

OPERATING AGREEMENT

BY AND BETWEEN

BLACK KETTLE, LLC

AND

BOARD OF TRUSTEES OF RAPPAHANNOCK COUNTY PUBLIC LIBRARY

Effective as of October __, 2026

Operating Agreement - Draft – 9/17/26

#257323586v8<US> - Operating Agreement - Execution Copy - 8/24/26

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (“*Agreement*”) is effectively dated and made as of October __, 2026 (“*Effective Date*”) by and between the following (individually, “*Party*” and collectively, “*Parties*”): Black Kettle, LLC, a Virginia limited liability company (“*Owner*”); and the Board of Trustees of Rappahannock County Public Library, the board of the free public library system of Rappahannock County, Virginia pursuant to Code of Virginia 42.1-35.A (“*Library*”).

Recitals:

- A. Owner owns the tract of land situated in Washington, Virginia known as Phase 2 of Rush River Commons and more particularly described on Exhibit A attached hereto and made a part hereof (“*Project*”).
- B. Owner is developing within the Project a building consisting of approximately {9000} usable square feet (and a meeting room (as more particularly defined in the Gift Lease described below, the “*Building*”).
- C. Library is the board of the free public library system of Rappahannock County, Virginia. Pursuant to Code of Virginia Section 42.1-35, Library is vested with the management and control of such library system.
- D. Pursuant to Code of Virginia Section 42.1-35.A, Library has the right to accept donations of real estate for the establishment and maintenance of the Rappahannock free public library system.
- E. Owner, for no consideration and with donative intent, has donated to Library a rent-free leasehold estate in and to the Building and the right to use certain common areas in the Project pursuant to a Deed of Gift Lease of even date herewith (“*Gift Lease*”).
- F. By this Agreement, Owner and Library desire to set forth certain agreements with respect to Library’s occupancy of the Building and operations within the Building under the Gift Lease.

NOW, THEREFORE, intending to be legally bound, the Parties agree as follows:

ARTICLE I DEFINED TERMS

Section 1.1. Defined Terms

For purposes of this Agreement, capitalized terms shall have the meanings set forth in the Gift Lease and as set forth in this Agreement.

“*Operating Expenses*” means Library’s pro rata share (which is agreed to be \$500/month, escalated as described in Section 6.6) of, collectively, all expenses, costs and disbursements of every kind and nature, incurred or paid by the Owner in connection with the ownership and operation of the Project and the common elements, including but not limited to maintenance of grounds, roads, parking lots, utility systems, exterior lighting, etc., computed on an accrual basis, including but not limited to the following:

(a) Wages and salaries of all persons engage in the operation, maintenance, security or access control of the Premises, Building and Project including all taxes, insurance and benefits relating thereto;

(b) The cost of all supplies, tools, equipment and materials used in the operation and maintenance of the Premises, Building and Project;

(c) Except for Library's responsibilities under Section 6.5, the cost of all utilities for the Premises, Building and Project, including but not limited to the cost of water and power, heating, lighting, air conditioning and ventilating of the Premises, Building and Project;

(d) except for Library's responsibilities under Section 6.3, the cost of all maintenance and service agreements for the Premises, Building and Project and the equipment therein, including but not limited to alarm service, security service, access control, landscaping, window cleaning, pest control, elevator maintenance, and janitorial service and snow removal;

(e) the cost of repairs and general maintenance of the Premises, Building and Project;

(f) amortization (together with reasonable financing charges) of the cost of capital investment items which are installed for the purpose of reducing operating expenses, promoting safety, complying with governmental requirements, or maintaining the quality of the Premises, Building and Project;

(g) except for Library's responsibilities under Section 7.4(b), the cost of all insurance relating to the Premises, Building and Project, including, but not limited to, the cost of property insurance, casualty, flood (if available), rental loss, and liability insurance applicable to the Premises, Building and Project; and

(h) managing agent's property management fees and any accounting and audit costs and attorney's fees relating to the operation and management of the Premises, Building and Project.

"Real Estate Taxes" mean, collectively: all taxes, assessments and governmental charges, whether or not directly paid by Owner, whether federal, state, county or municipal and whether they are imposed by taxing districts or authorities currently taxing the Building and Project.

ARTICLE II

BASIC AGREEMENT PROVISIONS

Section 2.1. Term

The term of this Agreement shall be co-terminous with the Term of the Gift Lease (including any Renewal Terms). If the Gift Lease shall expire or otherwise terminate in accordance with its terms, then this Agreement shall thereupon automatically terminate.

ARTICLE III

OPERATING EXPENSES

Section 3.1. Operating Expenses

(a) Library shall pay directly to all providers the following costs during the Agreement Term: (i) cleaning the interior of the Building and the common meeting room, (ii) the cost of Library's library operations, and (iii) any other costs which under this Agreement or the Gift Lease are expressly allocated to Library.

(b) Owner shall pay all costs and expenses of maintaining, repairing or improving the Premises, Building and the Project, other than those expressly allocated to Library pursuant to this Agreement or the Gift Lease. Owner shall pay all Real Estate Taxes imposed with respect to the Premises, the Building and the Project, without reimbursement from Library.

ARTICLE IV BUILDING RELATED PROVISIONS

Section 4.1. Graphics, Signage and Directory

Owner shall design, pay for, install and maintain a permanent sign on the Building exterior subject to Library's reasonable consent and applicable law, and Project-standard directional signage at the Project entrance. Owner shall be responsible for obtaining any approvals required for such signage. Such signage shall be, subject to Library's reasonable approval, consistent with the size and design of the Building and Project. In no event shall such signage be neon lighted without Library's express written permission.

Owner shall designate an area inside the front door of the Project for use by Library for temporary, removable signage for Library programs, events and activities in the Premises or otherwise sponsored by the Library. The form of such temporary signage shall be subject to Owner's reasonable approval, provided that Library shall have the right to change the content of such signage from time to time.

