

Memorandum of Understanding

This Memorandum of Understanding (the “MOU”) is dated as of March _____, 2020, and is between the Town of Chapel Hill, North Carolina (the “Town”), and Grubb Management LLC. (“Grubb”).

Unless the context clearly requires otherwise, capitalized terms used in this MOU and not otherwise defined have the meanings set forth in Exhibit A. Exhibit B shows the vicinity of property considered by this MOU.

1. The Project

The parties have engaged in a series of discussions concerning an economic development project whereby:

- The parties will exchange properties (the Wallace Deck in exchange for the CVS Deck and adjacent parcel), 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, the New Deck on the CVS Deck Property and the adjacent parcel (with the Town paying the New Deck Total Cost); and
- Grubb will then entitle, design and build the New Office Building; all as further described and provided for in this MOU.

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.

2. The Nature of this Agreement

This MOU is a binding agreement between the parties to negotiate in good faith and due diligence to complete the EDA by June 30, 2020. The parties will begin to negotiate the terms of the final EDA immediately after completing the execution and delivery of this MOU.

The parties agree that provisions of Sections 3 through 8 will form the basis for the start of those negotiations, but no party is bound to agree to any of those terms. The binding obligation is only to negotiate in good faith and due diligence in recognition of the deadline. Any party can cease negotiations at any time if it has acted in good faith and with due diligence to that point.

Sections 2, 9 and 10 are terms that relate to the conduct of the parties under this agreement. They are binding on the parties notwithstanding the non-binding nature of Sections 3 through 8.

3. The parties will exchange properties

a) Grubb owns the CVS Deck Property. The Town owns the Wallace Deck Property.

b) The parties will work together for the acquisition of the adjacent parcel. The parties expect that Grubb will acquire that property directly from the adjacent property owners, but recognize that the best agreement may be for the Town to acquire the property.

c) The parties will then exchange properties. In the end, the Town will own the CVS Deck Property and the adjacent parcel, and Grubb will own the Wallace Deck Property. The party acquiring excess value, as determined in accordance with the Economic Development Agreement (EDA), in the exchange will pay the difference to the other party as may be described in the EDA.

d) The parties recognize that the exchange must be complete before the Town can make any payments toward New Deck construction.

e) After the exchange, Grubb will begin to demolish the CVS Deck as part of the construction process for the New Deck. The parties will confer on the timing of this demolition as part of the construction process described in Section 6.

f) The Town and Grubb will enter into a lease, management agreement or other agreement concerning the operation of the Wallace Deck between the time of the exchange and the opening of the New Deck. Grubb agrees that the Wallace Deck will be maintained for public parking on substantially the same basis as today until the New Deck is open. The Town will not be required by the agreement to undertake any long-term improvements to the Wallace Deck, whether as a response to deferred maintenance or otherwise. The EDA will spell out more specific terms for the allocation between the parties of revenues and expenses from the Wallace Deck.

4. Grubb will entitle the New Deck

a) Grubb will apply by March 6, 2020 for all necessary land use approvals for the New Deck construction, on its own behalf. Grubb may include the adjacent property owner as co-applicants if adjacent parcel acquisition has not been completed by the time the application is filed.

b) In connection with the application, Grubb will complete a traffic impact analysis that endeavors to include an analysis of the expected impact of the New Deck, and the New Office Building.

c) The parties acknowledge that if full entitlement has not been completed by June 30, 2020, Grubb will be unlikely to realize its expected full value of the Project and may therefore cease work and negotiation.

5. Grubb will design the New Deck, and the Town will pay for it

a) Grubb will design the New Deck to sit on the CVS Deck Property plus the adjacent parcel. Grubb will design the New Deck to encompass 1100 standard sized parking spaces, with a tolerance of plus or minus 5%. The following firms are considered approved: Perkins + Will, Ballentine Associates, PA and NV5.

b) The parties will consult as to including in the design the following features:

i. Parking and charging stations for electric vehicles

ii) A pedestrian connection from the New Deck to Franklin Street

iii) Solar energy collection facilities on the roof of the New Deck, with the parties understanding that designing those rooftop facilities may have an effect on the total height of the New Deck as referenced in 5(a).

iv) Rosemary Street-side activation of the parking deck, such as, for example only, incorporation of a green space, retail use, or other public activity space.

v.) The design should include a second outlet for traffic (in addition to Rosemary Street) at a place as be determined in the Traffic Impact Analysis and as may be described in the EDA.

c) As part of working on the New Deck design, the parties will work together on a parking and construction management plan. This plan will be designed to minimize the disruption and adverse effects of the New Deck/New Office Building construction and Renovation projects on downtown traffic and parking, and on the operation of downtown businesses.

