

IMPROVEMENTS AGREEMENT

between

**THE TOWN OF CHAPEL HILL,
NORTH CAROLINA**

and

GRUBB MANAGEMENT, LLC

IMPROVEMENTS AGREEMENT

THIS IMPROVEMENTS AGREEMENT (this “Agreement”) is made as of the ___ day of _____, 2020, by and between **THE TOWN OF CHAPEL HILL, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the “Town”), and **GRUBB MANAGEMENT, LLC**, a North Carolina limited liability company (“Grubb”).

RECITALS

A. The Town desires to continue the revitalization and economic development of the downtown area of the Town with a new parking deck facility provide public parking the downtown area.

B. Grubb has been asked by the Town to design, develop and build the parking deck on behalf of the Town.

C. The Town and Grubb previously executed a “Economic Development Agreement” (the “EDA”) on _____, 2020 outlining certain responsibilities of each party with respect to pre-construction activities and commitments to work in good faith to negotiate and finalize an Improvements Agreement for the parking deck.

D. Town and Grubb now desire to enter into this Agreement to set forth the terms and conditions of the proposed public development.

DEFINITIONS

For the purposes of this Agreement, and in addition to terms defined elsewhere in this Agreement, the following defined terms shall have the meanings described thereto in this Definitions Section.

“**Affiliate**” shall mean any person or entity that is directly or indirectly controlled by or owned by the named entity. For purposes of this Agreement, the term “control” shall mean the ownership of fifty percent (50%) or more of the stock or other voting interest of the controlled entity.

“**Contract Deadline**” shall mean the date that is _____ (___) days after the Town issues a Notice to Proceed for construction of the Parking Deck. As of the Effective Date of this Agreement, the Notice to Proceed is anticipated to be _____ and the Contract Deadline is anticipated to be _____.

“**Commencement of Construction**” shall mean (i) Grubb, on behalf of the Town, has obtained all required building permits for the Parking Deck, (ii) the Town has executed a contract for construction of the Parking Deck with the Contractor, or another general contractor of similar experience, qualification, reputation, and financial solvency reasonably acceptable to and approved by the Town), and (iii) Grubb has commenced construction of the Parking Deck with the

intent to diligently prosecute the construction to completion in accord with the Development Schedule.

“Construction Documents” shall have the meaning given in Section 1.6.

“Contractor” means Samet Corporation, the contractor experienced, licensed and qualified to manage construction of the Parking Deck, having been selected jointly by the Town and Grubb through a qualification and experience-based selection process. The Contractor may be replaced by mutual consent of the Town and Grubb, or in the event the beginning of construction of the Parking Deck is postponed, either party may replace the Contractor without the consent of the other so long as the replacement Contractor is equally qualified, experienced and financially sound.

“Day” shall be deemed to mean calendar, unless otherwise specifically indicated.

“Design Team” shall mean Perkins & Will, Ballentine Associates, P.A., NV5, Inc. and such others as may be agreed from time to time between Grubb and the Town.

“Development” shall have the meaning given in Section 1.4.

“Development Budget” shall have the meaning given in section 4.2.1

“Development Plans” shall include the final Schematic Design Plans, the final Design Development Plans and the final Construction Documents.

“Development Schedule” shall have the meaning given in Section 1.4.

“Effective Date” shall mean the date set forth on the first page of this Agreement.

“Event of Default” shall mean those events listed in Article VI.

“Parking Deck” shall have the meaning set forth in Article I.

“Parking Deck Agreements” shall have the meaning given in Section 4.2.1.

“Parking Deck Plans” shall have the meaning given in Section 1.1.1.

“Parking Deck Team” shall mean the Design Team, the Contractor, and those other individuals and entities identified on **Exhibit B** hereto, as the same may be modified from time to time pursuant to Section 1.5.

“Prime Rate” shall mean the Wells Fargo Prime Rate, as announced by Wells Fargo Bank from time to time.

“**Property**” means approximately _____ acres of land fronting on Rosemary Street, in downtown Chapel Hill, North Carolina, all as more particularly shown and described on the drawing and related descriptions attached hereto as **Exhibit A**.

