

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (hereinafter the “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019 by and among GLEN LENNOX LLC, a Delaware limited liability company (“Developer Owners”) and the Town of Chapel Hill, North Carolina, a municipal corporation of the State of North Carolina (the “Town”) for the purpose of encouraging the development of Class A Office Space in the Glen Lennox Redevelopment Project (the “Project”). Developer Owners and the Town may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

**RECITALS**

1. Glen Lennox, LLC and its affiliates are the owners of parcels located in the northeast quadrant of the intersection of Fordham Boulevard (US Hwy. 15-501) and Raleigh Road (NC Hwy. 54) in Orange County, Chapel Hill, North Carolina, as described in the table below (collectively, the “Property”), which parcels are all of the parcels described on Exhibit A to that certain Development Agreement by and between Glen Lennox, LLC (f/k/a FCP Glen Lennox, LLC and Glen Lennox Delaware, LLC) and Glen Lennox Shopping Center, LLC, as Developer Owners, and the Town of Chapel Hill, as the Town, dated December 10, 2014 and recorded in the Orange County Registry at Deed Book 5883, Page 11 (the “Development Agreement”), which Exhibit A is attached hereto as **Exhibit A** for reference.

<b>PIN</b>	<b>Deed Book and Page</b>	<b>Plat Book and Page</b>
9798-38-2188	6517/559	119/36-38
9798-27-4369	6533/56	119/36-38
9798-27-4763	6533/53	119/36-38
9798-25-5743	6239/555	114-188
9798-27-4169	6164/249	119/36-38

2. The Property is subject to the Development Agreement, which was approved by the Town of Chapel Hill Town Council (“Council”) on June 23, 2014 pursuant to Ordinance Number 2014-06-23/O-5.
3. The Development Agreement sets forth the terms and conditions for the Project as a planned mixed-use development to be constructed on the Property and is projected to include a mixture of commercial, retail, hospitality, office and residential uses. At full build-out, the Project is projected to significantly increase the existing tax value of the Property.
4. The Chapel Hill office market declined after the 2008 downturn in the economy. No new office space was constructed from 2010 until 2017. New offices need to be constructed on a regular basis in order for the Chapel Hill office market to compete regionally and induce companies to locate operations and jobs in Chapel Hill. In 2019 Chapel Hill’s vacancy rate

- for Class A Office Space was ten percent (10%), indicating the need to construct new office space to serve the needs of growing companies.
5. The Parties anticipate that the Project will result in construction of 488,000 gross square feet of Office Space, as defined below, which is projected to generate up to 1,952 jobs and expand the tax base by approximately \$420,000,000.00. In 2018, high construction costs and weak market support for office space has impacted the Developer Owners' ability to secure the level of pre-leases needed to secure financing to construct the proposed office buildings.
  6. On March 21, 2018, Council authorized an Incentive Policy that includes awarding incentives for creating new space to host future businesses and allowing for calculating the amount of the incentives based on tax impact of projects.
  7. Performance-based financial support from the Town to this Project would make it possible for the Developer Owners to proceed with construction of office buildings and attract commercial tenants and jobs to Chapel Hill.
  8. The performance-based financial support from the Town to the Developer Owners for construction of Office Space as part of the Project is consistent with Council's Incentive Policy.
  9. The Economic Development grant from the Town would equal the amount of new ad valorem tax revenue generated for the Town as a result of Office Space constructed as part the Project.
  10. On March 20, 2019, Council authorized the Parties to negotiate this Agreement to incent the construction of office space as part of the Glen Lennox redevelopment pursuant to Resolution Number 2019-03-20/R-3 consistent with Council discussion.
  11. A public hearing was held on June 12, 2019 on the proposed Agreement in satisfaction of all requirements of North Carolina Gen. Stat. §158-7.1(c).
  12. On June 12, 2019, the Town Council authorized entering into this Agreement pursuant to Resolution Number 2019-05-22/R-XX.

## **TERMS**

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, Developer Owners and the Town do hereby agree as follows:

1. Town Economic Development Grant. The Town hereby agrees to award a Performance-Based Economic Development Grant (the "Grant") to Developer Owners in an amount not to exceed \$2,230,800.00 (the "Total Town Grant Amount") and subject to the terms and conditions set forth herein. This Grant is based on the annual ad valorem Town of Chapel Hill projected property taxes to be paid for new Office Space constructed at the Project during the Term of this Agreement.
  - a. Project Commencement. Any Office Space in the Project for which a building permit is obtained and on which actual construction begins after full execution of this Agreement and through and including June 30, 2026 ("Project Commencement") is eligible for a Grant under the terms of this Agreement.
  - b. Term. The term of the Grant award eligibility shall run from July 1, 2021 through June 30, 2026 and shall coincide with a total of up to five Town budget fiscal years

commencing on July 1<sup>st</sup> of each year (FY22, FY23, FY24, FY25 and FY26). Any Office Space that meets the Project Commencement set forth in Section 1(a) above on or before June 30, 2026, which may include dates prior to July 1, 2021, is eligible for the Grant, provided that a Certificate of Occupancy (“CO”) shall be issued for such Office Space on or before December 31, 2027.

