

Economic Development Agreement

For the Rosemary Street Redevelopment – Opportunity Zone Project

This Economic Development Agreement (the “Agreement”) is dated as of _____, 2020, and is between the Town of Chapel Hill, North Carolina (the “Town”), and Grubb Management LLC (“Grubb”), each a “Party” and collectively the “Parties.”

Unless the context clearly requires otherwise, capitalized terms used in this Agreement and not otherwise defined have the meanings set forth in Exhibit A.

The parties have engaged in a series of discussions concerning an economic development project (the “Project”) whereby:

- The parties will exchange parking deck and related properties, with a cash payment settling the difference in value;
- Grubb will entitle, design and build, as a fee developer for the Town’s account and not for its own account, a new parking deck, with the Town paying for the new deck; and
- Grubb will then entitle, design and build a new office building, all as further described and provided for in this Agreement.

The Project is an economic development project for the Town. The Town expects that the Project will enhance the Town’s taxable property, employment, and business prospects.

This Agreement spells out the parties’ mutual obligations with respect to the project summarized above.

1. The parties will exchange properties

a) Exchange of deeds. At a time and place to be agreed upon by the parties, but prior to the beginning of construction on the New Deck and in any event by May 28, 2021:

i) The Town will execute and deliver to Grubb a fee simple general warranty deed conveying marketable title to the Wallace Deck Property and the Corner Lot.

ii) Grubb will execute and deliver to the Town a fee simple general warranty deed conveying marketable title to the CVS Deck Property and the Investor's Title Insurance Company (ITIC) Lot.

iii) The Town will pay \$_____ to Grubb to reconcile the difference in property values exchanged and an additional amount to reimburse Grubb for New Deck Total Cost expended by Grubb through the Closing Date.

iv) The Parties will execute and deliver the "Wallace Deck Lease" in the form of Exhibit B, with only such additional changes as the parties may agree upon. The execution and delivery of the final form Wallace Deck Lease will constitute conclusive evidence that the parties have agreed on any such changes.

v) The Town will execute and deliver a license agreement as set forth in Section 3(g) hereof.

vi) The Town will execute and deliver a bill of sale in connection with the Wallace Deck Property.

The acts of executing, delivering and paying described above will be referred to as the "Closing," and the date of those actions will be referred to as the "Closing Date." If the Closing has not occurred by the end of the calendar day on May 28, 2020, neither Party shall have any further obligations under this Agreement.

The parties will execute and deliver such certificates and other documents as may be reasonably appropriate to effect the planned conveyances. The only monetary

adjustment to the transfers stated above will be to pro-rate taxes on the CVS Deck Property and the ITIC Lot to the Closing Date.

b) Provision for future tax payments. The deed referenced in (a)(i) above will include a provision to the effect that any future owner of the Wallace Deck Property that is not subject to paying ordinary ad valorem taxes to the Town must nevertheless make annual payments to the Town so as to hold the Town harmless from any loss of ad valorem tax revenues. The required payment will be calculated from year to year based on the then-current property value and tax rate. This provision must be in form and substance acceptable to the Town.

c) Warranties of Title. (i) Each Party promises to the other, as part of the consideration for the exchange, that it is seized of and has the right to convey its particular property (that is, the Wallace Deck Property and the Corner Lot in the case of the Town, and the CVS Deck Property and the ITIC Lot in the case of Grubb) in fee simple, that the title is free and clear of all liens and encumbrances other than "Permitted Encumbrances," that title to the property is marketable, and that the seller will forever warrant and defend title to the property (subject to the Permitted Encumbrances) against the claims of all persons.

"Permitted Encumbrances" means minor and ordinary rights-of-way and utility easements that do not have a material adverse effect on the planned use of the property.

(ii) Notwithstanding the above, the parties acknowledge that the CVS Deck property is subject to a lien recorded at Book _____, Page _____, Orange County Registry. Grubb promises that the CVS Deck Property will be released from this lien at or in connection with the Closing.

d) Environmental Warranties. Each of the Town and Grubb makes the following promises and statements of fact with respect to its own particular property (as described in (c) above), with the understanding and intent that the other Party will rely on these statements in making its decision to enter into this Agreement.

