

Prepared by and return after recording to:

Robert M. Jessup Jr.
Sanford Holshouser LLP
209 Lloyd St., Suite 350
Carrboro, NC 27510

NORTH CAROLINA

ORANGE COUNTY

Brief description: Wallace Parking Deck and related, Rosemary St., Chapel Hill

Orange County PINs:

WALLACE DECK LEASE

THIS WALLACE DECK MANAGEMENT LEASE (the "Lease") is made this _____ day of _____, 2020, and is between Grubb Management LLC ("Grubb") and the Town of Chapel Hill, North Carolina (the "Town").

Grubb hereby leases the "Wallace Deck," as defined below, to the Town, and the Town hereby leases the Wallace Deck from Grubb, to have and to hold for the Lease Term, subject to the provisions of this Lease.

For the purposes of this Lease, the "Wallace Deck" means the 309-space parking deck and associated improvements and real property located at ____ Rosemary Street, Chapel Hill, North Carolina, and further identified as Orange County PIN# _____. Grubb is the record owner of the Wallace Deck. This is the same property conveyed to Grubb by the Town by a deed recorded at Book _____, Page _____, Orange County Registry.

1. Lease Term. The term of this Lease (the "Term") begins on _____, 2020 (the "Effective Date"). The Term ends on the earliest to occur of the following:

a) 11:59 p.m. on the last day of the 59th full calendar month after the Effective Date.

b) the date either party elects to terminate this Lease. A party must give at least 90 days' notice of an election to terminate, **and neither party may give that notice before May 1, 2021.**

The Town has no right to hold over as a tenant after the Term ends.

2. Quiet Enjoyment and Operation. Grubb covenants that the Town will during the Lease Term peaceably and quietly have and hold and enjoy the Wallace Deck without suit, trouble or hindrance from Grubb, except as expressly required or permitted by this Lease. Grubb will not interfere with the Town's quiet use and enjoyment of the Wallace Deck during the Lease Term. Grubb will, at the Town's request and Grubb's cost, join and cooperate fully in any legal action in which the Town asserts its right to such possession and enjoyment. In addition, the Town may at its own expense join in any legal action affecting its possession and enjoyment of the Wallace Deck and will be joined (to the extent legally possible, and at the Town's expense) in any action affecting its liabilities under this Lease. The Town will operate and manage the Wallace Deck and carry out all associated responsibilities including collection of fees, maintenance of equipment, issuance of any tickets for violation of terms of use, and collection of any penalties associated with such violations.

3. Rent.

(a) The Town will pay monthly rent to Grubb in the amount of \$30,000.00 per month. Rent is due on _____, 2020, and on the 5th day of each month thereafter during the Term, except as provided in Section 3(b) below (the time period during which rent is paid as set forth in this Section 3(a), the "Flat Rent Period"). Rent for the first and last months of the Term or Flat Rent Period, as applicable, will be pro-rated, if appropriate, on the basis of the number of days elapsed and the total number of days in that month. If the 5th of any month is a holiday observed by the Town, the Town may pay the rent on the subsequent business day without penalty. The Town will pay the rent **by mailing a check by the due date** to the address designated by Grubb from time to time (which need not be the address designated in Section 10).

(b) From and after the date that is the later of (i) the date on which a Certificate of Occupancy has been issued by the Town in connection with the new parking deck to be constructed on the property located at 125 E. Rosemary Street, Chapel Hill, NC, and (ii) the date that is the first anniversary of the Effective Date, the Flat Rent Period shall terminate, and the following provisions shall apply:

(i) The Town will assess charges for parking in the Wallace Deck in its discretion, but as limited by this paragraph (b)(i). The rental rates charged by the Town for parking in the Wallace Deck must be substantially the same as the rates for other downtown parking facilities owned or leased by Town, as in effect from time to time. Any discounts or "free parking" periods or events provided by Town in its other downtown parking facilities may similarly apply to the Wallace Deck.

