

I, Amy T. Harvey, Deputy Town Clerk of the Town of Chapel Hill, North Carolina, hereby certify that the attached is a true and correct copy of (2023-11-15/R-3) adopted by the Chapel Hill Town Council on November 15, 2023.

This the 16th day of November, 2023.

Amy T. Harvey

**Amy T. Harvey
Deputy Town Clerk**



A RESOLUTION APPROVING AND AUTHORIZING AN EXCHANGE OF REAL PROPERTY OWNED BY THE TOWN OF CHAPEL HILL FOR OTHER REAL PROPERTY AND ADDITIONAL CONSIDERATION, AND FURTHER AUTHORIZING THE GRANT OF RELATED EASEMENTS OVER TOWN PROPERTY IN CONNECTION WITH DEVELOPMENT OF CERTAIN REAL PROPERTY LOCATED AT W. ROSEMARY STREET AND N. COLUMBIA STREET OWNED BY CHAPEL HILL VENTURES, LLC. (2023-11-15/R-3)

WHEREAS, the Council of the Town of Chapel Hill previously approved an application for Conditional Zoning for the Rosemary-Columbia Street Hotel Property assemblage at 108, 110, and 114 W. Rosemary Street, 205 and 207 N. Columbia Street, and 208 Pritchard Avenue (2021-11-17/O-5) (the "Conditional Zoning"); and

WHEREAS, pursuant to the Conditional Zoning, Chapel Hill Ventures, LLC intends to construct a hotel property on these parcels (the "Development"); and

WHEREAS, the Town of Chapel Hill acknowledges that the Development is likely to provide a substantial economic benefit to downtown Chapel Hill and to surrounding properties; and

WHEREAS, the Town of Chapel Hill owns the parcel having Orange County PIN 9788370535 located at 110 W. Rosemary Street (the "Town Property"), which is needed by Chapel Hill Ventures, LLC to carry out the Development; and

WHEREAS, Chapel Hill Ventures, LLC has the right to acquire the tract of land located in downtown Chapel Hill, more commonly known as 208 Pritchard Avenue, with tax parcel number 9788279667; and

WHEREAS, Chapel Hill Ventures, LLC wishes to exchange the western portion of 208 Pritchard Avenue, as more particularly shown on a survey shown in materials accompanying this Resolution (the "Pritchard Parcel") for the Town Property; and

WHEREAS, a property exchange was contemplated by Council during the Conditional Zoning approval, and the Conditional Zoning ordinance authorized the Town to enter into preliminary negotiations for an exchange; and

WHEREAS, the Town Parcel was valued in September 2023 by a Certified General Appraiser at \$770,000 and the relevant western portion of the Pritchard Parcel was valued in November 2023 by a Certified General Appraiser for \$340,000; and

WHEREAS, North Carolina General Statute Sec. 160A-271 authorizes the Town to exchange real or personal property belonging to the Town for other real or personal property if the Town receives a full and fair consideration in exchange for its property; and

WHEREAS, Chapel Hill Ventures, LLC proposes, in consideration of the Town's transferring fee simple ownership of the Town Property to Chapel Hill Ventures, LLC, to: (1) transfer to the Town fee simple ownership of the western portion of 208 Pritchard Avenue; and (2) make a payment to the Town of \$430,000, representing the difference in the appraised values of the exchanged properties; and

WHEREAS, the Development as approved in the Conditional Zoning requires additional easements across Town-owned parcels adjacent to the Development, including a permanent non-exclusive driveway easement and a temporary construction easement as more particularly described in the draft Land Exchange and Easement Agreement accompanying this Resolution; and

WHEREAS, North Carolina General Statute Sec. 160A-273 authorizes the Town to grant easements over, through, under, and across Town property; and

WHEREAS, as more specifically described in the draft Land Exchange and Easement Agreement accompanying this Resolution, Chapel Hill Ventures, LLC agrees to construct improvements on adjacent Town-owned property to create a park that will be accessible to the public; and

WHEREAS, the Council finds that the exchange of land and money described herein is fair and reasonable and that the Town is receiving full and fair consideration for the exchange; and further finds that conveyance of the easements described herein is reasonable and in the interest of the Town;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Town Manager is authorized to exchange Town Property having Orange County PIN 9788370535 for the Pritchard Parcel as described above and the additional sum of \$430,000 from Chapel Hill Ventures, LLC; to execute an agreement substantially in the form of the draft Land Exchange and Easement Agreement accompanying this Resolution; and to execute deeds and other necessary documentation to complete the exchanges and easements described therein.

This the 15th day of November, 2023.

MAI, Certified General Appraiser # A4499, and Kristina N. Van Buskirk, Certified General Appraiser #A8656, of Analytical Consultants.

(c) Subject and pursuant to the terms and conditions of this Agreement, CHV agrees to exchange marketable fee simple title to the Pritchard Parcel for marketable fee simple title to the Town Conveyance Parcel and the Town agrees to exchange marketable fee simple title to the Town Conveyance Parcel for marketable fee simple title to the Pritchard Parcel (“**Parcel Exchange**”) at the Closing (defined below). The Parcel Exchange shall also include the payment by CHV to the Town of \$_____ (the “**Net Cash**”) representing the difference in appraised values between the Town Conveyance Parcel and the Pritchard Parcel set forth in foregoing Sections 1(a) and 1(b), and will encompass the simultaneous conveyance of (i) the Pritchard Parcel by or at the direction of CHV to the Town and (ii) the Town Conveyance Parcel by the Town to CHV, and the contemporaneous grant of Easements and undertaking of commitments described in Section 2 below, all of which shall be executed and delivered at Closing and filed in the public records of Orange County, NC.

Section 2. Easements and Park Improvements.

(a) The Hotel to be constructed by CHV is proposed to be located on the property fronting on W. Rosemary and N. Columbia Streets to be acquired and consolidated as more particularly described on Exhibit D attached hereto and made a part hereof (“**Hotel Site**”).