Subject to all local governmental regulations, Library shall have the right to use temporary signs outside of the Building, but not on the Building, providing notice of programs, events and activities in the Premises or otherwise sponsored by Library. The form of such temporary signs shall be subject to Owner's reasonable approval, provided that Library shall have the right to change the content of such signs from time to time. Such signs shall not otherwise block access to the Building, parking or otherwise interfere with other signage of the Building.

To the extent that Owner believes that a sign does not comply with this Section 4.1, Owner shall provide Library reasonable written notice identifying what feature(s) of the sign do not comply with this Section 4.1. Library shall have a reasonable time to modify any such sign. Neon signs are specifically prohibited.

Section 4.2. Rules and Regulations

Library shall observe rules and regulations for the Building attached hereto as Exhibit B and incorporated by reference herein ("**Rules and Regulations**"). Owner may modify the Rules and Regulations from time to time for the safety, care and cleanliness of the Premises, the Building or Project and for the preservation of good order therein, subject to the approval of Library (such approval not to be unreasonably withheld so long as the modification does not materially and adversely affect Library's use of Premises for public library purposes).

ARTICLE V OCCUPANCY; ENTRY; ENVIRONMENTAL PROVISIONS

Section 5.1. Occupancy of Premises

Library shall, throughout the Term of this Agreement, at its own expense, clean the interior of the Building including the Common Meeting Room and keep them free from waste, damage or nuisance consistent with a typical office use, and shall deliver up the Building and Common Meeting Room in a broom clean condition at the expiration of this Agreement, having removed its personal property, and in good condition, reasonable wear and tear excepted. In the event Library neglects to clean and/or return the Building in such manner, Owner shall have the right, but not the obligation, to cause corrections to be made, and any reasonable costs therefor shall be payable by Library within ten (10) business days of demand therefor by Owner.

Upon the expiration or termination of this Agreement or the termination of Library's right to occupy the Premises by Library, Owner shall have the right to reenter and resume possession of the Premises. No act or thing done by Owner or any of Owner's agents during the Term of this Agreement shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless the same

be made in writing and executed by Owner. Library shall notify Owner at least fifteen (15) days prior to vacating the Premises.

Section 5.2. Entry for Repairs and Inspection

Library shall permit Owner and its agents: (a) to enter the Premises at all reasonable times, with 24 hours notice, to inspect the same to show the Premises to prospective tenants (within nine (9) months of the expiration of the Term of this Agreement), or interested parties such as prospective lenders and purchasers; (b) to exercise its rights under this Agreement; (c) with 24 hours notice, to clean and repair the Premises or the Building, and to undertake alterations or improvements to the Premises or the Building; (d) to discharge Library's obligations when Library has failed to do so within the time required under this Agreement or within a reasonable time after written notice from Owner, whichever is earlier; and (e) to post notices of non-responsibility and similar notices and "***For Sale***" signs at any time and to place "***Space Available***" signs upon or adjacent to the Building or the Premises at any time within nine (9) months of the expiration of the Term of this Agreement. Library shall permit Owner and its agents to enter the Premises at any time in the event of an emergency.

Section 5.3 Hazardous Materials

(a) As used in this Agreement, the term "***Hazardous Materials***" means and includes any substance that is or contains petroleum, asbestos, polychlorinated biphenyls, lead, or any other substance, material or waste which is now or is hereafter classified or considered to be hazardous or toxic under any federal, state or local law, rule, regulation or ordinance relating to pollution or the protection or regulation of human health, natural resources or the environment (collectively "***Environmental Laws***") or poses or threatens to pose a hazard to the health or safety of persons on the Premises or any adjacent property.

(b) Owner represents that, to the best of its knowledge and belief without independent investigation: (i) there are no Hazardous Materials located in or about the Building or the Premises; and (ii) Owner is not aware of any violations on the Building or the Premises of any of the Environmental Laws. Owner agrees to indemnify and hold Library harmless from and against any actual damages incurred by Library which arise directly from any violations concerning Hazardous Materials that may exist in the Building, or beneath the Building, or on the Premises unless same were caused by the negligence or actions of Library or its employees, invitees, agents, or contractors.

(c) Library agrees that, during its use and occupancy of the Premises, it will: (i) not permit Hazardous Materials to be present on or about the Premises except in a manner and quantity necessary for (i) the ordinary cleaning and maintenance of the Building, Common Meeting Room and the Library's property and (ii) programs and activities sponsored by Library (including without limitation science and technology education programs) that involve de minimis amounts of Hazardous Materials; and (iii) comply with all Environmental Laws relating to the use, storage or disposal of any such Hazardous Materials.

(d) If Library's use of Hazardous Materials on or about the Premises results in a release, discharge or disposal of Hazardous Materials on, in, at, under, or emanating from, the Premises or the Building, Library agrees to investigate, clean up, remove or remediate such Hazardous Materials in full compliance with: (i) the requirements of all Environmental Laws and any governmental agency or authority responsible for the enforcement of any Environmental Laws; and (ii) any additional requirements of Owner that are reasonably necessary to protect the value of the Premises or the Building. Owner shall also have the right, but not the obligation, to take whatever action with respect to any such Hazardous Materials that it deems reasonably necessary to protect the value of the Premises or the Building. All reasonable costs and expenses paid or incurred by Owner in the exercise of such right shall be payable by Library upon demand and evidence of Owner's payment of such expenses.

(e) Upon reasonable notice to Library, Owner may inspect the Premises for the purpose of determining whether there exists on the Premises any Hazardous Materials or other condition or activity that is in violation of the requirements of this Agreement or of any Environmental Laws. The right granted to Owner herein to perform inspections shall not create a duty on Owner's part to inspect the Premises, or liability on the part of Owner for Library's use, storage or disposal of Hazardous Materials, it being understood that Library shall be solely responsible for all liability in connection therewith.

