughout this document as the “**Property**” or as the site of the “**Visitors Center**” or “**Project**” in anticipation of improvements to be made in accord with this Agreement.

**WHEREAS**, the **TOWN**, by Resolution of its Board of Aldermen, has established that it does not need the aforementioned property for its everyday operations of Town government and business; and

**WHEREAS**, there exists and will continue to exist, a working relationship between the **TOWN** and **FOLLY** whereby the **FOLLY** shall provide certain services that will assist the **TOWN** in attracting resident and commercial/business/industrial citizens to the Town of Kernersville, increasing the Town’s Tax Base and strengthening the Town as a whole; and

**WHEREAS**, the **FOLLY**, while it partners with the **TOWN** in the Project, desires to lease the above stated property from the **TOWN** upon the terms and conditions as contained within the provisions set forth in the Lease portion of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, **THE TOWN OF KERNERSVILLE AND THE KÖRNER’S FOLLY FOUNDATION**, enter this Agreement and 99 Year Lease as a Public/Private Partnership for the benefit of each Party including all citizens of Kernersville, and do hereby agree as follows:

**I. JOINDER OF AGREEMENT AND LEASE**

- A. This Agreement includes but not limited to all pre-construction and construction agreements shall commence upon execution of this document.
- B. The Ninety-Nine Year Lease includes but not limited to all terms and agreement for the Lease of the **Visitor Center** and shall commence Fifteen (15) days after the issuance of a Certificate of Occupancy for the **Visitor Center** in accordance with IV B.

**II. AGREEMENT FOR CONSTRUCTION OF THE VISITORS CENTER**

- A. The parties agree that the **TOWN** shall carry forth the burden of providing as its contribution to the Project, and acquiring a loan for the same or a part thereof, if

desired by the **TOWN**, the amount of Seven Hundred Fifty Thousand and no/100 (\$750,000.00) Dollars.

B. The parties agree that the **FOLLY** shall carry forth the burden of providing as its contribution to the Project and acquiring a loan for the same or a part thereof, if desired by the **FOLLY**, in the amount of Seven Hundred Fifty Thousand and no/100 (\$750,000.00) Dollars.

C. It is further provided:

1) Commencing with the execution of this Agreement the **FOLLY/TOK** Committee, later defined herein, shall continue to meet at such times the Committee, dependent upon the current stage of construction, feels it can be helpful and valuable to both parties in the construction of the **Visitors Center**, and shall meet minimally, on a Quarterly basis.

2) The parties shall, when each has at its disposal the sum of Seven Hundred Fifty Thousand and no/100 (\$750,000.00) Dollars for the Project, place the same into a Special Construction Account to be managed by the **FOLLY** or the purposes of construction, and furnishing, of the **Visitors Center (Project)**.

3) With the exception of the **TOWN** and/or the **FOLLY** entering into a contract(s) for the purpose of borrowing its committed Seven Hundred Fifty Thousand and no/100 (\$750,000.00) Dollars, no contract for any aspect of the project shall be entered, by either party, until such time as both parties have contributed their committed Seven Hundred Fifty Thousand and no/100 (\$750,000.00) Dollars into said Special Construction Account.

4) At such time as the **FOLLY** shall have obtained its Seven Hundred Fifty Thousand and no/100 Dollars and reported such to the **TOWN**, the **TOWN** shall obtain its Seven Hundred Fifty Thousand and no/100 (\$750,000.00) Dollars within 150 days thereof (or within 120 Days if the **FOLLY** shall give the **TOWN** a minimum of thirty [30] days Notice of its intent to have its \$750,000 available), and shall deposit such funds into the Special Construction Account for use by the **FOLLY** in constructing the project.

5) The **FOLLY** shall be the AGENT of the **TOWN**, and the **Project**, for all aspects and purposes of the construction of the **Visitors Center** including but not limited to the architectural design, final design, execution of Construction Contracts, making any construction change orders, and final approval of the Project. The **FOLLY** through its Executive Director (ED) shall consult with the Town Manager on material aspects of the **Project**; however, the **FOLLY** shall have control over, and responsibility for, the **Project**.