(b) Park Improvements. Upon Closing, and as additional consideration for, the Parcel Exchange including the grant of easements described below, within the area described in Exhibit E attached hereto and made a part hereof (“**Park Improvement Area**”), the Hotel Site owner shall make improvements (“**Park Improvements**”) to the Town-owned parcel with PIN 9788370577 more particularly described in Exhibit F attached hereto and made a part hereof (“**Park Parcel**”) and the northern portion of the Town-owned parcel with PIN 9788371539 more particularly described in Exhibit G attached hereto and made a part hereof (“**OTH Parcel**”) pursuant to the Site Plan prepared by CJT, P.A. and dated _____, 2023, (“**Site Plan**”) attached as Exhibit H hereto and made a part hereof. The Park Improvements will be installed in conjunction with the construction of the Hotel and scheduled to be substantially completed [being the issuance of certificates of occupancy or the like] within six (6) months of the Hotel opening for business. After completion of the Park Improvements, the Town will maintain and replace the Park Improvements as necessary and appropriate.

(c) Easements. As additional consideration for the Parcel Exchange to permit the Hotel Site Owner to improve the Park Parcel and OTH Parcel with the Park Improvements, hotel construction, and reciprocal access, at Closing, the parties will convey the following easements and undertake the following actions and commitments:

1) For the benefit of the Hotel Site, the Town shall take the following actions and grant to CHV or its designee at Closing the following easements, or CHV shall reserve

the following easements in the conveyance to the Town (collectively, “**Easements**”), all as shown on the attached Survey and described in the Exhibits referenced below:

A. A temporary construction easement for two and one half (2½) years over, through and across the Park Improvement Area comprising: (i) the entire Park Parcel, (ii) the full width of the OTH Parcel extending from the northern façade of the former Town Hall building to the northern boundary thereof, and (iii) the full length of the OTH Parcel extending from the western façade of the former Town Hall building to the western border of said parcel, to facilitate and permit the construction of the Hotel, the Park Improvements and all related improvements. This temporary construction easement will include a crane pad area in the northwest corner of the Park Parcel for the crane necessary for the construction of the Hotel. CHV’s use of the crane will be subject to the Town’s standard requirements for cranes of this type.

B. A permanent, nonexclusive easement within the 35.5’ area (“**Columbia Easement Area**”) depicted on the Survey and extending across the entire width of the northern portions of both the Park Parcel and OTH Parcel, which Columbia Easement Area is more particularly described in Exhibit I attached hereto and made a part hereof, permitting access, egress, utilities, storm drainage conveyances, and the maintenance, repair and replacement of all such improvements relating to the same as follows:

(i) for the construction, maintenance, repair and replacement of the access driveway improvements (“**Driveway**”) within the Columbia Easement Area and the sidewalk and landscaping located north of the Driveway within the Columbia Easement Area, all substantially as shown on the Site Plan, and the utilities and storm drainage conveyances within the Columbia Easement Area; and

(ii) for pedestrian and vehicular ingress and egress to and from the Hotel Site and Columbia Street by and for the Hotel Site owner for its employees, agents, guests, contractors, licensees, and invitees, and for the use of the Town to access the Park Parcel and the OTH Parcel.

2) In the conveyance of the Pritchard Parcel, CHV shall retain the temporary right for two and one half (2½) years to access (A) the 10’ wide area along the eastern boundary of the Pritchard Parcel described in Exhibit J to construct a retaining wall, fence, and/or other site improvements consistent with the Site Plan and (B) the 10’ wide area along the southern boundary of the Pritchard Parcel described in Exhibit K attached hereto and made a part hereof to remove existing gravel and replace the same with seeded grass or other permeable plantings or material.

3) In no event shall the Town or the owner of the Hotel Site or any party under the control or direction of either party discontinue or materially impede two-way traffic in the Driveway, except that partial access may be disrupted when and to the extent reasonably necessary to make repairs or replacements thereof and to accommodate police,

fire department or other emergency services, provided at least partial or reasonable alternative access shall be maintained at all such times.

4) The Easements shall be appurtenant to and run with the land, and shall inure to the benefit of, the benefitted properties, the owners thereof, and their respective heirs, legal representatives, successors and assigns, tenants and lessees.

5) Driveway Maintenance. As and when reasonably required, the Hotel Site owner will maintain, repair and replace the Driveway and the sidewalk and landscaping located north of the Driveway within the Columbia Easement Area at its cost, except as, when and to the extent any such maintenance, repair or replacement is attributable to the actions or omissions of Town, its officials, representatives, employees, agents, contractors, licensees or invitees.

6) The two and one half year expiration dates of the foregoing temporary construction easements may be extended by one period of six (6) months by CHV's request to the Town, and the Town Manager granting such request, not to be unreasonably withheld conditioned or delayed.

Section 3. Property Condition.

(a) As-Is. Unless, and except to the extent expressly stated to the contrary in this Agreement, neither party warrants the physical condition of the property being conveyed by that party or any improvements thereon, and each parcel is conveyed "As-Is" as to physical condition.