(f) Library shall surrender the Premises to Owner upon the expiration or earlier termination of this Agreement free of debris, waste or Hazardous Materials placed on or about the Premises by Library or its employees, invitees, agents, or contractors, and in a condition free of violations of Environmental Laws caused by Library and as may be adopted and made available to Library by Owner from time to time for the safety, care and cleanliness of the Premises, the Building or Project and for the preservation of good order therein.

(g) The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

ARTICLE VI REPAIRS; ALTERATIONS; MAINTENANCE

Section 6.1. Maintenance by Owner

(a) Owner shall be responsible for the prompt maintenance, repair and replacement of the Building, Premises (except as provided in Section 6.2 below) and Project, including without limitation the roof, walls, exterior façade, exterior signage, windows, structural components of the Building and Premises, water and sewer hook-ups, radon mitigation system, fire/life safety systems, all base building systems and fixtures including HVAC, and all common areas including landscaping and restrooms. Owner shall also be responsible for the prompt maintenance, repair and replacement of all components of the Project outside of the Building, including without limitation landscaping, snow and ice removal, access roads, trails, sidewalks, roads, parking areas and snow removal. The Building shall include a designated area for Library to deposit trash, and Owner shall be responsible, at its cost, for periodic trash removal.

(b) Library may notify Owner (by email, telephone or in writing) of any component of the Building, Premises and/or Project requiring maintenance, repair, replacement or cleaning by Owner pursuant to this Section 6.1. Owner shall promptly respond to such notice and within a commercially reasonable time initiate such maintenance, repair, replacement or cleaning and diligently prosecute the same to completion.

Section 6.2 Maintenance and Repairs by Library

Subject to the terms of Section 6.1, Library shall be responsible, at its own cost and expense, for (i) the prompt maintenance, repair and replacement of all fixtures installed in the Building by the Library, (ii) the prompt repair of any damage to the Building, Building systems, common area including restrooms, Common Meeting Room or any part thereof to the extent such damage be beyond normal usage and demonstrated to have been caused by Library or its employees, invitees, agents, or contractors, and (iii) obtaining a contract for and providing annual maintenance of any system (e.g. HVAC) that solely serves the Building and that customarily is subject to an annual maintenance contract, unless otherwise agreed by Owner.

Section 6.3 Liens

Library shall keep the Premises and the Building free from any liens, including but not limited to liens filed by any contractor, material supplier and/or governmental agency, authority or organization, arising out of

any work performed, materials ordered, or obligations incurred by or on behalf of Library. Library shall cause any such lien imposed to be released of record by payment or negotiation or posting of the such bond as the statute or court may require within thirty (30) days after the earlier of imposition of the lien or written request by Owner. If Library fails to remove any lien within the prescribed thirty (30) day period, then Owner may do so at Library's expense and Library shall reimburse Owner for such amount, including attorneys' fees and costs. Library shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion or other estate of Owner, or of any interest of Owner in the Premises.

Section 6.4 Indemnification

(a) Library shall maintain comprehensive general liability insurance pursuant to Section 7.3(b) to protect Owner and its agents, employees, officers, managers, members, directors, partners and/or shareholders, as the case may be (together with Owner, collectively, "***Owner's Related Parties***"), from and against liabilities arising out of the use, occupancy, conduct, operation, or management of the Premises during the Term by, or the willful misconduct or negligence of, Library or its officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors in or about the Building or Premises, or arising from any accident, injury, or damage, to any person or property, occurring in the Building during the Term, unless due to the gross negligence or willful misconduct of Owner. This provision shall not be construed to make Library responsible for loss, damage, liability or expense resulting from injuries to third parties caused solely by the gross negligence or willful misconduct of Owner, or its officers, contractors, licensees, agents, employees, or invitees.

(b) Owner shall defend, indemnify and hold harmless Library and its trustees, agents, employees, officers, managers, members, directors, partners and/or shareholders, as the case may be (together with Library, collectively, "***Library's Related Parties***"), from and against any and all liabilities, judgments, demands, causes of action, claims, losses, damages, costs and expenses, including reasonable attorneys' fees and costs, arising out of the use, occupancy, conduct, operation, or management of the Building or Project during the Term by, or the willful misconduct or negligence of, Owner or its officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors in or about the Building or Project, or arising from any breach or default under this Agreement by Owner, or arising from any accident, injury, or damage, to any person or property, occurring in or about the Project (other than the Building) during the Term, unless due to the gross negligence or willful misconduct of Library. This indemnification shall be limited to any applicable insurance coverage and survive termination or expiration of this Agreement with respect to claims arising during the Term (and Library shall provide prompt written notice to Owner of any such claims). This provision shall not be construed to make Owner responsible for loss, damage, liability or expense resulting from injuries to third parties caused solely by the gross negligence or willful misconduct of Library, or its officers, contractors, licensees, agents, employees, or invitees.

Section 6.5 Utilities

Library shall pay directly to the applicable service provider the cost of utilities used by Library at the Building, and Owner shall pay the cost of utilities to the remainder of the Project, including all common areas. To the greatest extent possible in the design and construction of the Building, the Owner will separately meter all utilities to the Building, including water, sewer, electricity and/or gas as applicable.

Section 6.6 Operating Expenses

(a) From and after the Lease Commencement Date (as defined in the Gift Lease) for the Term of the Gift Lease, Library shall pay Owner the amount of Five Hundred and 00/100 Dollars (\$500.00) per month on or before the first day of the month, for Operating Expenses associated with the Building and the Project. On each one (1) year anniversary of the Lease Commencement Date, the monthly amount then in effect shall be escalated at the lesser of the percentage increase in the Consumer

Price Index published by the U.S. Department of Labor for the Washington Metropolitan Area over the one (1) year period preceding such anniversary of the Lease Commencement Date, or three percent (3%). Other than the monthly payment described in this Section 6.6(a), Library shall have no obligation to pay or reimburse Owner for Operating Expenses during the Term of the Gift Lease.