6. Grubb will construct the New Deck, and the Town will pay for it

a) Grubb will construct the New Deck in accordance with the final design as approved under Section 5(b). Grubb will construct the New Deck as a contractor for the Town, and not for its own account, under the authority of the Town Charter provision Sections 4.20 through 4.25) that allows the Town to enter into private construction contracts related to economic development projects.

b) Grubb must begin construction (which may include the start of demolition) by September 1, 2020, subject to receipt of all necessary permits and entitlements. Grubb may extend that deadline to no later than December 1, 2020, so long as Grubb notifies the Town prior to September 1st that the time is being extended. The Town will have no further obligation to purchase or pay for the New Deck if construction does not start by December 1, 2020, subject to delays by the Town, force majeure, and other delays not within the control of Grubb. The New Deck must receive a complete certificate of occupancy for all its intended functions not later than September 30, 2021.

The parties acknowledge that for the Town to obtain the necessary financing to construct the New Deck on the timetable contemplated by this MOU, the Town will require approval of the North Carolina Local Government Commission by early October, 2020. To meet this deadline, the Town must have a guaranteed maximum price construction contract for the New Deck approved by the Town not later than September 5, 2020.

c) The Town must approve Grubb's selection of the general contractor and the final construction contracts, provided that Samet Construction is considered approved as general contractor. These approvals will be administrative actions to be taken by the Town Manager without the requirement for further Council action.

d) When Grubb presents the Town with proposed final contracts that include a guaranteed maximum price (and a resulting New Deck Total Cost), the Town will seek a professional, independent opinion on the fairness of the stated cost. The parties will work together to resolve any dispute about the fairness of the cost, seeking to complete such resolution on or before September 5, 2020.

e) The Town will pay for the New Deck and its associated property by paying the New Deck Total Cost in the manner calculated and specified in the EDA. The parties expect that the Town will borrow the money at the beginning of the construction period and then make monthly progress payments toward completion, in a manner consistent with the Town's usual process for paying other construction contractors. The EDA will describe this process in more detail.

f) The Town expects that its financing contracts will require the Town to secure its loan payment obligations by a mortgage-type first lien on the New Deck Property. Grubb agrees that in connection with the property exchange contemplated in Section 3, Grubb will work to remove any prior financing liens from the New Deck Property. Grubb expects that it will be able to accomplish this removal in a timely fashion.

g) In connection with the construction, Grubb will provide to the Town

- i) Payment and performance bonds from the building contractor 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. The construction contracts must also require all contractors to maintain workers' compensation as provided by law.

h) The Town will make available to Grubb and its contractors a construction staging area in Lot 2, generally shown on Exhibit C attached. Grubb will use this staging area for all purposes of constructing the New Deck, constructing the New Office Building and carrying out the Renovation. At the end of the construction activity, Grubb will consult with the Town and then restore the staging area with suitable plantings and other development as a small urban park or green space (including, for example, removing all asphalt from the staging area).

7. It is anticipated that Grubb will entitle, design and build an office building

a) Grubb will apply for all necessary land use approvals for the New Office Building construction, on its own behalf, by July 2020 in order to meet their projection of beginning construction by fall 2021.

b) The parties acknowledge that if full entitlement of the New Office Building has not been completed by July 2020, Grubb will be unlikely to realize its expected full value of the Project and may therefore cease work and negotiation.

d) Although the final design elements of the New Office Building are to be determined and are within Grubb's discretion, the parties agree that their current understanding of Grubb's plans for the building and its design include the following:

- i) An office building with wet lab comprising approximately 200,000 square feet across six floors, in addition to two levels of parking at or below street grade. The office space will be finished to a Class A level.

- ii.) A building profile that steps back from the street above the fourth above-ground level on Rosemary Street.

iii.) A Town Square - public space at corner of Rosemary and Henderson Streets, developed in conjunction with the building.