The consummation of the transactions contemplated herein, being the Closing, pursuant to this Agreement shall be deemed the Town's acknowledgement and CHV's acknowledgement that each has had an adequate opportunity to make such legal, factual, and other inspections, inquiries, and investigations as it deems necessary, desirable, or appropriate. Such inspections, inquiries and investigations of the Town and/or CHV shall be deemed to include, but shall not be limited to, any contracts pertaining to the respective properties, the physical components of all portions of the respective properties, the physical condition of the respective properties, such state of facts as an accurate survey, environmental report and inspection would show, the present and future zoning ordinance, ordinances, resolutions. Except as expressly set forth in this Agreement or in any document delivered by the Town to CHV or by CHV to the Town as part of the Closing, a party [being the Town or CHV as necessary] shall not be entitled to and shall not rely upon, a party's officers, directors, shareholders, members, employees, representatives or agents, or its or their affiliates, with regard to, and a party has not made and will not make any representation or warranty with respect to: (i) the quality, nature, adequacy, or physical condition of the respective properties including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities, or the electrical, mechanical, HVAC, plumbing, sewage or utility systems (including, without limitation, cable, phone and other similar utilities), facilities, or appliances at the respective properties, if any; (ii) the quality, nature, adequacy, or physical condition of soils or the existence of ground water at the respective properties; (iii) the existence, quality, nature, adequacy, or physical condition of any utilities serving the respective properties (including, without limitation, cable, phone, and other similar utility services); (iv) the development potential of the respective properties, their habitability, merchantability, or the

fitness, suitability, or adequacy of the respective properties for any particular purpose; (v) the zoning or other legal status of the respective properties; (vi) the respective properties or their operations' compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions, or restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vii) the quality of any labor or materials relating in any way to the respective properties; or (viii) the condition of title to the respective properties or the nature, status, and extent of any right-of-way, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction, or any other matter whatsoever relating to or affecting the respective properties or the maintenance, use, operation or condition thereof or any other matter related thereto, except as expressly set forth in this Agreement. **However, the provisions and waivers contained in this section shall not apply with respect to the Town enforcement of its governmental regulatory powers.**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, EACH PARTY [BEING THE TOWN AND/OR CHV] HAS NOT, DOES NOT, AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE PROPERTIES (OR THE MAINTENANCE, USE, OPERATION, OR CONDITION THEREOF OR ANY OTHER MATTER RELATED THERETO) AND EACH PARTY SPECIFICALLY DISCLAIMS TO THE OTHER PARTY ANY OTHER WARRANTIES (INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OR WARRANTIES ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR USE). FURTHERMORE, EACH PARTY HAS NOT, DOES NOT, AND WILL NOT MAKE ANY REPRESENTATION OR WARRANTY TO THE OTHER PARTY WITH REGARD TO COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS INCLUDING, BUT NOT LIMITED TO, THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS MATERIALS OR SUBSTANCES INCLUDING, WITHOUT LIMITATION, ASBESTOS, PCB AND RADON. EACH PARTY ACKNOWLEDGES TO THE OTHER PARTY THAT IT IS A SOPHISTICATED ACTOR FAMILIAR WITH THESE TYPES OF PROPERTIES AND THAT, SUBJECT ONLY TO THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT AND THE DEED, EACH PARTY WILL BE ACQUIRING THE RESPECTIVE PROPERTY "AS IS AND WHERE IS, WITH ALL FAULTS," IN ITS PRESENT STATE AND CONDITION, SUBJECT TO NORMAL WEAR AND TEAR AND THE OTHER PROVISIONS OF THIS AGREEMENT, AND EACH PARTY SHALL ASSUME THE RISK THAT ADVERSE MATTERS AND CONDITIONS MAY NOT HAVE BEEN REVEALED BY A PARTY'S INSPECTIONS AND INVESTIGATIONS. EACH PARTY ALSO ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE RESPECTIVE PROPERTIES BY THE OTHER PARTY, OR ANY OFFICER, DIRECTOR, SHAREHOLDER, MEMBER, EMPLOYEE, REPRESENTATIVE OR AGENT OF THE OTHER PARTY, OR ITS OR THEIR AFFILIATES, OR ANY THIRD PARTY. THE TERMS AND CONDITIONS OF THIS SECTION SHALL SURVIVE THE CLOSING, AND NOT MERGE WITH THE PROVISIONS OF THE DEED OR ANY OTHER CLOSING DOCUMENTS. A PARTY SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN

STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE RESPECTIVE PROPERTIES FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON OF THE OTHER PARTY, UNLESS THE SAME ARE SPECIFICALLY SET FORTH IN THIS AGREEMENT.

Except as expressly set forth in this Agreement to the contrary and except for any claims arising under the express representations, warranties, or covenants of a party under this Agreement or under the indemnity provisions of any document delivered in connection with the closing of the transactions contemplated by this Agreement and except for claims brought by third parties or that arise as a result of the gross negligence or willful misconduct or omissions of a party, each party, for itself and its affiliates, and its and their employees, hereby releases and forever discharges the other party, its affiliates and each of their respective officers, directors, shareholders, members, employees, representatives and agents or their affiliates, and all of their respective successors and assigns from and against any and all claims at law or equity that the other party or any party related to or affiliated with the other party and their respective successors and assigns whether known or unknown at the time of this Agreement. **However, the provisions, waivers and indemnifications contained in this section shall not apply with respect to the Town enforcement of its governmental regulatory powers.**

(b) Diligence. Subject to the provisions herein, upon reasonable advance notice and express consent, not to be unreasonably withheld, conditioned or delayed, each party shall have the authority through the date of Closing to enter the property of the other which is being exchanged for conducting such surveys or due diligence testing as deemed necessary by the accessing party. The accessing party shall promptly repair any damage to the accessed property caused by such access and testing and shall indemnify, defend and hold the other party harmless from all losses arising out of the acts or omissions of accessing party, its employees, agents, contractors or representatives.

Section 4. Closing.

(a) Closing Date. The closing (“**Closing**”) of the Parcel Exchange, including the Easements, shall occur on a date (“**Closing Date**”) and at a place agreeable to the parties within sixty (60) days following delivery of notice from CHV to the Town (“**Closing Notice**”) that CHV is prepared to commence the construction of the Hotel and has obtained the Hotel site improvement permit. If the parties cannot agree on a date or location for the Closing, then it shall occur on the first business day following the 60th day after the Closing Notice at the local office of the Title Company. The Closing Date shall be extended if and as reasonably required to enable either party to cause a third party on which it is relying to comply with the terms of this Agreement. At Closing, the following shall occur:

(b) Payment of Net Cash. At Closing, CHV will pay the Town the Net Cash, with such payment being made through a customary escrow with the Title Company.