(b) Delivery of Payments. The address for the delivery of all payments of Operating Expenses due and owing by Library to Owner under this Agreement, as well as Owner's wiring instructions, are as follows:

Remittance Address for Mailing of Checks;

Black Kettle, LLC
P.O. Box 1540
Middleburg, VA 20118

ARTICLE VII

FORCE MAJEURE; CASUALTY; INSURANCE

Section 7.1. Force Majeure

Neither Owner nor Library shall be required to perform any term, provision, agreement, condition or covenant in this Agreement so long as such performance is delayed or prevented by the occurrence of a "***Force Majeure Event***," which means, collectively, acts of God, strikes, injunctions, lockouts, material or labor restrictions by any governmental authority, government declared epidemics/pandemics, civil riots, floods, fire, theft, public enemy, insurrection, war, court order, requisition or order of governmental body or authority, and any other cause not reasonably within the control of Owner or Library and which by the exercise of due diligence Owner or Library is unable, wholly or in part, to prevent or overcome. Neither Owner nor any mortgagee shall be liable or responsible to Library for any loss or damage to any property or person occasioned by any Force Majeure Event, or for any damage or inconvenience which may arise through repair or alteration of any part of the Building as a result of any Force Majeure Event. Notwithstanding the above, force majeure is not a defense to the failure to perform any monetary obligations under this Agreement.

Section 7.2. Fire or Other Casualty Damage

(a) Damage. If any portion of the Premises shall be destroyed or damaged by fire or any other casualty, Library shall immediately give notice thereof to Owner. If any portion of the Premises or Building shall be destroyed or damaged by fire or any other casualty, the proceeds of any insurance maintained by Owner shall be used by the Owner to rebuild the Building and Premises back to its original condition as much as practicable. If for any reason, the Library shall receive any portion of such insurance proceeds, at the option of Owner, Owner may require the Library to apply said insurance proceeds to the restoration and repair the portion of the Premises or Building damaged back to its original condition as much as practicable.

(b) Repair. Owner and Library shall use reasonable efforts to coordinate any written notice to each other of all decisions, estimates or elections under this Section within thirty (30) days after any such damage or destruction. If the Parties elect to repair and restore the Premises or other portion of the Building, this Agreement shall continue in full force and effect, and the repairs described in Section 7.2(a) will be made within a reasonable time after the fire or other casualty, subject to the provisions of the Section of this Agreement which is captioned "***Force Majeure***." Owner shall only be obligated to restore or rebuild the Premises or other portion of the Building to approximately the same condition as existed at the time Library entered into possession of the Premises, reasonable wear and tear excepted, and Owner shall not be required to rebuild, repair or replace any part of Library's property or leasehold improvements

installed by Library. Notwithstanding anything contained in this Agreement to the contrary, in no event shall Owner be required to expend under this Article any amount in excess of the proceeds actually received from the insurance carried by Owner pursuant to clause (a) of the Section of this Agreement which is captioned “**Insurance.**” Owner shall not be liable for any inconvenience or annoyance to Library or injury to the business of Library resulting in any way from such damage or destruction or the disregard of the repair thereof.

Section 7.3. Insurance

(a) The Owner shall maintain, or cause to be maintained, (i) standard fire and extended full replacement coverage insurance on the Building and Library improvements (excluding leasehold improvements installed by Library and Library’s furniture and personal property) in amounts considered by Owner to be reasonable and customary, (ii) flood insurance if any portion of the Building is located in a flood zone, and (iii) comprehensive general liability insurance (including personal injury liability, premises/operation, property damage, independent contractors and broad form contractual coverage in support of the indemnifications of Library by Owner under this Agreement) in amounts of not less than a combined single limit of \$3,000,000. The Library shall be named on any such insurance policy as an additional Insured Party. The insurer must be licensed to do business in the Commonwealth of Virginia. In the event that Owner fails to take out or maintain any policy required by this Section to be maintained by Owner, such failure shall be a defense to any claim asserted by Owner against Library by reason of any loss sustained by Owner that would have been covered by such policy, notwithstanding that such loss may have been proximately caused solely or partially by the negligence of Library or its trustees, agents, employees, officers, managers, members, directors, partners and/or shareholders. If Owner does not procure insurance as required, Library may, upon advance written notice to Owner, request such insurance to be issued. If Owner does not obtain such insurance within thirty (30) days of such request, Library may obtain such policy and Owner shall pay to Library the premium for such insurance within ten (10) days of Library’s demand. All policies of insurance required to be maintained by Owner shall specifically make reference to the indemnifications by Owner in favor of Library under this Agreement and shall provide that Library shall be given at least thirty (30) days’ prior written notice of any cancellation or nonrenewal of any such policy. A certificate evidencing each such policy shall be deposited with Library by Owner on or before the Lease Commencement Date, and a replacement certificate evidencing each subsequent policy shall be deposited with Library at least thirty (30) days prior to the expiration of the preceding such policy. All insurance policies obtained by Owner shall be written as primary policies (primary over any insurance carried by Library), not contributing with and not in excess of coverage which Library may carry, if any.