(i) It has no knowledge (A) that any industrial use has been made of its particular property, (B) that the particular property has been used for the storage, treatment or disposal of chemicals or any wastes or materials that are

classified by federal, State or local laws as hazardous or toxic substances, (C) that any manufacturing, landfilling or chemical production has occurred on the particular property, or (D) that there is any asbestos or other contaminant on, in or under the particular property.

(ii) To its knowledge, the particular property complies with all federal, State and local environmental laws and regulations.

(iii) It will promptly notify the other property of any change prior to the Closing in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Party property or used in connection therewith. It will send to the other party copies of any citations, orders, notices or other material governmental or other communication received prior to the Closing with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the particular property.

To the extent permitted by law, each of the Town and Grubb promises that it will indemnify and hold the other Party harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including cleanup costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against the other Party as a direct or indirect result of any warranty or representation made by the Party in this subsection (d) being false or untrue in any material respect.

e) Diligence Period. Beginning on the date hereof and continuing for a period of 30 days thereafter (the "Diligence Period"), Grubb shall have the right to conduct investigations into the Wallace Deck Property and to terminate this Agreement for any reason.

(i) Town Deliverables. On or before the fifth (5th) business day following the date hereof, the Town shall deliver to Grubb copies of all of the following (collectively, "Town Deliverables") to the extent in the possession of Seller or its agents:

a. A complete and correct list of any licenses, leases, or contracts then in effect in connection with the Wallace Deck Property and copies of all such agreements.

- b. The Town's existing title insurance policy and its most recent survey of the Wallace Deck Property, including a legal description, if any.
- c. All existing engineering, environmental, geotechnical, architectural and property condition reports, studies, drawings and plans with respect to the Wallace Deck Property.
- d. Certificates of occupancy with respect to the Wallace Deck Property.

- (ii) Independent Investigation. Grubb may, during the Diligence Period, inspect and investigate each and every aspect of the Wallace Deck Property, either independently or through agents, representatives or experts of Grubb's choosing, and may, upon reasonable notice to the Town, access the Wallace Deck Property for such purpose.

f) Conditions to the Parties' Obligation to Close. Neither Party hereto shall have an obligation to effect the Closing unless and until all of the following have occurred:

- (i) All of the representations and warranties of the Parties set forth in this Section 1 hereof shall be true as of the Closing Date.
- (ii) Grubb shall be the fee owner of the ITIC Lot.
- (iii) Any lender holding a deed of trust on the CVS Deck, the ITIC Lot, or both shall have consented to the transactions contemplated herein.
- (iv) There shall have been no material adverse change in the state of the title to any of the CVS Deck, the Corner Lot, the ITIC Lot, or the Wallace Deck Property, nor to the physical condition of the Wallace Deck Property.
- (v) The management plan contemplated in Section 2(d) hereof shall have been executed by the Parties.

- (vi) No notice has been received by either Party that any portion of the CVS Deck, the Corner Lot, the ITIC Lot, or the Wallace Deck Property will be or has been taken by any governmental authority exercising its powers of eminent domain or by purchase resulting from the contemplated use of such authority.

g) Representations. The Town hereby represents and warrants to Grubb, as to the Corner Lot and the Wallace Deck Property, and Grubb represents and warrants to the Town, as to the CVS Deck, and shall represent and warrant to the Town as to the ITIC Lot as of Closing, each in its role as “Grantor” of the parcels to be conveyed by it at Closing, as follows:

- (i) To Grantor’s Knowledge, this Agreement and all Closing documents to which Grantor is a party (aa) are, or at the time of Closing will be, duly authorized, executed and delivered by Grantor, (bb) do not, and at the time of Closing will not, violate any provision of any agreement or order to which Grantor is a party or to which Grantor is subject and (cc) constitute or will constitute at Closing the valid and legally binding obligations of Grantor, enforceable in accordance with their terms, subject to bankruptcy and other debtor relief laws limiting enforceability;
- (ii) To Grantor’s knowledge, there are no judicial or administrative proceedings (including, but not limited to, condemnation proceedings) pending against all or any portion of such property which would have a material adverse impact on the property after Closing, nor has Grantor received notice of any such proceeding.

2. Grubb will work to entitle the New Deck, and Grubb and the Town will work together on the design

a) Grubb will continue its process to obtain entitlement to build the New Deck through the Town’s land use regulatory process. Grubb and the Town, as the prospective future owner of the New Deck and the related property, will work together to complete this process by September 30, 2020.

b) Grubb and the Town will work together to design the New Deck to sit on the CVS Deck Property plus the ITIC Lot. Grubb and the Town will continue to cooperate for the final design of the New Deck so as to meet the construction and other deadlines specified in Sections 3 and 4. The New Deck will be designed to encompass 1,100 standard sized parking spaces, with a final as-built tolerance of plus or minus 10%.