“**Property Defects**” shall have the meaning set forth in Section 3.2.

“**Schematic Design**” shall mean design drawings and construction plans approved by the Town Council pursuant to the EDA and attached as **Exhibit ____**.

“**Site Investigations**” shall have the meaning set forth in Section 2.1.3.

“**Substantially Completed**” or “**Substantial Completion**” means when (i) Perkins & Will (the Architect for the Parking Deck) certifies in writing to Town that the construction of the Parking Deck has been completed substantially in accordance with the approved plans and specifications, subject only to punch list items and minor items which can be fully completed without material interference with the use of the Parking Deck (or such portion thereof) and other items which, because of the season, weather, or nature of such items are not practicable to perform at that time, and (ii) appropriate governmental officials issue as to the Parking Deck a Certificate of Occupancy, so that the Parking Deck can be utilized for the use for which it is intended.

“**Town Council**” shall mean the governing council of the Town.

“**Town Delays**” means (i) any delays in completion of construction of the “Parking Deck” resulting from any act or delay of Town, its employees or agents, other than delays resulting from Force Majeure events or acts that Town or its employees or agents are expressly permitted or obligated to perform pursuant to Town’s police power or pursuant to this Agreement, (ii) any delays in completion of construction of the Parking Deck resulting from the failure by Town to perform timely any of its obligations under this Agreement.

“**Town Manager**” shall mean the Chief Executive of the Town and for purposes of this Agreement shall mean the employee bearing that title at any given time during the performance of this Agreement.

“**Town Representative**” shall be the Town’s primary representative and point of contact. This person shall be _____ [insert name and title] and is the employee of Town bearing that title or those responsibilities at any given time during the performance of this Agreement.

“**Town**” shall mean the Town of Chapel Hill, North Carolina, a corporate body politic organized and existing under the laws of the State of North Carolina.

“**Town Clerk's Office**” shall mean the Clerk to the Town Council.

“**Town Consultant**” shall mean Joey D. Rowland, PE, Walker Consultants, 13860 Ballantyne Corporate Pl, Suite 140 | Charlotte, NC 28277.

“**Zoning Requirements**” means the building and zoning laws, rules, regulations and requirements of the Town of Chapel Hill.

AGREEMENT

In consideration of the mutual promises and undertakings of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grubb and the Town agree as follows:

ARTICLE I THE PARKING DECK

1.1 **Parking Deck.** A multi-level parking deck (the “Parking Deck”) containing approximately 1,100 spaces, with a final as-built tolerance of plus or minus 10%, as more particularly shown and described in **Exhibit D** attached hereto. Grubb shall build the Parking Deck substantially in accordance with the Parking Deck Plans, as amended from time to time by the Town, and shall be generally compatible in architecture and appearance with the Parking Deck Plans.

1.2 **The Property.** The Parking Deck shall be located on approximately _____ acres of land located on Rosemary Street in the Town and as more particularly shown and described on **Exhibit A** attached hereto (the “Property”).

1.3 **Assignment of Construction Documents.** As originally contemplated in the EDA, Grubb, with input from the Town, undertook to manage the pre-construction phase design necessary for the Parking Deck including cost estimations, schematic design, design development, and securing all approvals required prior to construction of the Parking Deck. As of the execution date of the EDA, Grubb, working with the Parking Deck Team, procured the conceptual design plans which are attached to this Agreement as part of **Exhibit C**.

1.4 **Development Schedule.** The approved schedule for development of the Parking Deck by Grubb (the “Development”) is attached hereto as **Exhibit E** (the “Development Schedule”). The parties agree to undertake their respective responsibilities pursuant to this Agreement in good faith and with best efforts in accordance with the Development Schedule. Grubb and the Town may, working together in good faith, mutually agree to alter or amend the Development Schedule.

1.5 **Equity and Financing.** Prior to Grubb’s Commencement of Construction of the Parking Deck, the Town shall make available for Grubb’s examination and confirmation sufficient evidence as may be reasonably requested by Grubb, to show the Town has obtained or has binding commitments for all the necessary funds to complete payment for the construction of the Parking Deck in accordance with Grubb’s development budget for the Parking Deck. Grubb’s confirmation shall not be unreasonably withheld, conditioned, or delayed.