(b) Library shall, at its sole cost and expense, procure and maintain during the Term of this Agreement all such policies of insurance as Owner may reasonably require based upon the insurance coverages generally maintained by tenants of comparable properties, including without limitation: (i) comprehensive general liability insurance (including personal injury liability, premises/operation, property damage and independent contractors) in amounts of not less than a combined single limit of \$3,000,000; (ii) comprehensive automobile liability insurance; and (iii) property insurance with respect to Library’s property, and all leasehold improvements, alterations and additions installed by Library, to be written on an “all risk” basis for full replacement cost; and (iv) workers’ compensation and employer’s liability insurance. All such insurance shall be maintained with companies, on forms, and in such amounts as Owner may, from time to time, reasonably approve and endorsed to include Owner, Owner’s property manager, and such other designated agents as additional insureds, with the premiums fully paid on or before the due dates. The insurer must be licensed to do business in the Commonwealth of Virginia. Library, and not Owner, will be liable for any costs or damages in excess of the statutory limit for which Library would, in the absence of workers’ compensation, be liable. In the event that Library fails to take out or maintain any policy required by this Section to be maintained by Library, and is not otherwise covered by the policy or policies obtained by the Board of Supervisors of Rappahannock County, such failure shall be a defense to any claim asserted by Library against Owner by reason of any loss sustained

by Library that would have been covered by such policy, notwithstanding that such loss may have been proximately caused solely or partially by the negligence or willful misconduct of Owner or any of Owner's Related Parties. If Library does not procure insurance as required, Owner may, upon advance written notice to Library, cause such insurance to be issued and Library shall pay to Owner the premium for such insurance within ten (10) days of Owner's demand, plus interest at the rate of Ten Percent (10%) per annum until repaid by Library. All policies of insurance required to be maintained by Library shall provide that Owner shall be given at least thirty (30) days' prior written notice of any cancellation or nonrenewal of any such policy. A certificate evidencing each such policy shall be deposited with Owner by Library on or before the Lease Commencement Date, and a replacement certificate evidencing each subsequent policy shall be deposited with Owner at least thirty (30) days prior to the expiration of the preceding such policy. All insurance policies obtained by Library shall be written as primary policies (primary over any insurance carried by Owner), not contributing with and not in excess of coverage which Owner may carry, if any.

Section 7.4. Waiver of Subrogation Rights

Each Party waives all rights of recovery, claims, actions or causes of actions arising in any manner in its (the "***Injured Party's***") favor and against the other Party for loss or damage to the Injured Party's property located within or constituting a part or all of the Building, to the extent the loss or damage: (a) is covered by the Injured Party's insurance; or (b) would have been covered by the insurance the Injured Party is required to carry under this Agreement, whichever is greater, regardless of the cause or origin, including the sole, contributory, partial, joint, comparative or concurrent negligence of the other Party. This waiver also applies to each Party's trustees, directors, officers, members, managers, employees, shareholders, partners, representatives and agents. All insurance carried by either Owner or Library covering the losses and damages described in this Section shall provide for such waiver of rights of subrogation by the Injured Party's insurance carrier to the maximum extent that the same is permitted under the laws and regulations governing the writing of insurance within the Commonwealth of Virginia. Both Parties hereto are obligated to obtain such a waiver and provide evidence to the other Party of such waiver. The waiver set forth in this Section shall be in addition to, and not in substitution for, any other waivers, indemnities or exclusions of liability set forth in this Agreement.

ARTICLE VIII DEFAULT; REMEDIES

Section 8.1. Default by Library

The occurrence of any one or more of the following events shall constitute a default by Library under this Agreement:

- (a) Library shall fail to pay to Owner all monetary charges due from Library hereunder as and when due and payable;
- (b) Library breaches or fails to comply with any term, provisions, conditions or covenant of (i) this Agreement or the Gift Lease, other than as described in the immediately preceding clause (a) of this Section, or (ii) any of the Building rules and regulations shown on Exhibit B attached hereto established to govern the operation of the Building;
- (c) a Transfer (as defined in Section 8.1(a) of the Gift Lease) shall occur, without the prior written approval of Owner;
- (d) the interest of Library under this Agreement shall be levied on under execution or other legal process, and such levy shall be final and unappealable;

(e) any petition in bankruptcy or other insolvency proceedings shall be filed by or against Library, or any petition shall be filed or other action taken to declare Library a bankrupt or to delay, reduce or modify Library's debts or obligations or to reorganize or modify Library's capital structure or indebtedness or to appoint a trustee, receiver or liquidator of Library or of any property of Library, or any proceeding or other action shall be commenced or taken by any governmental authority for the dissolution or liquidation of Library and, within six (6) months hereafter, Library fails to secure a discharge thereof;

(f) Library shall become insolvent, or Library shall make an assignment for the benefit of creditors, or Library shall make a transfer in fraud of creditors, or a receiver or trustee shall be appointed for Library or any of its properties;

(g) Library shall desert, abandon or vacate the Premises or any substantial portion thereof or fails to operate its business in the Premises for a period of six (6) months for any reason other than as a result of Force Majeure Event, damage or condemnation of the Premises, or the making of repairs or renovation provided reasonable notice has been given to Owner; or

(h) Library shall do or permit to be done anything which creates a lien upon the Premises or the Building, and fails to discharge/bond off said lien within thirty (30) days from the earlier date of Library's receipt of actual notice of lien imposition or the date Library receives written request from Owner to discharge/bond off such lien.

Section 8.2. Owner's Remedies

Upon occurrence of any default by Library under this Agreement and if the occurrence of: (i) a monetary default described in clause (a) of the immediately preceding Section of this Agreement is not cured within thirty (30) days after written notice from Owner of such default, provided however that Owner shall only be obligated to provide such written notice twice in any twelve (12) consecutive month period, following which if the payment is not made when due it shall constitute a default without the necessity of further notice, or (ii) a non-monetary default (other than as described in clauses (e) or (f) of the immediately preceding Section of this Agreement) is not cured within sixty (60) days after written notice from Owner of such default (provided that such sixty (60) period shall be extended so long as the Library has commenced to cure the default and is diligently pursuing such cure), or upon the occurrence of any default by Library under the Gift Lease after the giving of any notice and the expiration of any cure period provided thereunder, the Owner shall have the option to do and perform anyone or more of the following in addition to, and not in limitation of, any other remedy or right permitted it by law or in equity by this Agreement:

- (a) Pursue specific performance of the terms of this Agreement; and
- (b) Pursue monetary damages (except to the extent prohibited by law, including without limitation Code of Virginia Section 15.2-2506).
- (c) Exercise any and all other remedies available to Owner in this Agreement, at law, or in equity, provided that Owner shall not have the right to terminate this Agreement or repossess the Premises.