(i) Grubb shall submit preliminary plans for the New Deck to the Town on or before [October 16, 2020], and the Town shall provide any comments and requests thereto on or before [October 30, 2020].

(ii) All comments and requests timely received by Grubb from the Town shall be reflected in the final design drawings to be submitted to the Town for review on or before [December 1, 2020], and the Town shall provide any comments and requests thereto on or before [December 15, 2020].

(iii) All comments and requests received by Grubb from the Town shall be reflected on the construction drawings for the New Deck to be attached as exhibits to the New Deck Contract.

c) The Town ratifies and consents to the following firms' providing professional services for the design and construction of the New Deck: Perkins & Will, Ballentine Associates, P.A. and NV5, Inc. (these firms, and such others as may be agreed from time to time by the Parties, the "Design Consultants").

d) The parties will work together on a parking and construction management plan designed to minimize the disruption and adverse effects of the New Deck and New Office Building construction and Renovation projects on downtown traffic and parking, and on the operation of downtown businesses. This management plan will include the provisions set out in Exhibit C.

3. The Town will contract for and pay for the New Deck

a) Grubb and the Town have selected Samet Corporation ("Samet") to be the general contractor for the New Deck construction project. The Town has elected

to work with Samet as the general contractor under the authority of the Town Charter provisions (Sections 4.20 through 4.25) that allow the Town to enter into private construction contracts related to economic development projects. The Town ratifies prior action by Grubb to retain Samet for the work.

b) Grubb and the Town will work with Samet and the Design Consultants to prepare final design, drawings, plans and specifications for the New Deck so that the Town will have in hand by February 1, 2021 (the "Contract Deadline") the following items (the "LGC Requirements"):

i) A construction contract between Samet and the Town that states a guaranteed maximum price

ii) Written approval from [the Town's independent review consultant] as to the fairness of the stated maximum price

iii) A letter from Samet or a project architect confirming that all major regulatory permits that are conditions to the start of construction are in hand

Grubb, the Town, Samet and [the Consultant] will work together to allow [Consultant's] on-going review of estimated construction costs. The parties will work together with Samet and [the Consultant] to resolve any disagreements over construction costs and contract amounts, so as to allow [the Consultant] to give its approval as contemplated in the previous paragraph prior to the Contract Deadline.

c) Grubb may extend the Contract Deadline by prior notice to the Town to a stated time not beyond April 1, 2021, provided that Grubb waives any damages or allowances for additional time. If the Contract Deadline is not met, neither Party shall have any additional rights or obligations under this Agreement.

d) The parties acknowledge as follows: The Town plans to borrow money to pay the New Deck Total Costs. This borrowing requires the LGC's approval. The Town will pursue LGC approval in a timely and professional manner, but the Town cannot guarantee the outcome of the LGC approval process. As part of the approval process, the LGC will require delivery of the LGC Requirements. **The parties plan to**

complete the Closing described in Section 1 in connection with closing on the Town's financing for the New Deck, and not before.

e) The New Deck Contract must include the following, along with any other terms and conditions the Town may specify:

i) Payment and performance bonds from Samet in favor of the Town as would be required in a conventional Town construction project;

ii) Construction warranty bonds in favor of the Town;

iii) Identification of the Town as a loss payee or additional insured, as appropriate, on all policies of insurance provided by the contractor. These policies must include builders' risk insurance and property and liability insurance;

iv) A requirement that Samet and all subcontractors maintain workers' compensation as provided by law;

v) That Samet must begin construction (which may include the start of demolition) promptly upon Samet's receipt of a notice to proceed from the Town; and

vi) A construction period of not more than [365 days].

f) The Town will pay Samet for the costs of construction as provided in the New Deck Contract. The Town expects that the payment process will proceed substantially as described in Exhibit D.

g) The Town will provide Grubb, Samet and their contractors and subcontractors a non-exclusive license to use a portion of Lot 2, attached hereto as Exhibit E, as a construction staging area (the "Staging Area") in accordance with the following terms:

i) Grubb, Samet and their contractors and subcontractors may use this staging area for all purposes of constructing the New Deck, constructing

the New Office Building and carrying out the Renovation, but not beyond [_____].

