

STATE OF NORTH CAROLINA

**ACCESS AND TEMPORARY
CONSTRUCTION EASEMENT**

COUNTY OF ORANGE

Revenue Stamps: \$_____

**PINs: 9788-37-7517 (136 E. Rosemary)
9788-37-5557 (130 E. Rosemary)**

Prepared by: Amanda Bambrick, Morningstar Law Group, 421 Fayetteville Street, Suite 530, Raleigh, NC 27601
RETURN TO: Ann Anderson, Town Attorney, Town of Chapel Hill
405 Martin Luther King Jr. Blvd., Chapel Hill, NC 27514

THIS PUBLIC ACCESS AND TEMPORARY CONSTRUCTION EASEMENT (hereinafter referred to as the “**Easement**”) is made and entered into this the ____ day of _____, 2022 by and between **Franklin Office Chapel Hill, LLC**, a Delaware limited liability company authorized to do business in the State of North Carolina, whose mailing address is 4601 Park Road, Suite 450, Charlotte, NC 28209, (hereinafter referred to as “**Grantee**”), and **Town of Chapel Hill**, a North Carolina municipal corporation in Orange County, North Carolina whose mailing address is 405 Martin Luther King Jr. Blvd., Chapel Hill, NC 27514, (hereinafter referred to as “**Grantor**”). The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

W I T N E S S E T H:

WHEREAS, Grantee is the owner of certain real property known as and located at 136 E. Rosemary Street, in Chapel Hill, Chapel Hill Township, Orange County, North Carolina, as more particularly described in that certain deed recorded in **Book 6603, Page 282**, Orange County Registry, (hereinafter referred to as “**Grantee’s Property**”);

WHEREAS, Grantor is the owner of certain adjacent real property known as and located at 130 E. Rosemary Street, in Chapel Hill, Chapel Hill Township, Orange County, North Carolina, as more particularly described in that certain deed recorded in **Book 1269, Page 442**, Orange County Registry, (hereinafter referred to as “**Grantor’s Property**”);

WHEREAS, Grantee plans to construct at its sole cost and expense a public paved Walkway, retaining wall, and related stormwater and appurtenant facilities upon Grantor's Property, as more specifically set forth and depicted herein (hereinafter collectively referred to as the "**Paved WalkwayWalkway**");

WHEREAS, in constructing the Paved Walkway, Grantee plans to access portions of Grantor's Property from time to time as may be required for purposes of the installation and construction of the Paved Walkway, including foundations and related infrastructure and appurtenances;

WHEREAS, Grantee has requested that Grantor grant a temporary construction easement upon Grantor's Property for the installation of the Paved Walkway, subject to the terms and conditions set forth in this Easement hereinbelow;

WHEREAS, Grantee has requested that upon its completion of the Paved Walkway, Grantor grant a permanent public access easement related to the Paved Walkway in all aspects, subject to the terms and conditions set forth in this Easement hereinbelow;

WHEREAS, Grantor acknowledges that that certain benefits will flow both to Grantor and the lands of the Grantor and to other owners and other lands from the construction of said Paved Walkway and has agreed to grant certain easements upon the Grantor's Property to Grantee, subject to the terms and conditions set forth in this Easement hereinbelow;

NOW THEREFORE, said Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration in hand paid by the Grantee, the receipt and sufficiency of which is hereby acknowledged, including without limitation related to Grantee's expenditures with regard to the installation and ongoing maintenance in all aspects of the Paved Walkway, which will promote connectivity and economic development in the general vicinity thereof, has and by these presents does grant, bargain, sell and convey unto the Grantee the Easement, in perpetuity, upon the Grantor's Property, situated in the Town of Chapel Hill, Chapel Hill Township, Orange County, North Carolina, more particularly described as follows:

[INSERT EASEMENT DESCRIPTION]

The parties further agree as follows:

1. **Recitals.** The recitals above are incorporated into this Easement by reference.
2. **Grantee Access; Public Access.**

The Paved Walkway shall be installed in, on, or under Grantor's Property generally in the area shown on **Exhibit "A"** attached hereto and incorporated herein. Grantor hereby grants Grantee, its agents, employees and/or contractors, at Grantee's sole cost, expense and liability, the right to pedestrian and vehicular ingress, egress and regress on, over and across the Grantor Property as reasonably necessary for the installation and construction of the Paved Walkway in all aspects. Grantor expressly warrants and represents that certain Declaration of Restrictive Covenants made by Grantor recorded on November 7,

2022 at Book 6800, Page 376, Orange County Registry, does not prevent, prohibit, or restrict the installation, construction, and/or maintenance of the Paved Walkway hereunder.