Section 8.3. [Intentionally Blank]

Section 8.4. Rights of Owner in Bankruptcy

Nothing contained in this Agreement shall limit or prejudice the right of Owner to prove for and obtain in proceedings for bankruptcy or insolvency, by reason of the expiration or termination of this Agreement or the termination of Library's right of occupancy, an amount equal to the maximum amount allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to in this

Section. In the event that under applicable law, the trustee in bankruptcy or Library has the right to affirm this Agreement and continue to perform the obligations of Library hereunder, such trustee or Library shall, in such time period as may be permitted by the bankruptcy court having jurisdiction, cure all defaults of Library hereunder outstanding as of the date of the affirmation of this Agreement and provide to Owner such adequate assurances as may be necessary to ensure Owner of the continued performance of Library's obligations under this Agreement.

Section 8.5. [Intentionally Blank]

Section 8.6 Non-Waiver

Failure on the part of either Owner or Library to complain of any action or non-action on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by it of any of its rights under this Agreement. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Owner or Library shall be construed as a waiver of any of the other provisions hereof and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval by Owner or Library to or of any action by the other requiring its consent or approval shall not be deemed to waive or render unnecessary its consent or approval to or of any subsequent similar act by the other.

Section 8.7 Returned Checks

Library shall pay to Owner a handling charge of Fifty Dollars (\$50.00) for each check delivered by Library to Owner which is returned by Owner's or Library's bank for any reason. If any check delivered by Library to Owner is returned by Owner's or Library's bank for any reason, then thereafter Owner, in its sole discretion, may require that all future payments by Library to Owner be made by money order, cashier's check or certified check.

Section 8.8 Owner Defaults

Upon occurrence of any default by Owner under this Agreement and if the occurrence of: (i) a monetary default is not cured within thirty (30) days after written notice from Library of such default, or (ii) a non-monetary default is not cured within sixty (60) days after written notice from Library of such default, or upon the occurrence of any default by Owner under the Gift Lease after the giving of any notice and the lapse of any cure period provided thereunder, Library shall have the option to exercise any and all remedies available to Library in this Agreement, at law, or in equity including the recovery of its legal fees and costs for enforcing its rights under this Agreement.

**ARTICLE IX
TRANSFERS; ASSIGNMENT**

Section 9.1. Transfers

In the event of any Transfer permitted under the Lease, this Agreement shall continue in full force and the transferring Library shall be released from performing its obligations under this Agreement from and after the transfer, and the transferee Library shall assume all of Library's obligations under this Agreement in a writing satisfactory to Owner.

Section 9.2. Assignment by Owner

If Owner sells, transfers or assigns, in whole or in part, by operation of law or otherwise, its rights, benefits, privileges, duties, obligations or interests in the Premises, the Building, the Land, the Building and/or all or any portion of the other property referred to herein, this Agreement shall continue in full force and effect and the transferring Owner shall be released from all liability and obligations under this Agreement accruing after the

effective date of such sale, transfer or assignment and the transferee Owner shall assume all such liabilities and obligations.

Section 9.3 Owner Mortgages

Owner represents and warrants to Library that as of the Effective Date the Premises are not encumbered by a mortgage, deed of trust or other lien securing a monetary amount (a “*Mortgage*”). If, after the Effective Date, Owner grants a Mortgage that encumbers the Premises, this Agreement shall have priority over such Mortgage and shall not be affected by the foreclosure or other exercise of remedies by the holder of such Mortgage.

Section 9.4 Limitation on Liability

(a) The exclusive remedies of Library for the failure of Owner to perform any of its obligations under this Agreement shall be to proceed against the interest of Owner in and to the Building. In no event shall Owner be liable to Library, or any interest of Owner in the Building be subject to execution by Library for any indirect, special, consequential or punitive damages.

(b) The exclusive remedies of Owner for the failure of Library to perform any of its obligations under this Agreement shall be to proceed against the assets of Library. In no event shall any individual trustee on the board of trustees comprising Library, or the assets of such individual trustee, be subject to personal liability resulting from the Library’s failure to perform any of its obligations under this Agreement.

ARTICLE X

ESTOPPEL CERTIFICATE; NOTICES

Section 10.1 Estoppel Certificate or Three-Party Agreement

Library agrees within fifteen (15) business days following request by Owner, to execute, acknowledge and deliver to Owner and any other persons specified by Owner, a certificate or three-party agreement among Owner, Library and/or any third party dealing with Owner, certifying (a) that this Agreement is unmodified and in full force and effect, or, if modified, stating the nature of such modification, (b) the date to which any charges are paid in advance, if any, (c) that there are not, to Library’s knowledge, any uncured defaults on the part of Owner hereunder, or so specifying such defaults, if any, as are claimed, and/or (d) any other matters as such third party may reasonably require in connection with the business dealings of Owner and/or such third party.

Section 10.2 Notices

Any notice, request, approval, consent or other communication required or contemplated by this Agreement must be in writing, unless otherwise in this Agreement expressly provided, and may be given or be served by hand delivery or reputable overnight delivery. Notice given in any other manner shall be effective only if and when delivered to the Party to be notified or at such Party’s address for purposes of notice as set forth herein. For purposes of giving notice under this Agreement, the addresses of the Parties shall, until changed as herein provided, be as set forth below. The Parties shall have the right from time to time to change their respective addresses by giving at least fifteen (15) days’ written notice to the other Party in the manner set forth in this Section.