ARTICLE II
PRELIMINARY TOWN RESPONSIBILITIES

2.1 Town Responsibilities. The Town shall undertake the following preliminary responsibilities in connection with the Parking Deck:

2.1.1 Parcel Acquisition. Pursuant to the terms of the EDA, the Town shall obtain title to any and all real property within the boundaries of the Property, as shown in **Exhibit A** attached hereto, on or before the date set out in the EDA. Grubb and the Town recognize that all such Property is necessary for successful development and construction of the Parking Deck.

2.1.2 Easements. The Town shall obtain, at its sole cost and expense any and all easements it deems necessary for the construction and future operation of the Parking Deck, including, without limitation, easements for ingress and egress and utilities.

2.1.3 Site Investigation. The Town and Grubb shall each undertake their own site investigation of the Property pursuant to the terms of the EDA.

2.1.4 Condition of the Property. Subject to Force Majeure, by _____, Grubb shall have substantially completed demolition and preliminary site preparation work for the Parking Deck as depicted, specified and described in documents entitled “_____” by _____, a copy of which has been provided to the Town. The Town agrees to consult with Grubb regarding the extent to which the above mentioned site preparation work needs to be altered to meet the requirements of the Parking Deck. The Town and Grubb agree to negotiate the responsibility of such alterations in good faith. As part of the construction of the Parking Deck, the Town shall be responsible for all costs relating to alterations reasonably required to cause the Property to be graded to within plus or minus 0.2 feet of subgrade of proposed ground floor level concrete slab elevation; all backfill shall be structural and placed in compacted lifts for the bearing capacity stipulated by the Design Team. The Town shall also be responsible for the costs for street, landscaping and streetscape improvements in the right-of-way of adjacent public streets. All such work shall be performed by Grubb in accordance with the Development Schedule as same may be extended by the terms of this Agreement, in a good and workmanlike manner and in accordance with all applicable laws.

2.1.5 Town Consultant. The Town hereby designates the Town Consultant to receive any and all submissions and to grant any and all approvals with respect to the Parking Deck, consistent with authority granted by the Town Commissioners and Town Manager. The Town reserves the right to change or terminate such designee and to appoint another Town Consultant. Such modification or termination and appointment shall not become effective against Grubb until the Town provides Grubb with a notice of such action.

ARTICLE III GRUBB'S RESPONSIBILITIES

3.1 Investigations of Property. Pursuant to the EDA, Grubb and the Town (or the Town Consultant) shall coordinate on all investigations, examinations, studies or inquires with respect to the Property and to review the Site Investigations and give notice to the Town, of any tenancies, liens, encumbrances, conditions, deficiencies, restrictions or other defects (the "Property Defects") affecting the Property that are not reasonably acceptable to the development of the Parking Deck. If the Town cannot eliminate all Property Defects, Grubb may attempt, but shall not be obligated, to eliminate such Property Defects at the Town's expense. The Town shall cooperate fully with Grubb in such attempts. If the acquisition of the Property by the Town does not occur pursuant to the terms of the EDA, then either party may terminate this Agreement upon thirty (30) days written notice.

3.2 Right of Entry. From and after the Effective Date, Grubb shall have the right, for itself and its employees, contractors, architects, consultants and specialists, to enter upon the Property at reasonable hours and in a manner that does not disturb existing occupants for the purpose of conducting such studies and gathering such data as Grubb may deem desirable.

3.3 Construction of the Parking Deck. Grubb shall cause the design and construction of the Parking Deck to occur and be Substantially Completed in accordance with the Development Plans approved by the Town.

3.3.1 Pre-Development/Design Phases. Prior to the Commencement of Construction of the Parking Deck, Grubb shall have provided the Town for its review the final building design elevations, roof plans, and related specifications for the Parking Deck. Grubb may not make any material changes or modifications to the Schematic Design Plans attached hereto as **Exhibit C** without Town approval, with any changes or modifications to the exterior of the Parking Deck as to size, appearance, colors, materials, and features being considered a material change or modification.