- c. Grant Contingent Upon Performance by Developer Owners. The Total Town Grant Amount is based on the projected development of 488,000 gross square feet of Office Space. Grant payment is due annually after issuance of the first CO for Office Space within the Project and after a tax bill has been issued and paid to Orange County in the amount calculated as set forth in Section 1(d) below.
  - d. Calculation of Annual Grant Payment. Both the total and annual potential Grant payment shall be limited by the percentage of the 488,000 square feet of Office Space that has been verified as completed in any year. Completion will be verified by the payment of annual ad valorem property tax bills for such Office Space to Orange County. The pro rata share of verified Office Space completed will be the pro rata share of the Total Town Grant Amount that is the maximum amount that the Developer/Owner can earn in whole or in part any year, with the amount earned in any year never to exceed the amount paid to the Town in ad valorem property tax.
  - e. Payment of Annual Grant Amount. The Town shall deliver the Annual Grant Payment to the Developer Owners each year on or before the date that is 45 days after delivery to the Town of documentation of the ad valorem taxes paid to the Orange County Tax Office in connection with the Office Space (the “Annual Grant Payment Outside Date”). Delivery of such documentation may be made by either the Developer Owners or the Orange County Tax Office, and calculation of the Annual Grant Payment Outside Date shall be from the first date that such documentation is delivered to the Town by either the Developer Owners or the Orange County Tax Office.
  - f. Office Space. “Office Space” shall include, in addition to individual or shared work areas within any office setting within the Project, common areas and shared facilities serving such use, which shall include, without limitation, reception areas, hallways, conference rooms, storage areas, restroom facilities, service areas, mechanical space, and any building amenities, such as recreational facilities and food service areas. Notwithstanding the foregoing, for any building within the Project for which the only primary use of such building is for office use, all gross square footage of such building shall constitute Office Space.
  - g. Annual Progress Report. Developer Owners shall provide an annual progress report, beginning 12 months after the execution of this agreement, to the Town Council for the duration of this Agreement identifying progress on the performance consideration to date.
2. Amendment, Modification and Termination. The terms of this Agreement may be amended, modified or terminated by the mutual consent of the Parties. However, the consent of an owner of a portion of the Property that is not Developer Owners shall not be required for any amendment or modification of this Agreement unless the amendment or modification has a direct and adverse effect on the use or development of the portion of the Property owned by that particular owner.
  3. Recordation/Binding Effect. Within fourteen (14) days after the Town enters into this Agreement, Developer Owners shall record this Agreement in the Orange County Register

of Deeds Office. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the Town and its successors in interest and to the Developer Owners, its affiliates owning any portion of the Property as of the date hereof, and their successors and assigns in title. All of the provisions of this Agreement shall be enforceable during the term as equitable servitudes, and constitute covenants running with the land (including as such land may be further subdivided or recombined from time to time) pursuant to applicable law, as well as in contract between the Parties, including their respective successors and assigns.

4. Disclaimer of Joint Venture, Partnership and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Town and Developer Owners, or to impose any partnership obligation or liability upon the Parties. Neither the Town nor Developer Owners shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other Party.
5. Construction. The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement.
6. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.
7. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
8. Authority. Each Party represents that it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement has the authority to bind the Town and Developer Owners.
9. Address and Contact Information. The payment to the Developer Owners and written notices pursuant to this Agreement shall be mailed or otherwise delivered to:

Attn: Glen Lennox, LLC  
c/o Grubb Properties  
Attn: Clay Grubb  
4601 Park Road, Suite 450,  
Charlotte, NC 28209  
cgrubb@grubbproperties.com

When a notice is required or permitted by this Agreement, it shall be given by written notice to the Town by delivery to:

Attn: Town Manager  
Town of Chapel Hill  
405 Martin Luther King, Jr. Blvd.  
Chapel Hill, NC 27514  
manager@townofchapelhill.org

10. Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law unless the provision invalidated is so fundamental to this Agreement that this Agreement shall fail of its essential purpose without the provision that was invalidated.

11. Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of an act required hereunder by reason of the following: labor dispute, including strike and lockout; unavailability of essential materials, riot; epidemic; war, extreme weather events, fire; explosion; accident; delays or default of the other party, then performance of such act shall be excused for the period of the delay, and thereafter the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

*[SIGNATURES BEGIN ON FOLLOWING PAGE]*

DRAFT

IN WITNESS WHEREOF, the Town and Developer Owners hereby set their hands and seals on this Economic Development Incentive Agreement, effective the date first above written.

**GLEN LENNOX, LLC, a Delaware limited liability company**

BY: Grubb Fund Management, LLC, a North Carolina limited liability company

BY: Grubb Management, Inc., a North Carolina corporation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the State of \_\_\_\_\_,  
County of \_\_\_\_\_, do hereby certify that \_\_\_\_\_,  
personally appeared before me this day and acknowledged that (s)he is \_\_\_\_\_ of  
GRUBB MANAGEMENT, INC., and further acknowledged that by authority duly given, (s)he  
signed the foregoing and annexed instrument in its name on behalf of GLEN LENNOX, LLC.