(ii) At the end of the construction activity (or after [_____]), Grubb will promptly prepare the Staging Area by removing all asphalt, seeding the property with grass, defining a walkway from Rosemary Street through the Staging Area to Franklin Street, cutting off the access between the currently existing upper and lower portions of Lot 2, and constructing any appropriate retaining walls.

(iii) Grubb will indemnify the Town and hold it harmless for any claims or losses asserted against the Town by any person or entity related to or arising out of actions taken at the Staging Area, activities at the Staging Area, or the condition of the Staging Area while the license is in effect. This indemnification will not apply in the case of actions or omissions on the part of Town employees.

h) The Town will be responsible for payment of the New Deck Total Cost, including, without limitation, payments required under the New Deck Contract, and reimbursement of Grubb, at Closing, for all costs and expenses comprising part of the New Deck Total Cost expended by Grubb on or before the Closing Date. In the event the Closing shall not occur, the Town shall reimburse Grubb for such costs and expenses within 30 days after any termination of this Agreement whether as a result of denial of any required entitlement or for any other reason hereunder.

4. Grubb will apply to build the New Office Building

a) Grubb will apply for all necessary land use approvals for the New Office Building construction, on its own behalf. Grubb will make a concept plan presentation for the New Office Building, as required under the Town's land use ordinance, by the end of November 2020. The Town promises to act with all diligence to complete the land use entitlement process for the New Office Building by November 30, 2021, subject to Grubb's timely completion of applications and other required filings and subject to the provisions of Section 8(c).

b) The initial applications for entitlement must allow or provide for, as applicable, the following features for the New Office Building:

- i) Approximately 250,000 square feet of office space across not more than six floors, which may include two levels of parking at or below street grade.
- ii) At least two floors that constitute Wet Lab space
- iii) A building profile that steps back from the street above the fourth aboveground level on Rosemary Street.
- iv) A community green space in the Corner Lot, developed in conjunction with the building

The parties acknowledge that through the land use entitlement process, Grubb may not receive permission to build a building the includes all the features described above. In the event the entitlement process for the New Office Building is not complete by November 30, 2021, or if the resulting entitlements do not permit, at a minimum, the uses and development rights contemplated above or such lesser level of entitlement as shall be acceptable to Grubb in its sole discretion, Grubb shall have the right to terminate this Agreement and neither Party shall have any further rights or obligations hereunder except those explicitly surviving termination hereof.

5. Other provisions related to the New Office Building

- a) Any office space must be finished to a Class A level.
- b) Parking in the New Office Building must be restricted to use by tenants, customers and visitors to the New Office Building and the buildings that are the subject of the Renovation. The parking may not be made available to members of the general public from and after the date on which a certificate of occupancy has been issued by the Town for the New Deck.
- c) In connection with the New Office Building construction, Grubb will develop the Corner Lot into a community green space with plantings and amenities (such as grass, trees and benches) reasonably appropriate to a space of that size in that location. Promptly upon taking occupancy of the New Office Building, Grubb will dedicate the community green space to the Town. The dedicated green space does

not need to match the existing boundaries of the Corner Lot, but the Town expects that the approximate dimensions and location will match.

d) At any time and from time to time, between the Closing Date and Office Building Occupancy, at the Town's request, Grubb will provide for a representative to appear before the Town Council to provide a narrative update on the Project and to provide full and complete answers to questions from Councilmembers. The Town does not expect that these requests will occur more frequently than quarterly.

6. Town has a repurchase option

(a) Time of the Option. If, as of January 1, 2024, or any time between January 1, 2024, and December 31, 2025, after which the Option shall be forfeited by the Town, both:

(i) Grubb has not received a certificate of occupancy for the New Office Building; and

(ii) There is no active building permit for construction at the planned site of the New Office Building,

then the Town has the option to repurchase the Wallace Deck Property and the Corner Lot, as described in this Section 6 (the "Option").

(b) Option Price. The price at which the Town may repurchase the property is the "Make Whole Price."