Grantee, its agents, employees and/or contractors shall deliver to Grantor as-built drawings detailing the location, composition and dimensions of the Paved Walkway within ninety (90) days following completion of the construction of the Paved Walkway.

Grantee, its agents, employees and/or contractors shall (a) conduct its work in such a manner as to avoid unreasonable interruptions of or interference with the ownership, use, operation and enjoyment of Grantor's Property by Grantor, its tenants, employees, agents, contractors and guests; (b) use commercially reasonable efforts to minimize any inconvenience to Grantor, its tenants, employees, agents, contractors and guests during the construction of the Paved Walkway; and (c) repair any material physical damages to the Grantor Property arising from the work described herein as reasonably possible.

Upon completion of the Paved Walkway by Grantee, the Easement shall be a non-exclusive easement for the purposes of allowing ingress and egress to and from Grantee's property by persons with reasonable need for such access.. Notwithstanding any other provisions herein, this Easement shall be enforceable against Grantor only by Grantee, its successors and assigns, and is not enforceable against Grantor by any third party nor by any other person whether on that person's behalf or on behalf of a member of the public or the public generally. In addition, nothing in this Easement shall in any way limit Grantor from accessing the Easement for any purposes at any time as may suit its purposes.

Grantee, its successors and assigns, shall be solely responsible for maintenance of improvements on the Easement, which maintenance shall include but not be limited to removal of obstructions within the Paved Walkway, repair and replacement of the Paved Walkway as needed in Grantee's reasonable discretion, and maintenance of vegetation, if any, within the Easement.

3. **Standard of Care.** Grantee shall (a) perform all construction work in a safe and workmanlike manner, in accordance with applicable governmental laws, rules and regulations and customary prevailing standards; and (b) use commercially reasonable efforts to protect all improvements and utilities located on the Grantor's Property.

4. **Indemnity.** Grantee shall hold Grantor, its successors, heirs and assigns, harmless and indemnify the same from and against any and all claims, judgments, transgressions, losses, demands, damages, penalties, fines, costs and liabilities, (including sums paid in settlement of claims), or causes of action of any kind, character or nature, known or unknown, at law or in equity, in contract, tort or under statute or otherwise, for, or in connection with, any environmental matter, accident, loss of life, injury or damage whatsoever caused to any person or property, and from payment of monies or otherwise, arising out of Grantee's negligence or intentional misconduct related to the construction, installation, or maintenance of the Paved Walkway and from and against any and all costs, expenses and liability incurred with respect thereto, including reasonable attorney's fees, consultant fees and expert fees, in connection with such claim or proceeding. The indemnification provisions contained herein shall survive the extinguishment, lapse or abandonment of the Easement granted herein to Grantee, its successors, heirs and assigns.

5. **Insurance.** Until final completion of the Paved Walkway, Grantee will obtain and maintain in full force and effect or cause its agents and/or contractors to obtain and maintain in full force and effect the following insurance: (a) comprehensive general liability insurance of \$1,000,000.00 combined single limit per occurrence for loss of life, bodily injury and property damage with a minimum of \$3,000,000.00 aggregate which may be satisfied with a combination of primary and excess insurance; (b) automobile liability insurance covering any owned, non-owned, leased, rented or borrowed vehicles of Grantee on an occurrence basis with a minimum single limit of not less than \$1,000,000.00 for loss of life, bodily injury and property damage; (c) contractual liability insurance sufficient to cover Grantee's indemnification obligations hereunder; and (d) worker's compensation and other employers' liability insurance in such amounts which are reasonable necessary, but not less than any local, state or federal legal or statutorily requirements. Grantee shall provide evidence of such insurance prior to Grantee's commencement of work and at other times upon written request from the Grantor. Grantee's policies shall state that the insurance company cannot cancel or refuse to renew without at least thirty (30) days prior written notice to the Grantor before the expiration of each policy. The insurance shall be effected with insurers that are authorized to do business in North Carolina and in good standing and rating, under valid and enforceable policies naming Grantor as an additional insured as his interests may appear and naming Grantor's mortgagees, if any.