(ii) The Town shall determine each month the gross revenue from charges for parking in the Wallace Deck for the previous month. The Town will make its books and records for this calculation available to Grubb on Grubb's request. This amount will be called the "Monthly Gross Revenue." The Town will first make this calculation at the end of the first full calendar month that the Town manages the Wallace Deck under this Agreement (and that first calculation will cover any partial month at the beginning of the Term).

(iii) Each month the Town will retain from the Monthly Gross Revenue an amount equal to the following (to be called the "Expense Amount"):

- a. \$400 per parking space, divided by 12. For the first calculation of the Expense Amount, instead of dividing by 12 the derived product will instead be multiplied by a fraction, the numerator of which is the actual number of days elapsed in the first period and the denominator of which is 365.

b. The Town is entitled to retain the Expense Amount regardless of its actual costs or expenses and with no requirement to document costs or expenses. If the Monthly Gross Revenue is less than the Expense Amount in any month, the amount of the shortfall will be added to the amount the Town is entitled to retain in the following month, and so on from month to month. In no event will Grubb owe all or any portion of such shortfall to the Town.

(iv) The Monthly Gross Revenue for any period less the Expense Amount for that period will be called the Monthly Net Revenue.

(v) Each month, not later than the 25th day of the month, the Town will pay to Grubb 60% of the Monthly Net Revenue for the previous month **by mailing a check** to the address designated by Grubb from time to time (which need not be the address designated in Section 8).

4. Proper Use and Maintenance. (a) The Town will use and care for the Wallace Deck in a careful and proper manner. The Town must keep the Wallace Deck in good condition, repair, appearance and working order for the purposes intended. The Town is not required to undertake any long-term improvements to the Wallace Deck, whether as a response to deferred maintenance or otherwise. The Town is responsible for all maintenance and repair of the Wallace Deck during the Term, and Grubb shall have no obligation or liability with respect to the maintenance, repairs, or condition of the Wallace Deck hereunder.

(b) Utilities. The Town will pay for all water, sanitation, sewer, electricity, light, heat, gas, power, fuel, janitorial, and other utilities and services incident to Town's use of the Wallace Deck.

(c) Compliance with Requirements. The Town will promptly and faithfully comply with all requirements of governmental authorities relating to the use or condition of the Wallace Deck (or be diligently and in good faith contesting the requirements), if the violation of the requirement could adversely affect the use,

value, title, or condition of the Wallace Deck. This compliance (or contest) is required of the Town whether or not any requirement necessitates structural changes or improvements or interferes with the Town's use or enjoyment of the Wallace Deck.

The Town will in no event use the Wallace Deck, or any portion, nor allow it to be used, (i) for any unlawful purpose, (ii) in violation of any certificate of occupancy or other permit or certificate, or (iii) in violation of any law, ordinance or regulation.

(d) Modification of Wallace Deck; Installation of Equipment and Machinery. Subject to Grubb's written consent, not to be unreasonably withheld, the Town may remodel the Wallace Deck or make substitutions, additions, modifications and improvements to the Wallace Deck, at its own cost and expense. These changes, however, must not damage the Wallace Deck nor result in the use of the Wallace Deck for purposes substantially different from those contemplated as of the Effective Date, nor reduce the number or desirability of the parking spaces provided. Further, the Wallace Deck, upon completion of the changes, must be of a value not less than its value as of the date such work commenced. Any addition, alteration, or improvement that Grubb does not require the Town to remove upon the termination of this Lease becomes Grubb's property. The Town, however, may remove any machinery or equipment which it can remove without material damage to the Wallace Deck and for which such removal has been previously consented to by Grubb in writing.

(e) The maintenance and repair responsibilities of the Town shall include, without limitation:

(i) Town agrees to perform general maintenance of the Wallace Deck to include routine trash removal, blowing the levels off weekly, and pressure washing at least once every two years.

(ii) Town agrees to oversee and make available the after-hours security service contracted by Town.

(iii) Town agrees to manage any parking contracts and related payments.

The Town is not required to undertake any long-term improvements to the Wallace Deck, whether as a response to deferred maintenance or otherwise.