6) The **TOWN** shall only be responsible for payment of Seven Hundred Fifty Thousand and no/100 (\$750,000.00) Dollars for the **Project** and only, within 120 Days, when the **FOLLY** has put forth its Seven Hundred Fifty Thousand (\$750,000) for the **Project**. Any over-runs or additional expenses of the construction of the **Visitor Center**, whether caused by the **FOLLY** or not, shall be the responsibility of the **FOLLY**. In no event shall the Town be called upon, nor required, to contribute in excess of the Seven Hundred Fifty Thousand and no/100 (\$750,000.00) Dollars it has committed for the **Project**.

7) The **FOLLY** Shall:

- a. During the architectural and construction phases of the Agreement and Lease, as Agent for the Town and as a good steward of the construction of the **Visitors Center**, ensure that the **Visitors Center** is built as an energy efficient building, construct the parking areas in a manner that meets all applicable stormwater regulations, provides handicapped access in and around the **Visitors Center** in accordance with current building code requirements, provides a Family Restroom, and provides that Restroom Facilities are easily accessed by the public during times the **Visitors Center** is open.
- b. Be permitted, under the terms of this Public/Private Partnership and Lease, to engage in any legal Fundraising efforts for the benefit of maintenance, upkeep, and restoration of the **FOLLY**. Periodic Fundraising efforts of the **FOLLY** shall, at the discretion of the **FOLLY**, include naming rights to the **Visitors Center**, portions thereof, and tangible personal property therein. Recognition of Donors to the **FOLLY** shall, throughout the Term of this Lease, remain in the purview and authority of the Board of Directors of the **FOLLY**.

### III. POST CONSTRUCTION

A. The **TOWN** and **FOLLY** agree as follows:

1. The **FOLLY** shall have control of all aspects of management of the **FOLLY** together with the **Visitors Center** under the usage policies of the **Visitors Center**, which policies will be created by the **FOLLY** and approved by the **FOLLY/TOK** Partnership Committee.
2. The **FOLLY** shall annually, for one day, open the grounds of The **FOLLY** and **Visitors Center**, at no charge to the citizens of the **Town**. On such occasion the **TOWN** and/or **FOLLY** may establish, name, and operate any reasonable community gathering foreseen as promoting the **TOWN** and/or **Körner's Folly** and "giving back" to the community. This annual event shall be examined and evaluated by the **Folly/TOK** Partnership Committee after two years and a report generated for both parties. Should, for any reason, this event be or become unwieldy and/or unmanageable, the parties may amend this Agreement and Lease to change the style of the event or to eliminate such.
3. The **FOLLY**, in its management of the Visitors Center shall, in accordance with its established usage Policies, make the Visitors Center available for events to Kernersville non-profit organizations at reasonably reduced rates.

4. Based upon availability, six (6) times annually, for no more than 8 hours each time, and at no cost, the **TOWN** (government) shall have use of the Visitors Center, in accordance with the established usage Policies.

B. The TOWN and FOLLY agree:

1. To hereby name the **Visitors Center**: “**The Visitors Center at Körner’s Folly.**”
2. That the **FOLLY** shall have the right to rename the Visitors Center should a Major Donor come forth with funds deemed appropriate by the Folly for such renaming. In any event of renaming, signage on the **Visitors Center** shall also include “The Visitors Center at Körner’s Folly.” The additional language will not be required on other signage, logo or branding material.
3. To place appropriate signage in the interior of the **Visitors Center** setting forth in an appropriate manner, that the **Visitors Center** is a Public Private Partnership between the Town of Kernersville and the **Körner’s Folly Foundation**.
4. To have the responsibility of working together for the betterment of **Town of Kernersville** and **Körner’s Folly**, taking advice from all reasonable sources, negotiating in good faith; and, when working together, shall provide a level of transparency generally expected of a governmental unit
5. To utilize a **FOLLY/TOK** Partnership Committee to guide the parties in the execution of this Agreement and Lease. A **FOLLY/TOK** Planning Committee was established at the time of the Memorandum of Understanding between the **TOWN** and **FOLLY**; and, this Committee has worked toward finalization of this Agreement and Lease. Upon entering this Public/Private Partnership the **TOWN** shall appoint two members of its Board of Aldermen and the **Körner’s Folly Foundation** shall appoint two members of its Foundation to this Committee. The Members primarily appointed to the **FOLLY/TOK** Partnership Committee shall be those appointed by their respective Board in accordance with each respective Board’s policies to continue as members of the **FOLLY/TOK** Partnership Committee. until such time when other representatives are appointed by their respective boards.
6. To direct the **FOLLY/TOK** Partnership Committee to meet at least quarterly during the first year of this Agreement and Lease, and semi-annually for the succeeding two years. The **Folly/TOK** Partnership Committee will be expected, at such meetings, to evaluate the workings of the **Visitors Center**, cooperation of the Staff of the parties, and overall level of success of the established Public/Private Partnership. Should changes to this Agreement and Lease be deemed advisable, the