Witness my hand and notarial seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

*(Official Seal or Stamp)*

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[SIGNATURES CONTINUE ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Town and Developer Owners hereby set their hands and seals on this Economic Development Incentive Agreement, effective the date first above written.

**TOWN OF CHAPEL HILL**  
**a North Carolina municipal corporation**

By: \_\_\_\_\_  
Maurice Jones, Town Manager

ATTEST BY TOWN CLERK:

\_\_\_\_\_  
TOWN CLERK

TOWN SEAL

**Town Clerk** attests date this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Approved as to Form and Authorization

\_\_\_\_\_  
TOWN LEGAL STAFF

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

\_\_\_\_\_  
FINANCE OFFICER

\_\_\_\_\_  
DATE

STATE OF NORTH CAROLINA  
COUNTY OF ORANGE

I, \_\_\_\_\_, a Notary Public in and for \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally came before me this day and acknowledged that she is the (Acting) Town Clerk of the Town of Chapel Hill, a North Carolina municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by \_\_\_\_\_, its \_\_\_\_\_, sealed with its corporate seal, and attested by her as its (Acting) Town Clerk.

Witness my hand and notarial seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

*(Official Seal or Stamp)*

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

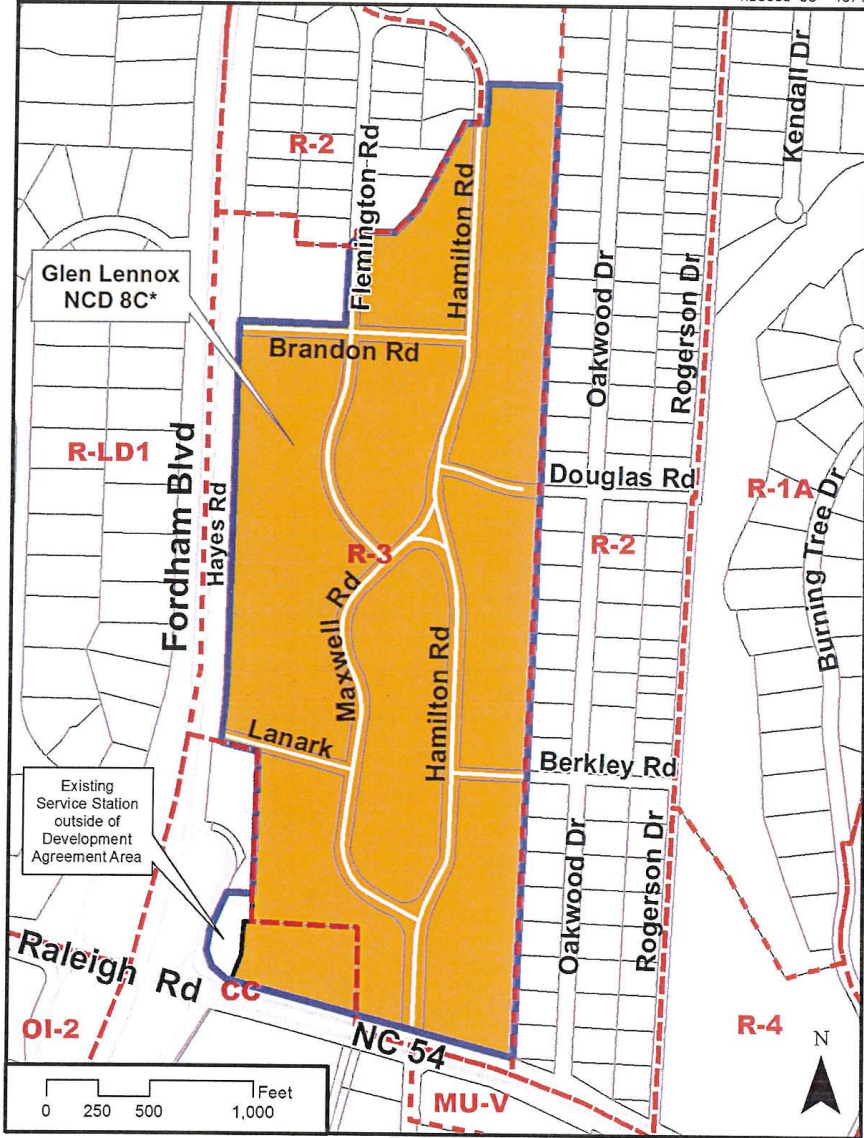
**Exhibit A**

**Property**

EXHIBIT A



Glen Lennox Development Agreement Area



	Glen Lennox Development Agreement Area
	Chapel Hill Zoning Districts
	Glen Lennox Neighborhood Conservation District (NCD) 8C

\* NCD shown only for area within the Development Agreement

GIS Map prepared by  
Town of Chapel Hill  
Planning Department  
May, 2014

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.