(c) Closing Documents. Each party shall deliver to the other party the items set forth below, to the reasonable satisfaction of each party’s counsel:

1) A Special Warranty Deed (“**Deed**”) fully and duly executed and acknowledged by the party, that conveys to the other party marketable fee simple title to the said parcel(s) as provided in Section 1 above. Each party agrees to pay at Closing the cost of the excise tax if any due and payable in connection with recording the Deed from it to the other party and to pay at Closing the cost of recording the Deed to it from the other party.

2) The Easements fully and duly executed and acknowledged by the party that conveys the same to the other party as provide in Section 2 above. CHV agrees to pay at Closing the cost of the excise tax if any due and payable in connection with recording the Easement and to pay at Closing the cost of recording the Easement.

3) Each party shall provide the other and the Title Company with all documents reasonably required by a party or the Title Company to complete the transactions contemplated in this Agreement, including but not limited to a FIRPTA Certificate certifying it is not a "foreign person" as defined under Section 1445 of the Internal Revenue Code; an affidavit certifying that there are no unpaid debts for work performed on, or materials provided to, that party's property as of the Closing Date; an affidavit or the like that there are no tenants in possession under unrecorded leases; and all other necessary or reasonable required and appropriate documents in order to perfect the conveyances or transactions contemplated by this Agreement.

(d) Closing Costs and Prorations.

1) Title Insurance. Each party shall pay for the cost of the title insurance policy (if any) obtained by it for the property to be conveyed to it.

2) Taxes and Assessments. Real estate taxes and assessments shall be allocated and prorated respecting the parcels to be exchanged as of the Closing Date.

3) Liens and Encumbrances. All deeds of trust, liens, judgments and other such charges against the conveying party's property must be paid and satisfied by the conveying party as of the Closing Date such that cancellation may be obtained by the Title Company promptly following Closing. Alternatively, the conveying party may obtain a release of the property it is exchanging from the beneficiary of such deed of trust, lien, judgments or other such charges, in which event the conveying party shall remain obligated to obtain any such cancellations following Closing. If the conveying party of any parcel has failed to remove any such lien or encumbrance by the Closing Date, then the party acquiring the same may pay the costs to remove the lien or encumbrance, in which event the conveying party shall promptly indemnify the other party for the related costs it has reasonably incurred.

4) All revenue, receivables, expenses and payable generated by any of the parcels being conveyed shall be prorated as of the Closing.

5) Transaction Fees. Both parties shall pay its own costs and expenses incurred in connection with this Agreement, including its respective attorneys' fees and any

other expenses specifically allocated hereunder, except that the party prevailing in any litigation commenced to enforce its rights under this Agreement shall be reimbursed for its reasonable costs and reasonable legal fees by the other party.

6) Other costs shall be allocated as is traditional for commercial transactions in Orange County, NC.

Section 5. Title.

(a) At Closing, each party shall deliver to the other the Deed, subject to Acceptable Encumbrances (as defined below), conveying to the other, an indefeasible, fee simple, marketable title to the Property, insurable at regular rates by Chicago Title Insurance Company, Investors Title Insurance Company, or other reputable title insurance company specified by CHV ("**Title Company**").

(b) Each party conveying a parcel or real estate interest pursuant to this Agreement shall take all such reasonable action required to enable the party to which it is making the conveyance to obtain a commitment for a policy of title insurance insuring title to the property it will receive at standard rates from the Title Company, subject only to the following (collectively, the "**Acceptable Encumbrances**"):

- 1) real property taxes relating to the period following the Closing;
- 2) public utility easements of record;
- 3) title defects that would not impair marketable title to the same or adversely affect the use of the property interest being conveyed; and
- 4) any other exceptions that are specifically approved in writing by the party to acquire the property interest.

(c) Each party shall have until thirty (30) days prior to the Closing Date within which to cause the title to parcel or property right it will acquire to be examined and to notify the other party in writing of any objections thereto that would render title to the subject property other than good, marketable and insurable as required in this Agreement. If a party so notifies the other party and the other party does not cure the title defect within ten (10) days of delivery of the Notice, then notifying party shall have the right to terminate this Agreement by written Notice to the other party or waive the title defect and proceed to Closing.

(d) Each party shall have until thirty (30) days prior to the Closing Date within which to undertake its Diligence [as described in Section 3(b)] of the parcel it will acquire to be examined and to notify the other party in writing of any objections thereto that would render the subject property of unsuitable condition as required in this Agreement. If a party so notifies the other party that the subject property is unsuitable and the other party does not cure the condition defect within ten (10) days of delivery of the Notice, then notifying party shall have the right to terminate this Agreement by written Notice to the other party or waive the condition defect and proceed to Closing.

(e) From the date of this Agreement through the Closing, neither party shall, without the written consent of the other party, enter into any new lease, license, easement or other encumbrance, or modify (except to cause the same to be terminated or released as required to deliver marketable title hereunder) an existing lease, license, easement or other encumbrance, in any case beyond a month-to-month term, respecting any property that is subject to this Agreement.

(f) The parties shall reasonably cooperate to facilitate all approvals required for the Hotel project and Park Improvements.

(g) The Town shall terminate, and document and record the termination of, the Contract for Easement/Encroachment entered with Joseph Polcaro as Lessor and dated June 26, 2017, for purposes of an access easement for the Town's Lot 4 parking lot over and across the property formerly owned by Joseph Polcaro located on Rosemary Street, Chapel Hill, North Carolina as described in said contract. Said termination shall be effective at or before the Closing as defined in this Agreement.

Section 6. Notices.

Any notice required under this Agreement shall be in writing and shall be delivered in person, by certified mail, return receipt requested, U.S. Postal Service Express Mail or nationally recognized overnight delivery service. Notices delivered in person shall be deemed delivered on the date of such delivery. Notices sent by any of the other foregoing methods shall be deemed delivered the day after deposited with the U.S. Postal Service or courier service, provided the envelope is properly addressed. Notices may alternatively be delivered by email, with delivery effective on the date of a reply email confirming receipt of the Notice by the recipient designated below.