The "Make Whole Price" is the price that will make Grubb whole for its expenditures on the New Office Building prior to the Town's purchase. This price will include (a) the value of the CVS Deck Property and the ITIC Lot as included in the swap price calculation described in Section 1, plus (b) a 6% rate of return on the property value, compounded annually, plus (c) all costs incurred to the purchase date in entitling (for any entitlements still in effect on the purchase date), designing, and constructing the New Office Building. The Make Whole Price does not include any allocation of indirect costs by Grubb, and does not include any allowances for taxes or principal or interest on money borrowed for the Project. It does not include any allowance for general increases in land values, or increases in values attributable to development entitlements attached to the land. It does not take into account any value of the CVS Deck Property above that included in the calculation of the swap price calculation.

(c) Means of Exercise. The Option may be exercised as follows:

(i) The Town may give notice of its exercise by notice under Section 8 under the conditions set forth in Section 6(a). The Town may complete its purchase even if those conditions do not continue through the purchase date (including closing the purchase after December 31, 2025).

(ii) At the time of giving notice, the Town must pay an earnest money deposit of \$100,000. The Town then has 120 days to perform due diligence and complete the purchase.

(ii) The amount of the earnest money deposit will be applied to the purchase price at closing or retained by Grubb in the event there is no closing. The Town is only entitled to return of the earnest money deposit if it abandons the transaction (a) as a result of a finding during the due diligence period or (b) as a result of the parties' being unable to reach an agreement on the calculation of the Make Whole Price. The Town is not entitled to a return of the deposit based on a failure to secure financing.

(d) Other matters. The Town may assign the Option in its discretion, including assigning between the option notice date and the closing date. Grubb can sell the property to any other purchaser during the Town's option period if the Town has not given its notice of exercise, but the Town's option survives any sale by Grubb (either before or during the option period). Either Party may provide for notice of this Option to be placed on record with the Register of Deeds for Orange County. The Town will cooperate with Grubb to subordinate its Option to the interests of any lender for the project, so long as the subordination does not reach any liabilities of Grubb not related to the New Office Building.

7. Defaults and Remedies; Dispute Resolution

a) Defaults. A Party is in default under this Agreement (i) if it fails to observe and perform any covenant, condition or agreement on its part to be observed or performed for a period of 30 days after notice specifying the failure and requesting that it be remedied has been given by the other Party or (ii) if any representation or warranty provided in this Agreement is found to be incorrect or incomplete in any material respect as of the Closing.

b) Remedies. Whenever any default is continuing, the non-defaulting Party may take any or all of the following remedial steps:

(i) At its option, cure the default by paying money or taking any other appropriate action, in which case the defaulting Party must

reimburse the defaulting Party for all costs and expenses reasonably incurred in curing the default, including legal costs.

- (ii) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of a Party under this Agreement.
- (iii) Where the default is a failure to effect the Closing, either Party hereto shall be entitled to the remedy of specific performance.

c) No remedy exclusive; other provisions. No remedy conferred or reserved in this Agreement is intended to be exclusive, but instead is intended to be cumulative. No delay or omission to exercise any right or power accruing upon any default constitutes a waiver of that right or power. A waiver of any default is limited to the default so waived and does not waive any other default. If a Party incurs legal or other costs and expenses to collect any payments due under this Agreement, or to enforce the performance or observance of any obligation or covenant under this Agreement, then to the extent permitted by law each Party promises to reimburse a non-defaulting Party for all reasonable legal and other fees and costs incurred in the collection or enforcement.

d) Dispute resolution. In the event of a dispute between the parties concerning the terms or performance of this Agreement, the parties will take the following steps prior to commencing any proceeding before a court or administrative body:

(i) Exchange of positions. Any Party noting a dispute under this Agreement will notify the other Party of the nature of the dispute and the first Party's proposed resolution. Within ten days after the effective date of the notice, the other Party must respond in writing as to its view of the dispute and its position on the proposed resolution.

(ii) Meet and confer. If the parties are unable to reach an agreement on the dispute and upon notice from any Party, the parties will promptly hold a meeting attended by representatives with appropriate authority to resolve

the dispute. At this meeting, the parties will attempt in good faith to negotiate a resolution of the dispute.

(iii) Mediation. If the dispute remains unsettled by negotiation, the parties will engage the services of a professional mediator agreed upon by the parties. The parties will then attempt in good faith to resolve the dispute through mediation. The Town and Grubb will each pay one-half of the mediator's fees and expenses and each Party will pay all its own legal fees and other expenses related to the mediation. Each Party must be represented at the mediation by a representative with appropriate authority to resolve the matters in dispute. Only after mediation may a part initiate legal or administrative proceedings.