5. Taxes and Other Governmental Charges. If the Wallace Deck (or any portion) is, for any reason, deemed subject to taxation, assessments or charges lawfully made by any government, the Town will, during the Lease Term, pay the amount of all those taxes, assessments and governmental charges. With respect to special assessments or other charges which may be lawfully paid in installments over a period of years, the Town is obligated under this Lease only to provide for the installments that are required to be paid during the Lease Term. The Town must not allow any liens for taxes, assessments or governmental charges with respect to the Wallace Deck (or any portion) to become delinquent, including any taxes levied upon Grubb's interest in the Wallace Deck, or on any rentals or other revenues derived from the Wallace Deck, and any such lien placed on the Wallace Deck must be discharged within 20 days thereafter.

The Town may, at its own expense and in its own name, in good faith contest any taxes, assessments and other charges with prior written notice to Grubb. In the event of a contest, the Town may permit the charges to remain unpaid during the period of the contest and any appeal notwithstanding any provision of the prior paragraph to the contrary.

6. Insurance.

a) Property Damage Insurance – The Town shall, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to the Wallace Deck in an amount equal to its estimated replacement cost as reasonably approved by Grubb. This insurance must include Grubb as a loss payee.

b) General Liability Insurance – To the extent permitted by law, the Town agrees that it will, at its own expense, acquire, carry and maintain comprehensive general liability insurance in an amount not less than \$2,000,000 for personal injury or death and \$2,000,000 for property damage, and that it will include Grubb as an additional insured with respect to occurrences related to the Wallace Deck.

c) The Town must maintain the insurance required by this Section with generally recognized responsible insurers. The insurance may carry reasonable deductible or risk-retention amounts. The Town must provide copies of all policies to

Grubb upon request. Grubb is not responsible for the sufficiency or adequacy of any required insurance.

c) To the maximum extent permitted by insurance policies which may be owned by Grubb or Town without affecting coverage, Town and Grubb, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist.

d) The Town may settle or adjust insurance claims in its discretion, except that no Town agent or employee will have the power to adjust or settle any property damage loss greater than \$100,000 with respect to the Wallace Deck, whether or not covered by insurance, without Grubb's prior written consent, which may be granted or withheld in Grubb's sole discretion. Grubb and the Town will cooperate fully with each other in filing any claim or proof of loss with respect to any insurance policy related to the Wallace Deck.

7. **Condemnation.** If the Wallace Deck or any portion is taken under power of eminent domain, or conveyed by Grubb in lieu of any taking, then this Lease terminates as of the date when possession of the Wallace Deck, or the applicable portion, is taken by the taking authority. Grubb will then refund to Town any unearned monthly rent or other charges previously paid by Town, provided no such payment was delivered to Grubb more than 30 days in advance of the date such payment was due hereunder.

All damages for any taking of all or any part of the Wallace Deck will be Grubb's sole property, without any deduction therefrom for any present or future estate of the Town. The Town hereby assigns to Grubb all its right, title, and interest to any such award; provided, the Town shall have the right to claim and recover from the taking authority any compensation that may be separately awarded or recoverable by Town. For example, compensation for any cost of loss which Town might incur because of the taking, including the cost of removing furniture and fixtures from the Wallace Deck.

8. **Non-Appropriation of Public Funds.** Grubb acknowledges that the Town is a governmental entity, and the Lease's validity is based 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 Lease, then this Lease 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 Lease, but only as an emergency fiscal measure during a substantial fiscal crisis that generally affects its governmental operations. The Town reasonably believes funds will be available to satisfy all its obligations under this Lease.

9. Indemnification. To the extent permitted by law, the Town shall indemnify and hold harmless Grubb for any injury or loss incurred by Grubb or a third party while on the Wallace Deck during the Term, unless the loss is caused by the willful acts or omissions or gross negligence of Grubb, its employees, agents, licensees, or contractors.