Notices shall be addressed as follows:

If to Town:

Town of Chapel Hill
Attn: _____
405 Martin Luther King Jr., Boulevard
Chapel Hill, NC 27514
Email: _____

With a copy (which shall not constitute notice) to:

Town of Chapel Hill
Attn: _____
405 Martin Luther King Jr., Boulevard
Chapel Hill, NC 27514
Email: _____

With a copy (which shall not constitute notice) to:

Eric W. Hinson, Esq.
1709 Legion Road, Suite 229
Chapel Hill, NC 27517
Email: eric@erichinsonlaw.com

If to CHV:

Chapel Hill Ventures, LLC
Ed Small
20600 Chagrin Boulevard, Suite 705
Shaker Heights, OH 44122
Email: esmall@smarthotelsgroup.com

With a copy (which shall not constitute notice) to:

Will Anderson
Kennon Craver, PLLC
4011 University Dr., Ste. 300
Durham, NC 27707
Email: wanderson@kennoncraver.com

Either party may, at any time, and from time to time, designate in writing a substitute address by giving notice to the other party.

Section 7. Other Terms or Conditions.

(a) Documents. The documents for completing the Parcel Exchange, including the Easements, shall be reasonably satisfactory to the Town and CHV consistent with the intent expressed in this Agreement and meeting the requirements for filing documents in the public records of Orange County, NC. CHV shall cause the initial drafts of said documents to be prepared and submitted to the Town for its review and comment, with the Town Manager having the authority to approve final forms of these documents. The parties shall exercise commercially reasonable efforts to finalize and approve the form and content of all deeds, easements and any other agreements contemplated by this Agreement within thirty days of the date hereof.

(b) Condemnation or Damage. If, prior to Closing, a subject parcel or any part thereof shall be condemned, or destroyed or materially damaged by fire or other casualty, the party shall immediately so notify the other party and the other party shall have the option either to terminate this Agreement or to consummate the transaction contemplated by this Agreement notwithstanding such condemnation, destruction or material damage. If the other party elects to consummate the transaction contemplated by this Agreement, said other party shall be entitled to receive the condemnation proceeds or settle the loss under all policies of insurance applicable to the destruction or damage and receive the proceeds of insurance applicable thereto, and the first party

shall, at Closing and thereafter as necessary, execute and deliver to the other party all required proofs of loss, assignments of claims and other similar items. If the other party elects to take an assignment of all insurance claims as aforesaid, the other party shall receive at Closing a credit [or debit] in an amount equal to any deductibles applicable thereto.

(c) Termination. If a party properly elects to terminate this Agreement, this Agreement shall, without further action of the parties, become null and void and neither party shall have any rights or obligations under this Agreement except for those matters that specifically survive the termination.

(d) Further Assurances. Each of the parties hereto agrees to perform, execute, acknowledge and deliver and cause to be performed, executed, acknowledged and delivered all such further acts, assignments, transfers and assurances as shall reasonably be requested of it in order to carry out this Agreement, to cooperate with each other in effecting the terms of this Agreement, and to take such action and execute such documents as are reasonably necessary to enable the other party to acquire and use the property and rights specified for it under this Agreement for the use intended by the acquiring party.

(e) Commission/Agency. Neither party is represented in this transaction by a broker or agent to whom a commission or similar fee is payable. Each party whose actions give rise to an obligation for any such commission or fee agrees to indemnify the other non-retaining party from liability for any such commission or fee.

(f) Entire Agreement. This Agreement is the entire agreement between CHV and the Town concerning the properties and no modification hereof is effective unless it be in writing and signed by the parties. For purposes of this Agreement, facsimile, electronic [.PDF] or emailed signatures shall be deemed the same as an original. This Agreement may be executed in any number of counterparts which together shall constitute the agreement of the parties. This Agreement shall be binding upon the parties hereto, as well as their successors, heirs, executors and assigns.

(g) Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties' successors, assigns and designees; provided that, during the term of this Agreement and except to facilitate the Parcel Exchange and the development of the Hotel, neither party shall assign any interest in the properties referenced herein as being part of the Parcel Exchange to any party other than the Town, CHV or their respective designees.

(h) Town Regulatory Authority. Notwithstanding any provision of this Agreement, nothing shall impair the Town's enforcement of its governmental regulatory powers with respect to the Hotel and/or Park Improvements.

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SIGNATURE PAGES AND EXHIBITS FOLLOW

EXECUTED the date and year noted beside the respective signatures.

Chapel Hill Ventures, LLC,
a Florida limited liability company

By: _____

Name: _____

Title: _____

State of _____

County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____, personally appeared before me this day in his capacity as _____ of Chapel Hill Ventures, LLC, a Florida limited liability company, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this _____ day of _____, 2023.

My Commission Expires: _____

Notary Public
Notary's Printed or Typed Name

(Affix Seal)

TOWN OF CHAPEL HILL,
a North Carolina municipal corporation

(DEPUTY) TOWN MANAGER

ATTEST BY TOWN CLERK:

(Affix Town Seal)

(ACTING) TOWN CLERK

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

Approved as to Form and Authorization

TOWN LEGAL STAFF

DATE

TOWN LEGAL STAFF

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

FINANCE OFFICER

DATE

State of North Carolina

County of Orange

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that _____, personally appeared before me this day and acknowledged that (s)he is (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 (him)/(her) as its (Acting) Town Clerk. Witness my hand and Notarial stamp or seal, this ____ day of _____, 2023.

My Commission Expires: _____

Notary Public
Notary's Printed or Typed Name

(Affix Seal)

[illegible]

Exhibit B

TOWN CONVEYANCE PARCEL

Chapel Hill Township, Orange County, North Carolina.