8. Miscellaneous provisions.

a) Notices. Any communication provided for in this Agreement must be in writing (not including facsimile transmission or electronic mail). Any communication under this Agreement will be deemed given on the delivery date shown on a certified mail receipt, or a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

If intended for the Town, to Town of Chapel Hill, c/o Town Manager, Re:
Notice under 2020 Grubb Economic Development Agreement, Town Hall, 405
Martin Luther King, Jr. Blvd., Chapel Hill, NC 27599

If intended for Grubb, to Grubb Management LLC, 117 Edinburgh Drive South,
Suite 110, Cary, NC 27511, Attn: Joe Dye

Any addressee may designate additional or different addresses for communications by notice given under this subsection to the other.

b) General Representations. The Town and Grubb each represents, covenants and warrants for the other's benefit as follows:

(i) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the

consummation of the transactions contemplated by this Agreement, results in a material breach of the terms, conditions and provisions of any agreement or instrument to which either is now a party or by which either is bound, or constitutes a material default under any of the foregoing.

(ii) To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against that Party (or against any other person) concerning that Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither the Party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

c) Limits on Town's power to agree. (i) Grubb acknowledges that the Town's ability to agree to provisions in this Agreement, and to carry out its agreements, is limited by its status as a unit of local government, and in particular its role as a land use regulator. The Town acts in separate capacities as a party to a business agreement such as this EDA, and as a land use regulator. The Town makes no representation, and can give no assurances, that any land use or related approvals necessary for the Project will be forthcoming at any time.

(ii) Grubb acknowledges that the Town is a governmental entity, and the Agreement's validity is based in part upon the availability of public funding under the authority of its statutory mandate. If public funds are unavailable and not appropriated for the performance of Town's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the Town thirty (30) days after notice to Grubb of the unavailability and non-appropriation of public funds. It is expressly agreed that the Town shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis that generally affects its governmental operations.

(iii) A failure of the Town to receive LGC approval or to appropriate funds, or the failure of any aspect of the Project to receive a necessary land use approval from the Town, will not be an event of default on the part of the Town. The Town, however, promises to process requests for regulatory approvals and necessary appropriations in a timely and professional manner.

d) Public Records Law. Any information furnished under this instrument is subject to the North Carolina Public Records Law.

c) E-Verify. Grubb shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

d) Each Party will bear its own costs. Except as specifically set forth herein, each Party will bear its own costs of the fees and expenses of its counsel and consultants, and of the studies or surveys required under this Agreement or that it otherwise commissions or obtains for its use under this Agreement.

e) Limitation on liability of officers and agents. No officer, agent or employee of the Town will be subject to any personal liability or accountability because of the execution of this Agreement or any other documents related to the transactions contemplated by this Agreement. Those officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This provision does not relieve any officer, agent or employee from the performance of any official duty provided by law.

f) Assignment. Neither Party may assign any of its rights or obligations under this Agreement without the express consent of the other, provided that Grubb may assign this Agreement without the prior written consent of the Town to a partnership, corporation or limited liability entity which is controlled by, controlling, under common control with or affiliated with Grubb (each, a "Permitted Assignee"), provided that Grubb gives the Town prompt written notice of such assignment, to be received by the Town in any event not less than five business days prior to the Closing Date. Upon an assignment of this Agreement to a Permitted Assignee, as used in this Agreement, the term "Grubb" shall be deemed to include such Permitted Assignee. Subject to the foregoing, this Agreement shall inure to the benefit of and shall be binding upon the Town and Grubb and their respective successors and assigns.

g) Amendments. This Agreement may only be modified in writing signed by all parties.

h) Governing law. The parties intend that North Carolina law will govern this Agreement and all matters of its interpretation. To the extent permitted by law,

the parties agree that any action brought with respect to this Agreement must be brought in the North Carolina General Court of Justice in Orange County, North Carolina.

i) Severability. If any provision of this Agreement is determined to be unenforceable, that will not affect any other provision of this Agreement.

j) Binding effect. Subject to the specific provisions of this Agreement, this Agreement will be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

k) Entire agreement. This Agreement constitutes the entire agreement between the Town and Grubb with respect to its general subject matter.

l) No third-party beneficiaries. There are no parties intended as third-party beneficiaries of this Agreement.

m) Time. Time is of the essence of this Contract and each and all of its provisions.

n) Definitions. Unless the context clearly requires otherwise, capitalized terms used in this Contract and not otherwise defined have the meanings set forth in Exhibit A.

o) Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each will be an original, but all of them together constitute the same instrument.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the Town and Grubb have caused this Agreement to be executed and delivered as of the day and year first above written by duly authorized officers.