10. Notices.

a) Any communication provided for in this Lease must be in writing (not including facsimile transmission or electronic mail).

b) Any communication under this Lease 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,
Town Hall, 405 Martin Luther King, Jr. Blvd., Chapel Hill, NC 27514

If intended for Grubb, to _____

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

11. Miscellaneous.

a) Entire Lease. This Lease contains the entire Lease and agreement of the parties, and there are no other promises or conditions in any other Lease or other agreement, whether oral or written. This Lease supersedes any prior written or oral leases or other agreements between the parties.

b) Recording. At the request of either party, Grubb and the Town will at any time execute a memorandum of this Lease legally sufficient to comply with the relevant provisions of the North Carolina General Statutes. Either party may provide for this Lease, or a memorandum of this Lease, to be recorded with the Register of Deeds of Orange County, North Carolina.

c) Subordination of the Lease. This Lease and the Town's rights under this Lease are subordinate and subject to any bona fide mortgage which may now exist or which Grubb may hereafter place upon the Wallace Deck. The Town shall, if requested by Grubb, execute a separate agreement reflecting the subordination.

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

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

f) Amendment. This Lease may be modified or amended if the amendment is made in writing and is signed by both parties.

g) Severability. If any provision of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited. This severability provision shall not apply, however, to separate the Town's obligation to pay rent from its right of quiet enjoyment.

h) Delay Not Waiver. The failure of either party to enforce any provision of this Lease will not operate to waive or limit that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

i) No Assignment. Neither party shall assign this Lease or any part of its rights or obligations under this Lease without the prior express written consent of the other. Consent must not be unreasonably withheld or delayed.

j) Dispute Resolution. The parties agree to provide notice to each other and a reasonable opportunity to respond if either determines that the other is not meeting its responsibilities under this Lease.

k) Grubb Owns the Deck. Grubb represents that it owns the Wallace Deck and that entering into this Lease will not constitute on its part a material breach or a default under any other contract to which Grubb is a party. Grubb as the owner of the Wallace Deck bears the ultimate risk of all loss to and condemnation of the Wallace Deck.

l) Applicable Law. The parties intend that this Lease and all aspects of its interpretation shall be governed by the laws of the State of North Carolina. The parties agree that the proper venue for any dispute arising out of this Lease shall be in the General Court of Justice, Orange County, North Carolina.

m) Estoppel Certificates. Either party shall within 10 days of receipt of a request from the other execute an estoppel certificate certifying as to such facts (if true) as the requesting party (or mortgagees or proposed purchasers of the Wallace Deck) may reasonably request (including, without limitation, rent, term commencement, tenant's acceptance of the premises, and the absence of defaults).

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

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

(SEAL)

ATTEST:

**TOWN OF CHAPEL HILL
NORTH CAROLINA**

Sabrina Oliver
Town Clerk

By: _____
Maurice Jones
Town Manager

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

Finance Officer
Town of Chapel Hill, North Carolina

GRUBB MANAGEMENT LLC

By: _____

Printed name: _____

Title: _____

[Wallace Deck Lease dated as of _____, 2020]

**STATE OF NORTH CAROLINA;
ORANGE COUNTY**

I, a Notary Public of such Town and State, certify that Maurice Jones and Sabrina Oliver personally came before me this day and acknowledged that they are the Town Manager and the Town Clerk, respectively, of the Town of Chapel Hill, North Carolina, and that by authority duly given and as the act of such Town, the foregoing instrument was signed in the Town's name by such Town Manager, sealed with its corporate seal and attested by such Clerk.

WITNESS my hand and official stamp or seal, this _____ day of _____, 2020.

[SEAL]

Notary Public

My commission expires: _____

* * * * *

**STATE OF NORTH CAROLINA;
_____ COUNTY**

I, a Notary Public of such County and State, certify that _____ personally came before me this day and acknowledged that [he] is a Manager of Grubb Management LLC and that by authority duly given and as the act of such corporation, the foregoing instrument was signed in the corporation's name by that Manager.

WITNESS my hand and official stamp or seal, this _____ day of _____, 2020.

[SEAL]

Notary Public

My commission expires: _____

[Wallace Deck Lease dated as of _____, 2020]