Being all and the same as that certain property described in Deed Book 264, Page 1308 of Orange County, NC Registry and being more particularly described as follows:

COMMENCING at a Chiseled "X" at the intersection of the northern right of way of West Rosemary Street (a public 38' R/W), and the western right of way of North Columbia Street (a public 100' R/W), this property being the southeast corner of the Historic Town Hall parcel; thence along the northern R/W of West Rosemary Street the following two (2) calls: South 64°49'32" West a distance of 59.41 feet to a point; thence South 64°36'23" West a distance of 54.50 feet to a point on the southwest corner of Town of Chapel Hill [TOCH] (PIN# 9788-37-0577 / Deed Book 238, page 1467), and being the point of BEGINNING; thence continuing with the R/W of West Rosemary Street South 65°02'27" West a distance of 52.55 feet to a point on the southeast corner of KW RC Properties, LLC [KW1] (PIN# 9788-37-0680 / Deed Book 669, page 2170 / Plat Book 118, page 160); thence with the line of KW1 North 24°44'55" West a total distance of 145.00 feet, passing an existing iron pipe at 10.00 feet, to an existing iron pipe at the southeast corner of KW RC Properties, LLC [KW2] (PIN# 9788-27-9667 / Deed Book 6691, page 2170 / Plat Book 118, page 160); thence with the line of KW2 North 24°44'55" West a distance of 5.00 feet to a point at the southwest corner of KW RC Properties, LLC [KW3] (PIN# 9788-37-0647 / Deed Book 6691, page 2170); thence with the line of KW3 North 64°49'05" East a distance of 52.00 feet to an existing iron pipe at the northwest corner of TOCH; thence with the line of TOCH South 24°57'37" East a total distance of 150.20 feet, passing an existing iron pipe at 140.20 feet, to the point of BEGINNING, containing an area of 7,847 square feet, or 0.18 acres, more or less.

Exhibit C

PRITCHARD PARCEL

Lot 2

Chapel Hill Township, Orange County, North Carolina.

Being all that certain land more particularly described as follows:

BEGINNING at a set iron pipe at the southwestern corner of Cider 7 LLC [C7] (PIN# 9788-27-8626 / Deed Book 6176, Page 587) on the eastern right of way of Pritchard Avenue (a public 50' R/W); thence along the line of C7 North 64°49'05" East a distance of 104.63 feet to a set iron pipe at the corner of Lot 1; thence along the line of Lot 1 South 25°00'00" East a distance of 84.79 feet to an existing iron pipe on the northeastern corner of Investors Title Company [ITC] (PIN# 9788-37-0507 / Deed Book 6478, Page 510); thence along the line of ITC South 64°49'05" West a distance of 50.00 feet to an existing iron pipe on the northeastern corner of Rosemary Pritchard LLC [RP] (PIN# 9788-27-9538 / Deed Book 6690, Page 1228 / Plat Book 121, Page 101); thence along the line of RP South 64°49'05" West a distance of 55.00 feet to an existing iron pipe at the eastern R/W of Pritchard Avenue; thence along the R/W of Pritchard Avenue North 24°44'55" West a distance of 84.79 feet to the point of BEGINNING, containing an area of 8,887 square feet, or 0.20 acres, more or less.

Exhibit D

HOTEL SITE

Lot 1

Chapel Hill Township, Orange County, North Carolina.

Being all that certain land more particularly described as follows:

BEGINNING at an existing 1/2" iron pipe at the southeastern corner of Cider 1 LLC [C1] (PIN# 9788-37-0707 / Deed Book 5778, Page 371) on the western Right of Way of North Columbia Street (a public 100' R/W) having NCSPCS Coordinates of Northing: 787,856.22' Easting: 1,983,166.31', thence along the R/W of North Columbia Street South 24°23'34" East a distance of 111.35 feet to an existing iron pipe at the northeastern corner of Town of Chapel Hill [TOCH1] (PIN# 9788-37-1539 / Deed Book 1009, Page 14); thence along the line of TOCH1 South 64°49'05" West a distance of 60.00 feet to an existing iron pipe at the northeastern corner of Town of Chapel Hill [TOCH2] (PIN# 9788-37-0577 / Deed Book 238, Page 1467); thence along the line of TOCH2 the following two (2) calls: South 64°49'05" West a distance of 54.50 feet to an existing iron pipe;

thence South 24°57'37" East a distance of 150.20 feet to a point on the northern R/W of West Rosemary Street (a public 38' R/W), passing an existing iron pipe at 140.20 feet; thence along the R/W of West Rosemary Street the following two (2) calls: South 65°02'27" West a distance of 52.55 feet to a point; thence South 64°49'05" West a distance of 75.00 feet to a point at the southeastern corner of Investors Title Company [ITC] (PIN# 9788-37-0507 / Deed Book 6478, Page 510); thence along the line of ITC North 24°44'55" West a distance of 145.00 feet to an existing iron pipe on the southeast corner of Lot 2, passing a set iron pipe at 10.00 feet; thence along the line of Lot 2 North 25°00'00" West a distance of 84.79 feet to a set iron pipe at the line of Cider 7 LLC [C7] (PIN# 9788-27-8626 / Deed Book 6176, Page 587); thence along the line of C7 the following two (2) calls: North 64°49'05" East a distance of 8.57 feet to an existing iron pipe; thence North 10°28'53" West a distance of 82.64 feet to an existing iron pipe on the line of CKB Properties LLC [CKB] (PIN# 9788-27-8723 / Deed Book 4781, Page 8); thence along the line of CKB North 64°44'22" East a distance of 46.44 feet to a set iron pipe at the line of C1; thence along the line of C1 the following two (2) calls: South 24°44'55" East a distance of 49.52 feet to a set iron pipe; thence North 64°27'13" East a distance of 167.20 feet to the point of BEGINNING, containing an area of 48,111 square feet, or 1.10 acres, more or less.