**FOLLY/TOK** Partnership Committee shall recommend the same to their respective Boards for approval and if such recommendations are approved by both boards then this agreement and lease will be amended accordingly.

7. That they shall work together toward the creation, design, manufacture, and placement of appropriate signage directing tourists and visitors to the **Visitors Center**, particularly striving to establish and maintain such signage on major highways that may be in close proximity to Kernersville (currently Interstate 40 and Business-40).
8. That they shall work with the Kernersville Chamber of Commerce in an effort to see that the Chamber of Commerce is included in welcoming visitors to Kernersville and continues to disseminate visitor materials.
9. That should the **FOLLY** establish a committee designed to oversee the **Visitors Center**, the **TOWN** shall have the right to appoint an Alderman, or some other representative of the Town, to sit on such committee. If appointed, that individual shall have no vote.

#### **IV. NINETY-NINE (99) YEAR LEASE**

- A. **OCCUPANCY DATE.** The “Occupancy Date” shall mean the date, after both the Completion of the Construction Project and Project’s formal Acceptance by both Parties, and final Certificate(s) and/or Permits of/for Occupancy and Use are Issued by all governmental authorities and entities required for the legal and safe occupancy and intended usage of the **Visitors Center**.
- B. **BEGINNING DATE.** The “Beginning Date” shall mean the day Fifteen (15) days after the Occupancy Date unless the Parties shall mutually agree to a different “Beginning Date,” which shall be, in any case, post the “Occupancy Date.”
- C. **TERM OF LEASE.** The term of this Lease shall be for Ninety-Nine (99) years, commencing on the Beginning Date set forth herein and ending at 11:59 p.m. on the last day of the 1188<sup>th</sup> complete month following the Beginning Date.
- D. **RENTAL PAYMENTS.**
  1. The minimal Rental Payments reflected hereinbelow in 2. are intended to be adequate to allow the Town to maintain its ownership of the Property while exhibiting the true nature of the Public/Private Partnership created by this Agreement and Lease document.
  2. Annual Rental Payments in the amount of Ten and no/100 (\$10.00) Dollars shall be due by the Lessee to the Lessor on the first business day of each Fiscal Year (July 1<sup>st</sup>- June 30<sup>th</sup>) of the **TOWN**. The **TOWN** agrees to provide the **FOLLY** with an invoice for the forthcoming Annual Rent on or before May 1<sup>st</sup> of each Calendar Year. Failure of the **FOLLY** to pay the herein set forth Annual Rent shall constitute a breach of this Agreement and Lease only if Formal

Written Demand for such is made by the **TOWN** and the same goes unpaid for a period of six (6) months.

3. Annual Rent payments shall be made to:

The Town of Kernersville  
134 East Mountain Street  
P. O. Drawer 728 (Kernersville, NC 27285)  
Kernersville NC 27284

Attention: Town Manager (currently Curtis L. Swisher)  
throughout the Lease Term or until such time as the TOWN shall have given instructions for payment to be made at a different address.

E. INTERIOR MAINTENANCE. In keeping with the purposes of the Project, Lessee shall be responsible for general upkeep and maintaining the premises as a clean, informative and welcoming gathering place for Kernersville's visitors and guests. In accordance with approved architectural plans, space shall be provided to local businesses and non-profits, particularly those who promote and feature Kernersville's community interests, including, but not limited to, its history, sports, community attractions, and ongoing events, by providing services to its visitors, displaying and distributing promotional materials in addition to promoting **Körner's Folly**. If needs exceed capacity, Lessee shall provide a fair and transparent method to share or rotate access to such.