6. **Breach.** In the event that a party breaches any obligation under this Easement, the non-breaching party shall provide the breaching party with written notice of such breach with sufficient explanation and description and reasonable documentation of the nature of the breach. Within thirty (30) days after receiving the written notice, the breaching party shall have a duty to remedy the breach to the extent commercially reasonable and appropriate. In the event that the nature of the breach cannot be reasonably remedied within said thirty (30) days, the breaching party shall be allowed a reasonable period of time to remedy said breach provided that the breaching party shall promptly commence and diligently prosecute said remedy. Further, in no event under any breach shall either party be liable to the other party for special, consequential, expectancy, incidental and/or punitive damages. The sole remedy available for a breach under this Easement shall be an action for specific performance to enforce the obligations against the breaching party.

7. **Notices.** All necessary notices, demands and requests required or permitted to be given under the provisions of this Easement shall be deemed duly given, if made by hand delivery or mailed by certified mail, postage pre-paid, or by Federal Express or other similar overnight delivery carrier, addressed as follows:

Grantee: Franklin Office Chapel Hill, LLC
Attn: _____
4601 Park Road, Suite 450
Charlotte, NC 28209

Grantor: Town of Chapel Hill
Attn: Town Manager
405 Martin Luther King Jr. Blvd.
Chapel Hill, NC 27514

or such other address as a party may provide in writing to the other or as may be shown on the public tax rolls of Orange County, North Carolina.

Notice mailed by certified mail shall be deemed received by the addressee upon signed receipt. Notice personally delivered shall be deemed received when delivered. Notice mailed by overnight express courier shall be deemed received by the addressee upon mailing. Either party at any time may change the address for notice to such party by mailing, sending or delivering a Notice as aforesaid. Time shall run only on business days which, for purposes of this Easement shall be any day other than a Saturday, Sunday or legal public holiday.

8. **Assignment.** The Easement granted herein may be assigned by the Grantee upon the written consent of Grantor, which shall not be unreasonably withheld, conditioned, or delayed.

9. **Survival.** All of the terms, covenants, conditions, representations, warranties, and agreements of this Easement shall survive and continue in full force and effect and shall be enforceable after the termination hereof.

10. **Binding Effect and Jurisdiction.** This Easement shall be binding on and inure to the benefit of the parties hereto, their respective officers, owners, heirs, administrators, personal representatives, successors and permitted assigns and shall be interpreted insofar, as is possible, in accordance with the laws of the State of North Carolina. Each party hereby submits themselves to the jurisdictions of the courts of the State of North Carolina in any future action brought by either of them to enforce any provision of this Easement. The parties agree to personally submit themselves exclusively to the personal jurisdiction of the trial courts located in Orange County, North Carolina with regard to any dispute arising out of this Contract. The parties further agree that venue shall be proper only in the courts located in said Orange County, North Carolina.

11. **Costs.** Each party shall be responsible for their own costs incurred in connection with this Easement, including but not limited to, reasonable legal costs for their respective counsel in connection with the review, preparation, negotiation and enforcement of this Easement.

12. **Authority.** Any individual signing this instrument on behalf of a corporate entity warrants and represents that (s)he has the authority to act and bind said entity to the terms and conditions of this instrument.

13. **Modification and Waiver/Termination.** A modification of any of the provisions of this Easement shall be effective only if made in writing and executed with the same formality as this Easement and shall be recorded in the public records of the Orange County Registry. The failure of either party to insist upon strict performance of any of the provisions of this Easement shall not be construed as a waiver of any subsequent default of the same or similar nature. In the event the Easement should become unnecessary as a means of access to Grantee's Property; fall into material disuse as a means of access to Grantee's Property for a period of one (1) year or more; and/or the Paved Walkway improvements should suffer significant damage or disrepair for a period of six (6) months or more such that in the Grantor's sole judgement the Easement is not suitable as a means of ingress or egress to Grantee's Property, then this Easement shall terminate and have no further force and effect.