Exhibit E

PARK IMPROVEMENT AREA (Temporary Construction Easement #1)

Chapel Hill Township, Orange County, North Carolina.

Being a portion of the land owned by Town of Chapel Hill [TOCH1] (PIN# 9788-37-1539 / Deed Book 1009, Page 14), and all of the land owned by Town of Chapel Hill [TOCH2] (PIN# 9788-37-0577 / Deed Book 238, Page 1467); that certain land more particularly described as follows:

COMMENCING from an existing 1/2" iron pipe at the northeastern corner of Lot 1 on the western Right of Way of North Columbia Street (a public 100' R/W) having NCSPCS Coordinates of Northing: 787,856.22' Easting: 1,983,166.31', thence along the R/W of North Columbia Street South 24°23'34" East a distance of 111.35 feet to an existing iron pipe at the northeastern corner of TOCH1, the point of BEGINNING; thence continuing along the R/W of North Columbia Street South 24°44'09" East a distance of 69.73 feet to a point; thence along a new line the following eight (8) calls: South 64°41'15" West a distance of 23.68 feet to a point; thence North 25°18'45" West a distance of 8.07 feet to a point; thence South 64°41'15" West a distance of 17.34 feet to a point; thence South 25°18'45" East a distance of 7.97 feet to a point; thence South 64°41'15" West a distance of 9.67 feet to a point; thence South 25°18'45" East a distance of 25.10 feet to a point; thence South 64°41'15" West a distance of 1.00 feet to a point; thence South 25°18'45" East a distance of 55.15 feet to a point at the northern R/W of West Rosemary Street; thence along the R/W of West Rosemary Street the following two (2) calls: South 64°49'32" West a distance of 8.53 feet to a point; thence South 64°36'23" West a distance of 54.50 feet to a point at the southeastern corner of Lot 1; thence along the line of Lot 1 the following three (3) calls: North 24°57'37" West a distance of 150.20 feet to an existing iron pipe, passing an existing iron pipe at 10.00 feet; thence North 64°49'05" East a distance of 54.50 feet to an existing iron pipe; thence North 64°49'05" East a distance of 60.00 feet to the point of BEGINNING, containing an area of 12,906 square feet, or 0.30 acres, more or less.

Exhibit F

PARK PARCEL

Chapel Hill Township, Orange County, North Carolina.

Being all that certain land comprising the parcel fronting on W. Rosemary Street and described in Deed Book 238, Page 1467 of Orange County, NC Registry, and being identified as PIN # 9788-37-0577.

Exhibit G

OTH PARCEL

Being all that certain land more particularly described as follows:

BEGINNING at a Chiseled "X" at the intersection of the northern right of way of West Rosemary Street (a public 38' R/W), and the western right of way of North Columbia Street (a public 100' R/W); thence along the northern R/W of West Rosemary Street South 64°49'32" West a distance of 59.41 feet to a point at the southeast corner of Town of Chapel Hill [TOCH] (PIN# 9788-37-0577 / Deed Book 238, Page 1467); thence with the line of TOCH North 24°57'37" West a total distance of 150.00 feet, passing an existing iron pipe at 10.00 feet, to an existing iron pipe on the line of KW RC Properties, LLC (PIN# 9788-37-0647 / Deed Book 6691, page 2170); thence with the line of KW RC Properties, LLC North 64°49'05" East a distance of 60.00 feet to an existing iron pipe on the western R/W of North Columbia Street; thence with the R/W of North Columbia Street South 24°44'09" East a distance of 150.01 feet to the point of BEGINNING, containing an area of 8,956 square feet, or 0.21 acres, more or less.