3.3.2 Construction Phase. Grubb will cause Commencement of Construction of the Parking Deck to occur on or prior to the Contract Deadline, and will Substantially Complete the construction on or before the date for Substantial Completion as set forth in the Development Schedule, subject to Force Majeure or Town Delays. **Notwithstanding anything to the contrary in this Agreement, if Commencement of Construction of the Parking Deck has not occurred on or prior to the Contract Deadline, the Town may, in its sole and absolute discretion, (i) negotiate and grant an extension to Grubb on such terms as the Town deems acceptable, or (ii) by written notice to Grubb, terminate this Agreement, with such termination to be effective immediately (Grubb shall not be entitled to any extension or cure periods), the Town shall have the option but not the obligation to purchase the Parking Deck Development Plans from Grubb, and except for such provisions of this Agreement that by their clear meaning are meant to survive such early termination, neither party shall have any further obligation to the other.** The Town agrees, however, that it will affirmatively delay its right to terminate this Agreement, as provided in the previous sentence, for sixty (60) days, PROVIDED that Grubb, prior to the Contract Deadline, satisfies the Town it has done the following: (a)

complied with all other provisions of this Agreement to be complied with by Grubb prior to Commencement of Construction of the Parking Deck; (b) received completed construction drawings from the Design Team for the Parking Deck; (c) made substantial progress toward obtaining a final contract from the Contractor; and (d) submitted to the Town for permits. During the construction period the Town shall, and shall cause the Design Team, its other architects, engineers, quality control and testing consultants, Contractor, contractors and subcontractors to cooperate fully with Grubb to coordinate the construction of the Parking Deck with Grubb's construction of the Parking Deck. During construction Grubb agrees to the following conditions and instructions:

(a) To construct or cause to be constructed the Parking Deck in accordance with the Parking Deck Plans approved by the Town and all applicable building codes and regulations;

(b) Subject to reimbursement by the Town, to be fully responsible for causing the Parking Deck to be constructed;

(c) To apply on behalf of the Town for the balance of the building permits, utility permits, utility easements and certificates of occupancy as well as all licenses and permits required for the construction of the Parking Deck.

(d) To ensure that the Parking Deck shall be constructed in full compliance with all applicable federal, state and local laws, rules and regulations and that all construction shall be of good quality and shall be made in a workmanlike manner consistent with industry standards. Grubb agrees to supervise and direct the construction of the Parking Deck using its best skill and attention. During the construction period, Grubb shall, and shall cause the Design Team, its other architects, engineers, quality control and testing consultants, Contractor, contractors and subcontractors to cooperate fully with the Town to coordinate the construction of the Parking Deck.

(e) To cause the Property to be kept clean and in good order, reasonably free of trash and construction debris.

(f) At the Town's cost and expense, to promptly discharge (either by payment or by filing of the necessary bond, or otherwise) any mechanics', materialmen's or other lien against the Property (whether or not such lien is valid or enforceable as such) that may arise out of any payment due for, or purported to be due for, any construction and development work or any other labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the Parking Deck.

(g) To include and enforce a liquidated damages provision in its Construction Contract for the Parking Deck in the event the Parking Deck is not completed in accordance with the Development Schedule (as may be extended pursuant to this Agreement) for any reason other than Force Majeure or Town Delays.

~~3.4 — Parking Arrangements. Upon Substantial Completion of the Parking Deck, Grubb shall have the right to lease from the Town up to _____ non-designated parking spaces within the Parking Deck (the “Reserved Parking Spaces”) from the Town at a monthly per parking space lease fee equal to the then current monthly rate the Town charges non-Town employees (the “Reserved Parking Space Lease Fee”). Grubb shall have the right to assign the right to lease the Reserved Parking Spaces to tenants of Grubb’s affiliates. Within 30 days after Substantial Completion of the Parking Deck, and thereafter at least fifteen (15) days prior to the beginning of each calendar month, Grubb (or its authorized assignees) shall notify the Town as to the number of spaces it wishes to lease for the following month. The Town agrees that any Reserved Parking Spaces not leased by Grubb (or its authorized assignees) for a particular month shall remain available for Grubb (or its authorized assignees) to lease in following months, all subject to the terms and conditions of this Agreement. All Reserved Parking Space Lease Fees shall be payable to the Town or its designated agent in accordance with the Town’s then current policy for charging monthly parking fees in the Parking Deck.~~