14. **Severability.** It is expressly understood and agreed that in the event of any one or more of the provisions of this Easement shall be unenforceable for any reason, the remaining portions of this Easement shall, nevertheless, remain in full force and effect, and the unenforceable provision or provisions shall be deemed deleted.

15. **Captions.** The captions or paragraph headings are for convenience and ease of reference only and shall not be construed to limit, modify or alter the terms of this Easement.

16. **Construction of Terms.** Where appropriate, any word denoting the singular shall be deemed to denote the plural, and vice versa. Where appropriate, any word denoting or referring to one gender shall be deemed to include the other gender.

17. **Entire Agreement.** This Easement contains the entire understanding of the parties hereto and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein which shall be deemed to be binding upon the parties. No statements, matters or representations, oral or written, or extrinsic to this Easement are relied upon or shall have any force or effect.

18. **Conveyance.** The subject property does not contain the primary residence of the Grantor. Grantor shall retain fee ownership of the land subject to said easement.

TO HAVE AND TO HOLD the aforesaid rights and easements to the Grantee, his successors and/or assigns, in title for the time period set forth herein, it being agreed that the rights and easements hereby granted are appurtenant to and run with the lands now owned by the Grantee hereinabove referred.

And the Grantor covenants with the Grantee that it is seized of the above-described lands in fee simple in which the aforesaid rights and easements are granted and that he has the right to convey such rights and easements. Otherwise, Grantee acknowledges and accepts the subject easements in their "AS-IS, WHERE-IS" physical condition and "WITH ALL FAULTS", and this conveyance is made without any representations or warranties of any kind, express or implied, including without limitation, any representations or warranties of habitability or merchantability.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Grantee has duly executed the foregoing ACCESS AND TEMPORARY CONSTRUCTION EASEMENT as of the day and year first above written.

GRANTEE:

Franklin Office Chapel Hill, LLC
(a Delaware limited liability company)

By: _____ (Seal)

{Printed Name & Title}

STATE OF _____, _____ COUNTY ss:

I, _____, a Notary Public of the State of _____
_____, County of _____, do hereby
certify that the following person(s) personally appeared before me this day, acknowledging to me that
they voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

_____ [Printed Name(s) & Title(s)] of **Franklin Office**
Chapel Hill, LLC (a Delaware limited liability company).

Witness my hand and notarial seal, this ____ day of _____, 20____.

(Official Seal or Stamp)

Notary Public
My Commission Expires: _____

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing PUBLIC ACCESS AND TEMPORARY CONSRUCTION EASEMENT as of the day and year first above written.

GRANTOR:

TOWN OF CHAPEL HILL
(a North Carolina municipal corporation)

By: _____ (Seal)
Name: _____
Title: _____ (Deputy) Town Manager

ATTEST BY TOWN CLERK: _____ (Corporate Seal)

By: _____ (Seal)
Name: _____
Title: _____ (Deputy / acting) Town Clerk

Town Clerk attests date this the _____ day of _____, 20____.

APPROVED AS TO FORM AND AUTHORIZATION:

By: _____ (Seal)
Ann Anderson, Town Attorney

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

By: _____ (Seal)
Name: _____
Title: _____ Finance Officer

DATE: _____

STATE OF _____, _____ COUNTY ss:

I, _____, a Notary Public of the State of North Carolina, County of _____, do hereby certify that _____, personally appeared before me this day and acknowledged that (s)he is (Deputy / 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 municipal corporation, the foregoing and annexed instrument was signed in its name by _____, its (Deputy) Town Manager, sealed with its corporate seal, and attested by her as its (Deputy / acting) Town Clerk.

Witness my hand and notarial seal, this ____ day of _____, 20____.

(Official Seal or Stamp)

Notary Public

My Commission Expires: _____

Exhibit "A" The Easement