(SEAL)

ATTEST:

**TOWN OF CHAPEL HILL
NORTH CAROLINA**

Sabrina Oliver
Town Clerk

By: _____
Maurice Jones
Town Manager

GRUBB MANAGEMENT LLC

By: _____

Printed name: _____

Title: _____

Exhibits:

- A – Definitions
- B – Form of the Wallace Deck Lease
- C – Key provisions of Parking and Construction Management Plan
- D – Contract payment terms
- E – Staging Area designation *[will be a diagram]*

[Economic Development Agreement dated as of _____, 2020]

Exhibit A – Definitions

References to Columbia Street, Rosemary Street, Franklin Street and North Street are references to those streets in downtown Chapel Hill, North Carolina.

“Corner Lot” means the Town-owned lot at the southwest corner of Rosemary and Henderson Streets and is further identified by PIN # _____ in the Orange County land records.

“CVS Deck” means the existing 270-space parking deck located at 125 E. Rosemary Street. “CVS Deck Property” means this deck and its related real estate, which comprises approximately 0.87 acres and is further identified by PIN # 9788-37-4748 in the Orange County land records.

“ITIC Lot” means the existing 91-space parking lot located at 135 E. Rosemary Street and its related real estate, which comprises approximately 0.81 acres and is further identified by PIN # 9788-37-6817 in the Orange County land records.

“LGC” means the North Carolina Local Government Commission, a department of the office of the North Carolina State Treasurer, or any successor to its functions.

“Lot 2” means the Town-owned, 102-space surface parking lot located near the corner of Rosemary and Columbia Streets and is further identified by PIN # _____ in the Orange County land records.

“New Building Completion” means the earliest date of substantial completion of permitted work for the New Office Building, whether or not the property is occupied or a certificate of occupancy issued.

“New Deck” means the new 1,100-space parking deck to be constructed on the CVS Deck Property and ITIC Lot for the Town under Section 3.

“New Deck Contract” means the final construction contract for the New Deck between the Town and Samet as contemplated by Section 3.

“New Deck Total Cost” means the total of all costs related to placing the New Deck in service for its intended purposes. These costs include land acquisition, design, construction, traffic impact assessment, and related legal, administrative and financing costs.

“New Office Building” means the new office building to be designed and constructed at 150 E. Rosemary Street as described in Sections 4 and 5.

“Project” means the project as described in the preambles to this Agreement.

“Renovation” means Grubb’s planned renovation of the existing buildings located at 137 East Franklin and 136 East Rosemary Streets. The Renovation will be considered complete under this Agreement upon substantial completion of the permitted work, whether or not in either case the property is occupied or a certificate of occupancy issued. Renovation may be considered complete for one building before the other.

“Wallace Deck” means the existing Town-owned, 309-space parking deck located at 150 E. Rosemary Street. “Wallace Deck Property” means this deck and its related real estate, which comprises approximately 1.49 acres and is further identified by PIN # 9788-37-9717 in the Orange County land records.

“Wet Lab” means a laboratory equipped with appropriate plumbing, ventilation, and equipment to allow for hands-on scientific research and experimentation, including the direct handling of potentially hazardous materials.

Exhibit B - Form of the Wallace Deck Lease

To be attached.

Exhibit C
Parking and Construction Management Plan

To be attached.

Exhibit D – Standard construction contract payment terms

The Town will pay construction cost requests to Samet upon Samet's providing a payment request to the Town in the form provided in the New Deck Contract, which will require Samet to provide proof of any stated third-party expenditures and appropriate lien waivers. The Town will have the right as the owner (but not the obligation) to inspect the work done from time to time and to request additional information from Samet to resolve any questions or apparent discrepancies. The Town will generally pay requisitions based on a "percentage of completion" basis, subject to the contract's retainage provisions, and will make payments within 30 days of the receipt of a payment request. The Town will not process more than one payment request in any calendar month.

To the extent the final terms of the New Deck Contract provide for different procedures, the terms of the New Deck Contract will govern.

Exhibit E - Staging Area designation

[To come]