SITE PLAN

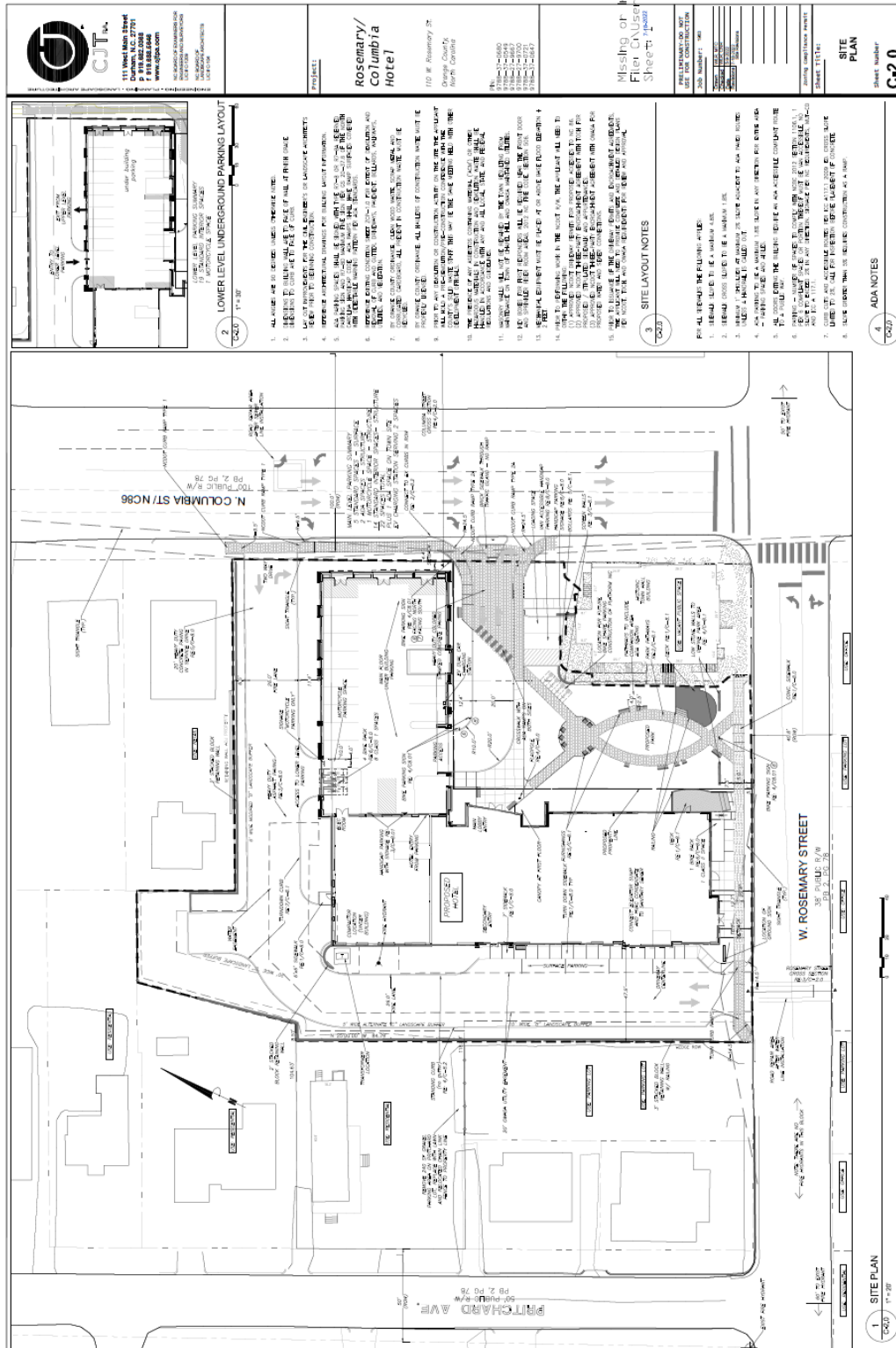


Exhibit I

COLUMBIA EASEMENT AREA

Permanent Access and Utility Easement

Chapel Hill Township, Orange County, North Carolina.

Being a portion of the land owned by Town of Chapel Hill [TOCH1] (PIN# 9788-37-1539 / Deed Book 1009, Page 14), and a portion of the land owned by Town of Chapel Hill [TOCH2] (PIN# 9788-37-0577 / Deed Book 238, Page 1467); that certain land more particularly described as follows:

COMMENCING from an existing 1/2" iron pipe at the northeastern corner of Lot 1 on the western Right of Way of North Columbia Street (a public 100' R/W) having NCSPCS Coordinates of Northing: 787,856.22' Easting: 1,983,166.31', thence along the R/W of North Columbia Street South 24°23'34" East a distance of 111.35 feet to an existing iron pipe at the northeastern corner of TOCH1, the point of BEGINNING; thence continuing along the R/W of North Columbia Street South 24°44'09" East a distance of 35.50 feet to a point; thence along a new line the following two (2) calls: South 64°49'05" West a distance of 59.86 feet to a point on the line of TOCH2; thence South 64°49'05" West a distance of 54.50 feet to a point on the line of Lot 1; thence along the line of Lot 1 the following three (3) calls: North 24°57'37" West a distance of 35.50 feet to an existing iron pipe; thence North 64°49'05" East a distance of 54.50 feet to an existing iron pipe at the corner of TOCH1 and TOCH2; thence North 64°49'05" East a distance of 60.00 feet to the point of BEGINNING, containing an area of 4,062 square feet, or 0.09 acres, more or less.

Exhibit J

PRITCHARD SITE WORK AREA
(Temporary Construction Easement #4)

Chapel Hill Township, Orange County, North Carolina.

Being a portion of Lot 2; that certain land more particularly described as follows:

COMMENCING from a set iron pipe at the southwestern corner of Cider 7 LLC [C7] (PIN# 9788-27-8626 / Deed Book 6176, Page 587) on the eastern right of way of Pritchard Avenue (a public 50' R/W); thence along the line of C7 North 64°49'05" East a distance of 94.63', to the point of BEGINNING; thence continuing along the line of C7 North 64°49'05" East a distance of 10.00 feet to an existing iron pipe at the corner of Lot 1; thence along the line of Lot 1 South 25°00'00" East a distance of 84.79 feet to an existing iron pipe at the northeastern corner of Investors Title Company [ITC] (PIN# 9788-37-0507 / Deed Book 6478, Page 510); thence along the line of ITC South 64°49'05" West a distance of 10.00 feet to an existing iron pipe; thence along a new line North 25°00'00" West a distance of 84.79 feet to the point of BEGINNING, containing an area of 848 square feet, or 0.02 acres, more or less.

Exhibit K

PRITCHARD IMPERVIOUS AREA (Temporary Construction Easement #3)

Chapel Hill Township, Orange County, North Carolina.

Being a portion of Lot 2; that certain land more particularly described as follows:

COMMENCING from a set iron pipe at the southwestern corner of Cider 7 LLC (PIN# 9788-27-8626 / Deed Book 6176, Page 587) on the eastern right of way of Pritchard Avenue (a public 50' R/W); thence along the R/W of Pritchard Avenue South $24^{\circ}44'55''$ East a distance of 84.79 feet to an existing iron pipe on the northwest corner of Rosemary Pritchard LLC (PIN# 9788-27-9538 / Deed Book 6690, page 1228 / Plat Book 121, page 101); thence along the line of Rosemary Pritchard LLC North $64^{\circ}49'05''$ East a distance of 55.00 feet to an existing iron pipe on the northwest corner of Investors Title Company [ITC] (PIN# 9788-37-0507 / Deed Book 6478, Page 510), the point of BEGINNING; thence along a new line the following three (3) calls: North $25^{\circ}10'55''$ West a distance of 10.00 feet to a point; thence North $64^{\circ}49'05''$ East a distance of 40.03 feet to a point; thence North $25^{\circ}00'00''$ West a distance of 74.79 feet to a point on the line of ITC; thence South $64^{\circ}49'05''$ West a distance of 40.00 feet to the point of BEGINNING, containing an area of 400 square feet, or 0.01 acres, more or less.