F. SUBTENANTS. If space is available, and is not needed to meet the needs of **Körner's Folly** and other community-based entities, or to promote the Town in other ways, the Lessee may sublease space to subtenants, provided such tenants are reputable and do nothing to undermine the **Visitors Center's** mission, and that any such commitments made to such prospective tenants are for no longer than one year, are reported to the **TOWN** Board of Aldermen, and the net proceeds from such subleases benefit both Parties to this Lease in equal measure

G. OPTION FOR RENEWAL. Lessee shall have the option for renewal of this Ninety-Nine-Year Lease upon providing written notice to the **TOWN** six months prior to the expiration of the Lease stating its desire to renew the Lease and for what term. Such renewal terms shall be agreeable to the **TOWN** and **FOLLY**.

## V. LESSEE'S OBLIGATIONS

A. OUTREACH AND PROMOTION OF TOWN. Lessor and Lessee have mutual interests in promoting Kernersville as a place to visit, invest, and live. It is because the **FOLLY** is uniquely located physically, and uniquely experienced in entertaining and drawing visitors to an attraction that represents some of the roots of the community, that **TOWN** is entrusting the oversight and operation of its investment in the **Visitors Center** to the **FOLLY**. In recognition of its responsibilities in representing the entire Town of Kernersville in this Public/Private Partnership, the **FOLLY** agrees to promote the Town and



Community's interests including but not limited to **Körner's Folly** when visitors arrive at the **Visitors Center**. In addition to welcoming **Visitors Center** guests to its adjacent attraction, The **FOLLY** agrees to promote, inform, direct, and educate Visitors at the **Visitors Center** about all participants in the life of the Town who could benefit from the **Visitors Center's** promotion. The **FOLLY** will assist community groups in self-promotion at the **Visitors Center** with literature provided by such groups and in keeping with the overall vision of the **Visitors Center** and the previously referenced usage policies. Consistent with its current practice, Lessee will partner with all community groups desiring such partnership(s) such as the Chamber of Commerce, Merchants' Associations, profit and non-profit attractions, and other organizations without regard to race, color, gender, religion, age, disability, or national origin.

- B. INFORMATION AND RECORD-KEEPING. The **FOLLY** shall keep a "Visitors Log" and as complete records regarding numbers of persons served at the Visitors Center, by day of the week and time, as detailed as is possible.
- C. TRAINING OF STAFF. Lessee shall conduct training of **Visitors Center** Staff regarding the **FOLLY** and all other Kernersville attractions, points of interest, interests of, comments from, and questions asked by, Visitors. The **FOLLY** shall rely on information and educational material provided by other Kernersville attractions and points of interest when training **Visitors Center** Staff.
- D. REPORTING TO TOWN AND OTHERS. Lessee shall be capable, with reasonable notice upon request, of providing to the Board of Aldermen, and any other governmental body or interested group, a reasonable reporting of information it collects from visitors to the Kernersville Visitors Center.
- E. AMENITIES. Part of Lessee's obligations shall be to ensure that the **Visitors Center** maintains clean and secure restrooms, free Wi-fi, and water fountain open to the public during normal operating hours.
- F. UTILITIES. The Lessee shall be responsible for all utilities including water, gas, electric, telephone, heat and other services delivered to the premises. The **Lessor** shall be responsible for providing Internet access, wi-fi, and future like services to the Premises.
- G. SIGNAGE. Lessee will maintain appropriate signage for the Center and its own attraction, **Körner's Folly**. No exterior signage, other than for the **Visitors Center, Körner's Folly** or its sponsors, shall be allowed. The parties anticipate that a portion of the Visitors Center property could be designated as a small Community Park. The parties agree to work together toward that possibility; and, should such come to fruition, both the **FOLLY** and the **TOWN**, agree that they shall continue to work together in the development of such Park, and share any financial benefits, of potential naming opportunities (ex. Benches, picnic tables, trees, gardens) of certain amenities and signage placed thereon. The Lessee may allow, on a non-discriminatory basis, such interior signage as the Executive

Director of the **FOLLY** shall, in his/her sole discretion, deem proper, including tasteful, well-made signage, in keeping with, and enhancing the overall purposes and total dynamics of the **Visitors Center**. Temporary event signage may be permitted with the approval of the **FOLLY** Executive Director.