If to Owner: Black Kettle, LLC
 P.O. Box 1540
 Middleburg, VA 20118

With a copy to: E. Andrew Burcher, Esq.
 Walsh, Colucci, Lubeley & Walsh, P.C.

4310 Prince William Parkway, Suite 300
Woodbridge, VA 22192
eaburcher@thelandlawyers.com

If to Library: Rappahannock County Public Library Board of Trustees
4 Library Road
Washington, VA 22747
Attn: Library Director

With a copy to: Rappahannock County Administration Office
3 Library Road
Washington, VA 22747
Attn: County Administrator

ARTICLE XI

MISCELLANEOUS

Section 11.1. Relation to Gift Lease.

This Operating Agreement supplements the Gift Lease and provides for operational terms. Library agrees that if Library defaults under this Operating Agreement and such default is not cured within the time periods set forth in Section 8.2 and not resolved by mediation as provided in Section 11.14, such default shall constitute a default under the Gift Lease and Owner shall be entitled to pursue its remedies thereunder.

Section 11.2. Rights and Remedies Cumulative

The rights and remedies of Owner and Library under this Agreement shall be nonexclusive and each right or remedy shall be in addition to and cumulative of all other rights and remedies available to Owner and Library under this Agreement or at law or in equity. Pursuit of any right or remedy shall not preclude pursuit of any other rights or remedies provided in this Agreement or at law or in equity, nor shall pursuit of any right or remedy constitute a forfeiture or waiver of any amounts due to Owner or Library or of any damages accruing to Owner by reason of the violation of any of the terms of this Agreement.

Section 11.3. Legal Interpretation

This Agreement and the rights and obligations of the Parties shall be interpreted, construed and enforced in accordance with the laws of the Commonwealth of Virginia and exclusive jurisdiction for the resolution of any disputes hereunder is in the courts applicable to Washington, VA. The determination that one or more provisions of this Agreement is invalid, void, illegal or unenforceable shall not affect or invalidate any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. All obligations of either Party hereunder not fully performed as of the expiration or termination of the Term of this Agreement shall survive the expiration or termination of the Term of this Agreement and shall be fully enforceable in accordance with those provisions pertaining thereto. No custom or practice which may evolve between the Parties in the administration of the terms of this Agreement shall waive or diminish the right of either Party to insist upon the performance by the other Party in strict accordance with the terms of this Agreement. Time is of the essence as to all duties and obligations of the Parties hereunder. This Agreement is for the sole benefit of Owner and Library, and, without the express written consent thereto, no third party shall be deemed a third party beneficiary hereof. The Parties agree that this Agreement supersedes and cancels any and all previous statements, negotiations, arrangements, brochures, agreements and understandings, if any, between Owner and Library with respect to the subject matter of this Agreement or the Premises and that this Agreement, including written extrinsic documents referred to herein, is the entire agreement of the Parties, and that there are no representations, understandings, stipulations, agreements, warranties or

promises (express or implied, oral or written) between Owner and Library with respect to the subject matter of this Agreement or the Premises. It is likewise agreed that this Agreement may not be altered, amended, changed or extended except by an instrument in writing signed by both Owner and Library. The terms and provisions of this Agreement shall not be construed against or in favor of a Party merely because such Party is the “**Owner**” or the “**Library**” hereunder or because such Party or its counsel is the draftsman of this Agreement. All references to days in this Agreement and any Exhibits or addenda hereto mean calendar days, not business days, unless otherwise stated.

Section 11.4. Library’s Authority

Library warrants and represents unto Owner that: (a) no proceedings are pending against Library or to its knowledge contemplated for its dissolution or reorganization, voluntary or involuntary; (b) based on the advice of the County Attorney of Rappahannock County, Library has full right, power and authority to execute, deliver and perform this Agreement; (c) the person executing this Agreement on behalf of Library is authorized to do so; (d) upon execution of this Agreement by Library, this Agreement shall constitute a valid and legally binding obligation of Library; and (e) upon request of Owner, such person will deliver to Owner satisfactory evidence of the matters set forth in this Section.

Section 11.5. Commissions

Library represents and warrants to Owner that it has not dealt with any broker, agent, finder or other person in the negotiation for or the obtaining of this Agreement.

Section 11.6. No Accord or Satisfaction

No payment by Library or receipt by Owner of a lesser amount than the sums due hereunder shall be deemed to be other than on account of the sums due, nor shall any endorsement or statement on any check or accompanying any check or payment be deemed an accord and satisfaction; and Owner may accept such check or payment without prejudice to Owner’s right to recover the balance of such sum and to pursue any other remedy provided in this Agreement.

Section 11.7. Acceptance

The submission of this Agreement by Owner does not constitute an offer by Owner or other option for, or restriction of, the Premises, and this Agreement shall only become effective and binding upon Owner, upon full execution hereof by Owner and delivery of a signed copy of this Operating Agreement and the Gift Lease to Library.

Section 11.8. Time is of the Essence

Time is of the essence of this Agreement. Unless specifically provided otherwise, all references to terms of days or months shall be construed as references to calendar days or calendar months, respectively.

Section 11.9. Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 11.10. No Partnership

Owner is not in any way or for any purpose a partner of, joint venturer with, or a member of any enterprise with, Library in the conduct of Library’s business, or otherwise. This Agreement establishes a relationship solely by Owner and Library.

Section 11.11. Binding Nature

This Agreement shall inure to the benefit of and be enforceable by Owner and Owner's successors and assigns and any other person to whom Owner may grant an interest in Library's obligations to Owner, and shall be binding and enforceable against Library and its successors and assigns.