8. Other provisions to be included in the EDA

a) The EDA will have other provisions suitable for such an agreement, including the following:

i) Provisions for any future owner of the Wallace Deck Property that is not subject to paying ordinary ad valorem taxes to the Town to nevertheless make a payment 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 will be recorded in the real estate records as a covenant by Grubb so that it runs with the land and binds successor owners.

ii) Methods for dispute resolution, including provisions requiring mediation (but not arbitration) before any party commences a lawsuit.

iii) Procedures specifying how to provide formal notice to a party under the agreement

iv) Provisions whereby Grubb:

A) Acknowledges that the Town is providing no warranties regarding the New Deck, either with respect to design and construction or as to the environmental condition of any property other than the Wallace Deck Property. Both parties may reserve the right to complete Phase I or II testing in advance of a scheduled and accepted closing.

B) Indemnifies the Town regarding the design, construction and environmental condition of the New Deck and its associated property

C) Agrees to provide annual revenue to the Town equivalent to the leasing of 250 spaces in the New Deck, to be further defined in the EDA.

b) The Town expects to negotiate in the EDA for additional community benefits from the development of the New Deck and the New Office Building.

9. Limits on Town's power to agree

Grubb acknowledges that the Town's ability to agree to provisions in this MOU and in the EDA, and to carry out its agreements, is limited by its status as

a unit of local government, and in particular the following aspects of that status:

a) Dual role as land use regulator – The Town acts in separate capacities as a party to a business agreement such as this and the 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.

b) Agreements subject to Council approval – The Town’s entering into the final EDA, the final agreement to exchange properties and any other required agreements, including agreements related to financing the New Deck, is subject to the Council’s approval of substantially final documents, in some cases after taking comment at public hearings. The Town makes no representation, and can give no assurances, that any further approvals necessary will be forthcoming at any time. Council approval and authorization includes any debt issuance for this project and the EDA will include a non-appropriation clause.

c) LGC approval – the Town’s completion of the financing for the New Deck is subject to the approval of the North Carolina Local Government Commission and the marketability of the Town’s debt obligations. The Town, however, promises to process requests for regulatory approvals in a timely and professional manner.

10. Miscellaneous provisions

a) Neither party may assign its interests or obligations under this MOU without the other party’s consent, provided that Grubb may assign such interest to any entity owned or controlled by Grubb or in common ownership or control with Grubb.

b) Each party will bear its own costs in connection with the negotiation and completion of the EDA.

c) No officer, agent or employee of the Town will be subject to any personal liability or accountability because of the execution of this MOU or any other documents related to the transactions contemplated by this MOU. These officers, agents or employees will be deemed to execute documents and carry out activities in their official capacities only, and not in their individual capacities. This Section does not operate to relieve any officer, agent or employee from the performance of any official duty provided by law.

d) The parties intend that North Carolina law will govern this MOU and all matters of its interpretation. To the extent permitted by law, the parties agree that any action brought with respect to this MOU must be brought in the

North Carolina General Court of Justice in Orange County, North Carolina. There are no parties intended as third-party beneficiaries of this MOU. Time is of the essence of this MOU and each and all of its provisions. This MOU may be executed in counterparts, including separate counterparts, but all together constitute a single agreement.

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

f) This MOU may be amended by agreement of the parties.

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IN WITNESS WHEREOF, the Town and Grubb have caused this Memorandum of Understanding 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 ENTITY]

By: _____
[name/title/execution block]

[Memorandum of Understanding dated as of March ____, 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.

“CVS Deck” means the existing 270-space parking deck located on Rosemary Street. “CVS Deck Property” means this deck and its related real estate, which comprises approximately 1.6 acres.

“EDA” means a definitive economic development agreement between the Town and Grubb creating mutual and binding commitments for the Project, which the parties expect will be based on this MOU.

“Adjacent parcel Lot” means the adjacent parcel as needed to build a 110 space deck.

“Lot 2” means the Town-owned, 102-space surface parking lot located at the corner of Rosemary and Columbia Streets.

“New Deck” means the new 1,100-space parking deck to be constructed for the Town under Section 6.

“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 as described in Sections 5 and 6.

“Project” means the project described in Section 1.

“Renovation” means Grubb’s planned renovation of the existing buildings located at 137 East Franklin and 136 East Rosemary Streets.

“Wallace Deck” means the existing Town-owned, 309-space parking deck located on Rosemary Street. “Wallace Deck Property” means this deck and its related real estate, which comprises approximately 1.6 acres.

Exhibit B – Vicinity Map

[To come.]

Exhibit C – Construction Staging Area

[To come.]