H. EXTERIOR AND INTERIOR CHANGES, IMPROVEMENTS- FIXTURES.

1. There shall be no significant alteration of the exterior of the **Visitors Center** without the approval, by Resolution, of the Board of Aldermen
2. Any and all improvements to the interior of the **Visitors Center**, including such interior design changes and upfits as the Lessee may desire, shall be at the sole discretion of the Lessee. Structural changes to the interior shall require approval by the Board of Aldermen. Anything affixed to the premises, during the term hereof, except such trade fixtures of the Lessee which may be removed without damage to the property, shall become the property of the Lessor upon termination of the Lease.

- I. CARE, MAINTENANCE AND REPAIRS. The Lessee shall maintain and keep in a good state of repair at its own expense all interior parts and portions of the demised premises. The Lessee further agrees to maintain, repair, and replace, if necessary, at its own expense, any minor repairs of plumbing and wiring in and about the premises and shall further perform all usual and necessary maintenance, upkeep and minor repair to the heating and air conditioning systems. Minor repair as used herein refers to any HVAC, plumbing and electrical wiring Bills/Costs up to Five Hundred (\$500.00) Dollars per **TOWN** fiscal year. Lessor shall be responsible for any such HVAC, plumbing and electrical wiring costs in excess of Five Hundred (\$500.00) dollars per **TOWN** fiscal year, such repairs/expenditures to be approved by Town Manager prior to costs being incurred.

The Lessee shall, at all times, keep the premises in a neat and orderly condition free and clear from rubbish, trash or other debris.

The Lessor shall, at its expense, maintain the walkways, driveways, parking areas and the grounds of the Premises in good condition. The Lessor shall also maintain any yard (grass and green planted matter such as bushes and trees) on the property including mowing and trimming thereof and removal of snow and ice.

- J. FURNITURE. Lessee will provide furniture for the **Visitors Center**, and replacements as needed because of age or changes in use.

- K. SURRENDER OF PREMISES. The Lessee agrees to surrender the premises at the end of the Lease term, or any extended term or terms as agreed to by the Parties, in as good a condition and repair as when received or upon the completion of any improvements or alterations, ordinary wear and tear excepted.

- L. INDEMNIFICATION OF LESSOR. Unless caused by the intentional or negligent act(s) or omission(s) of the Lessor, its servants, employees, invitees, or licensees, the Lessor shall not be responsible or liable for any damage or injury to the Lessee

or to any other person including any employee or agent of the Lessee, nor shall Lessor be responsible or liable for any personal property or for any damage or injury occurring on the demised property or any part thereof. The Lessee furthermore shall indemnify, protect and save harmless the Lessor from and against any and all claims, liabilities, damages or losses, and loss or expense of any sort or nature to any person, firm or corporation which may arise or grow out of the use or occupancy of the demised premises by the Lessee or out of any intentional or negligent act or omission of the Lessee, its agents, servants, employees, invitees or licensees.

#### M. INSURANCE.

1. Lessor shall maintain, under its "blanket" coverage of all structures and buildings owned by the **TOWN**, fire and extended hazard insurance in an amount sufficient to enable the **TOWN** to repair and/or replace the **Visitors Center** to the standard the same exists at the commencement of this Lease. Such "blanket" coverage to be in effect during construction of the **Visitors Center**.
2. Personal Property. The Lessee shall maintain insurance on any personal property contained within the Premises which the Lessee desires to maintain for its benefit.
3. Liability Insurance. The Lessee shall, at all times during the term of this Lease, and at no cost to the Lessor, maintain and provide general liability insurance covering the demised premises for the benefit and protection of both the Lessor and the Lessee in an amount of not less than \$1,000,000.00 per occurrence for injury to, or damages of, any one person, and an annual aggregate of not less than \$2,000,000.00 for injury to, or damages of, more than one person. The amounts prescribed herein shall be adjusted during the term of this 99-year Lease to reflect cost of living adjustments and amounts of liability insurance the TOWN may require of other Lessees of Town property. Lessor shall be made an additional insured party to said policy(ies). A copy of all said insurance policy or policies, with all riders thereto, shall be delivered by the Lessee to the Lessor, together with proof of payment of the premiums due thereon, with ten (10) days after execution of this Lease, and with renewal of such policy or policies together with proof of payment(s) during the term of this Lease.
4. Mutual Release and Indemnification. Lessor and Lessee hereby mutually release and discharge each other from all claims and liability arising from, or caused by fire or other casualty covered by the above insurance on the leased premises, or property in or on the leased premises. To the maximum extent permitted by insurance policies which may be owned by the Lessor or the Lessee, the Lessee and Lessor, for the benefit of each other, waive any, and all, rights of subrogation which might otherwise exist.