Section 11.12. USA Patriot Act and Anti-Terrorism Laws

(a) Library represents and warrants to, and covenants with, Owner that neither Library nor any of its respective constituent owners or affiliates currently are, or shall be at any time during the Term hereof, in violation of any laws relating to terrorism or money laundering (collectively, "***Anti-Terrorism Laws***"), including but not limited to Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism ("***Executive Order***") and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 ("***USA Patriot Act***").

(b) Library covenants with Owner that neither Library nor any of its respective constituent owners or affiliates is or shall be during the Term hereof a "***Prohibited Person***," which is defined as follows: (i) a person or entity that is listed in the Annex to, or is otherwise subject to, the provisions of the Executive Order; (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) a person or entity with whom Owner is prohibited from dealing with or otherwise engaging in any transaction by any of the Anti-Terrorism Laws, including but not limited to the Executive Order and the USA Patriot Act; (iv) a person or entity who commits, threatens or conspires to commit or support "terrorism" as defined in Section 3(d) of the Executive Order; (v) a person or entity that is named as a "specially designated national and blocked person" on the then-most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/offices/eotffc/ofac/sdnAllsdn.pdf>, or at any replacement website or other replacement official publication of such list; and (vi) a person or entity who is affiliated with a person or entity listed in items (i) through (v) above.

(c) At any time and from time-to-time during the Term, Library shall deliver to Owner, within ten (10) days after receipt of a written request therefor, a written certification or such other evidence reasonably acceptable to Owner evidencing and confirming Library's compliance with the terms of this Section.

(d) "Affiliates" shall not include members of the general public to whom Library issues library cards or who, as members of the general public, access the Premises.

Section 11.13. Disclaimer; Waiver of Jury Trial

OWNER AND LIBRARY EXPRESSLY ACKNOWLEDGE AND AGREE, AS A MATERIAL PART OF THE CONSIDERATION FOR OWNER'S ENTERING INTO THIS AGREEMENT WITH LIBRARY THAT, EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, OWNER HAS MADE NO WARRANTIES TO LIBRARY AS TO THE USE OR CONDITION OF THE PREMISES OR THE BUILDING, EITHER EXPRESS OR IMPLIED, AND OWNER AND LIBRARY EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES OR THE BUILDING ARE SUITABLE FOR LIBRARY'S INTENDED COMMERCIAL PURPOSE OR ANY OTHER WARRANTY (EXPRESS OR IMPLIED) REGARDING THE PREMISES OR THE BUILDING, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, OWNER AND LIBRARY EXPRESSLY AGREE THAT THERE ARE NO, AND SHALL NOT BE ANY, IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER KIND ARISING OUT OF THIS AGREEMENT, ALL SUCH OTHER EXPRESS OR

IMPLIED WARRANTIES IN CONNECTION HERewith BEING EXPRESSLY DISCLAIMED AND WAIVED.

OWNER AND LIBRARY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY LIBRARY AND LIBRARY ACKNOWLEDGES THAT NEITHER OWNER NOR ANY PERSON ACTING ON BEHALF OF OWNER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. LIBRARY FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. LIBRARY FURTHER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION AND AS EVIDENCE OF SAME HAS EXECUTED THIS AGREEMENT.

Section 11.14 Dispute Resolution/Mediation. The parties agree that should any dispute arise hereunder that they are unable to resolve between the parties that they will bring the dispute to mediation through the McCammon Group or such similar mediation services company. Such mediation shall be a prerequisite to the filing of any action in court, and such action may be filed only if the mediation fails or does not occur within 30 days from the demand for mediation of one of the parties. The parties agree to split the costs of such mediation.

[signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the Effective Date (notwithstanding the actual date of execution and delivery hereof). This Agreement may be executed in counterparts and delivered via facsimile or electronic transmission.

WITNESS/ATTEST:

OWNER:

Black Kettle, LLC,
a Virginia limited liability company

By: _____
Name: _____
Title: _____

LIBRARY:

Board of Trustees of Rappahannock County Public Library, the board of the free public library system of Rappahannock County, Virginia pursuant to Code of Virginia 42.1-35.A

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF LAND

EXHIBIT B

BUILDING RULES AND REGULATIONS

1. Sidewalks, doorways, vestibules, halls, stairways, and other similar areas shall not be used for the disposal of trash (except for the designated dumpster area in the Building) be obstructed by Library, or be used by Library for any purpose other than ingress and egress to and from the Premises and for going from one part of the Building to another part of the Building.
2. Plumbing fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags, or other unsuitable material shall be thrown or placed therein. Damage resulting to any such fixtures or appliances from misuse by Library shall be paid by such Library and Owner shall not in any case be responsible therefor.
3. Signs, advertisements, or notices visible in or from public corridors or from outside the Building shall comply with applicable law.
4. Library space visible from a public area must be kept neat and clean.
5. No animals shall be brought into or kept in, on, or about the Building, other than (i) service animals and (ii) animals used in connection with programs or events sponsored, hosted or supported by Library.
6. No flammable or explosive fluids or materials shall be kept or used within the Building except in areas approved by Owner, and Library shall comply with all applicable building and fire codes relating thereto.
7. No smoking shall be permitted in the Premises.
8. Owner reserves the right to rescind any of these rules and regulations and, subject to Section 4.2 of the Agreement, to make such other and further rules and regulations as in its good faith judgment shall from time to time be needed for the safety, protection, care and cleanliness of the Premises, the operation thereof, the preservation of good order therein, and the protection and comfort of the Library and its agents, employees, and invitees, which rules and regulations, when made and written notice thereof is given to Library, shall be binding upon Library in like manner as if originally herein prescribed. Owner shall make commercially reasonable efforts to enforce the rules in a nondiscriminatory manner.