Any certificate of insurance provided to the Lessor shall provide for a ten-day written notice to the Lessor in the event of cancellation of material change of coverage.

**N. CASUALTY DAMAGE.**

1. In the event of partial destruction of the Visitors Center, the **TOWN** shall repair and/or replace the Visitors Center to the same basic condition the structure was prior to destruction. In the event replacement is needed, the **TOWN** and **FOLLY** Board shall seek a mutual agreement to re-build pursuant to specification in Section N.2. below
2. In the event the building on the demised premises shall be damaged or destroyed by fire or other unavoidable casualty during the terms of this Lease so that the same cannot be reasonably be rendered fit for its intended use the **TOWN** and the **FOLLY** shall mutually decide as to whether rebuilding the Visitors Center make sense to either or both, at which time:
  - a. If the decision is to rebuild the Visitors Center, the **TOWN** shall rebuild the structure to the same basic condition the structure was prior to destruction.
  - b. If the decision is not to rebuild the Visitors Center, the parties shall divide equally any and all insurance proceeds payable to parties on account of destruction of the Visitors Center structure.
  - c. If the decision is not to rebuild the Visitors Center, the **FOLLY** shall receive any and all insurance proceeds from any policy of insurance carried by the **FOLLY** on furnishings and other personal property.

**O. ABANDONMENT OF PREMISES.** The Lessee hereby agrees that it shall not vacate or abandon the premises at any time during the term of this Lease; and, should the Lessee abandon or vacate the premises, or be dispossessed by process of law or otherwise, any personal property belonging to the Lessee left upon the premises shall be deemed to be abandoned at the option of the Lessor.

**P. RIGHT OF ENTRY.** The Lessee agrees that the Lessor shall have the right to enter upon the premises, at any time, for the purpose of examining the same. Lessor shall provide Lessee with 48 hours' notice prior to entry on the premise.

**VI. LESSOR'S OBLIGATIONS**

**A. INTERNET SERVICES.** As provided for here in above paragraph V F. Internet access for the Center, including wi-fi for visitors, and such other future equivalents shall be provided by Lessor.

**B. STRUCTURAL FEATURES, ROOF, HVAC, PAVEMENT.** Lessor shall maintain and keep in a good state of repair at its expense the roof, structural walls, plumbing, electrical heating and air conditioning systems (except routine maintenance and minor repairs as provided above), foundation of the Premises, the surface of parking areas [whether gravel or paved] and access to and from South Main and Salisbury Street.

- C. **TAXES.** The Lessor shall be responsible for any and all ad valorem taxes upon the real property as enumerated herein. The Lessee shall be responsible for any and all personal property taxes imposed by any governmental agency upon the personal property of the Lessee.
- D. **VOLUNTARY RESTRAINT OF SALE.** The **TOWN** sets forth its intent to hold Title to the herein described property for the term of this 99-year Lease. Should the **TOWN**, at any time during the term of this Lease, decide to sell the herein described property, the **TOWN** covenants that, subject to the Laws of sale of real property by municipalities in North Carolina, the **FOLLY** shall be provided the right of first refusal to purchase the herein described property, and if the **FOLLY** does not purchase the property such sale shall be made subject to this 99-year Lease and Agreement. In the event such a sale results in a profit to the **TOWN**, the **FOLLY** will share in the proceeds of the sale pro-rata, based on its investments in the **Visitors Center** and the **Property**. The **TOWN** further sets forth that, should the **TOWN** desire to sell the herein described property upon the termination of this 99-year Lease, within the parameters of, and subject to, the Laws governing sale of real property by municipalities in North Carolina, the **TOWN**, shall sell said property to the **FOLLY**.

#### **VII. OTHER PROVISIONS:**

- A. Should the **FOLLY** materially breach this Lease and not correct the reported breach within six months, the Town will take over the property and continue to provide a **Visitors Center**, at the current location or at a location within the Town corporate limits.
- B. Mindful of the responsibility the **FOLLY** is undertaking in this Public/Private Partnership. The **TOWN** shall, periodically, and particularly at the time its Annual Fiscal Year Budget is formulated and ultimately passed, examine the finances necessary to for the continued support of the **Visitors Center**, including any expanded days and hours that may be applicable, in order to determine reasonable stipends from the **TOWN's** General and Occupancy Tax Funds, provided that any such determination of a reduction in such stipends by the **TOWN** shall not constitute a default of this Agreement and Lease by **FOLLY**.

#### **VIII. GENERAL PROVISIONS**

- A. **MODIFICATION.** Modification of this agreement shall be in writing, signed, duly executed by the parties hereto, and duplicate originals kept on file with each of the original lease agreements.
- B. **NOTICE** Any offer, notice, election, or other communication, which any party hereto may be required or desire to give to any other party, shall be in writing and shall be considered delivered when deposited in the United States mail, certified

with postage prepaid, addressed to the last known address of the parties as shown below:

To Lessor: Town of Kernersville  
134 East Mountain Street  
PO Box 728 (Kernersville, NC 27285)  
Kernersville, NC 27284  
Attn: Town Manager (currently Curtis L. Swisher)

With copy to: John G. Wolfe, III (currently Town Attorney)  
John G. Wolfe, III & Associates, P.L.L.C.  
101 South Main Street  
Kernersville, NC 27284

To Lessee: Körner's Folly Foundation  
PO Box 2091  
413 South Main  
Kernersville NC 27284  
Attn: Chair of Board of Directors

With copy to: Dale Pennington (currently Executive Director)  
PO Box 2091  
413 South Main Street  
Kernersville, NC 27284

C. **BINDING EFFECT.** The Parties agree that the terms and provisions of this Agreement shall be binding upon, and inure to the benefit of, the parties, their successors in interest and assigns.

D. **NORTH CAROLINA LAW.** The parties agree that this Lease Agreement shall be construed and interpreted under and governed by the laws of the State of North Carolina.

E. **INTEGRATED DOCUMENT.** This Lease Agreement embodies the entire agreement between the Lessor and the Lessee. There is merged herein all prior and collateral representations, promises, and conditions in connection with the subject matter hereof. Any representation, promise, or condition not incorporated herein shall not be binding upon either party.

F. **NO WAIVER.** The acknowledgment or acceptance of any term or condition inconsistent with this agreement shall not be deemed an acceptance or approval of such inconsistent provisions.

G. **MEDIATION.** If a dispute arises between Lessee and Lessor regarding the terms of this Agreement and Lease, the parties will first try to resolve the dispute through mediation. Representative of the **FOLLY** and the **TOWN** will select an independent and neutral person qualified to act as a mediator. The mediation proceeding will be

held in Kernersville, NC and will commence not more than thirty (30) days after the mediator is selected and agreed upon. The mediation will be attended by the representatives of the **FOLLY** and the **TOWN** (who may or may not be accompanied by legal counsel), who will attempt in good faith to resolve the dispute and will have reasonable authority to do so. The parties will bear equally the cost of the mediator; each party will be responsible for its own attorneys' fees and costs.

H.MEMORANDUM OF LEASE. The parties hereto agree to execute a Memorandum of Lease in the basic form as Exhibit B attached hereto. Said Memorandum of Lease shall be created subsequent to the construction of the Visitors Center and prior to occupation by the Körner's Folly Foundation. Said Memorandum of Lease shall further be executed in a form necessary for its recordation by the Forsyth County Register of Deeds; and, the parties shall provide for such recordation.

IN WITNESS WHEREOF, the parties hereto, by actions of their respective Boards (Town of Kernersville Aldermen) and Directors (Körner's Folly Foundation), have caused these presents to be executed in duplicate originals, effective as of the below Resolution last adopted, one copy to be retained by each of the parties hereto.

Approved by Resolution of the Board of Aldermen of the Town of Kernersville this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Dawn H. Morgan, Mayor

ATTEST:

\_\_\_\_\_  
Keith Hooker, Town Clerk

(signatures of execution are continued on the following page)

Approved by Resolution of the Board of Directors of the Körner's Folly Foundation the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
, President

ATTEST:

\_\_\_\_\_  
, Secretary

**S:\TOK\VISITOR CENTER\4-7-19 FOLLY AGREEMENT-99YR LEASE JGWIII.DOCX**