ARTICLE IV

GRUBB’S SERVICES – PLANNING, PERMITTING, DESIGN AND CONSTRUCTION SERVICES FOR PARKING DECK

4.1 Employment of Grubb. Commencing upon execution of the EDA and continuing through the date of this Agreement, Grubb has managed all pre-development planning, design, permitting and cost estimating for the Parking Deck (along with the further clarification of such services in Section 4.2.1, the “Predevelopment Services”) on behalf of the Town in accordance with the terms and conditions of the EDA. The parties acknowledge that Grubb and the Town have thus far complied with the terms and conditions of the EDA with respect to the Predevelopment Services. In return for the continuing Predevelopment Services, the Town agrees to reimburse Grubb the sum of \$_____ in accordance with the EDA and the Pre-Development Services Budget attached hereto as **Exhibit F** (the “Pre-Development Reimbursement”). In performing its duties hereunder, Grubb has been and shall continue to be an independent contractor and nothing contained in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between Grubb and the Town.

4.2 Grubb’s Services. The Predevelopment Services that Grubb shall perform or continue to perform or cause to be performed in accordance with Section 4.1 shall include the following in connection with the Parking Deck:

4.2.1 Predevelopment/Design Phases. During the pre-development and design phases, Grubb shall work with the Town to coordinate pre-development, permitting and design activities and shall provide the following services:

(a) Preparing a final Development Budget for the Parking Deck for the Town’s review and approval. The preliminary Development Budget approved by the Town and Grubb is attached hereto as **Exhibit G**. Upon approval by the Town, the final Development Budget shall become the Development Budget, subject to adjustment as hereinafter provided.

(b) Delivering to the Town a predevelopment and development project schedule that includes a detailed construction schedule and an estimated substantial completion date, and periodically update the same, for the Parking Deck. This schedule shall contain all key project activities and tasks and be produced using [*Primavera SureTrak or P-3*] software which clearly identifies the critical path activities. The preliminary project schedule currently approved by the Town and Grubb is attached hereto as **Exhibit E**.

(c) Negotiating, drafting terms and conditions for review, finalizing and, if applicable, executing (for approval and, if applicable, execution by the Town) proposed contracts for the design and pre-construction phase Contractor services for the Parking Deck (the “Parking Deck Agreements”) with the Parking Deck Team, all of which shall be subject to approval by, and be in the name of the Town.

(d) Coordinating with the Design Team on the production and evaluation of alternative conceptual and schematic design solutions for the Parking Deck, if necessary.

(e) Obtaining approval from the Town for changes in the Parking Deck Plans and Development Budget for the Parking Deck that result from a change in the Parking Deck design, condition or size of the Property or are reasonably requested by the Town.

(f) Obtaining cost estimates from specialists, consultants and the Contractor and preparation of various revisions to the Development Budget for the Parking Deck in light of the design and development of the Parking Deck.

(g) Timely submitting to the Town, for its approval, schematic design, design development, and final construction drawings and specifications for the Parking Deck, including landscaping plans, mechanical and electrical drawings, architectural appearance, interior design schemes and specialized plans with sufficient information and detail to be used to obtain guaranteed maximum pricing from the Contractor (all such documents are deemed to be included in the term “Parking Deck Agreements”). The Town hereby acknowledges approval of all such Parking Deck Agreements formally submitted as of the date of this Agreement.

(h) Applying for, obtaining and complying with such Site Plan conditions, permits, authorizations and approvals from the City as may be required by all applicable Zoning Requirements. Additionally, Grubb shall obtain all necessary permits, authorizations and approvals from the Town to construct the Parking Deck (such permits, approvals and authorizations are deemed to be included in the term “Parking Deck Agreements”). Nothing contained in this Agreement shall be deemed a waiver of any of the Town’s normal permit and approval process, and Grubb recognizes and agrees that all licenses, permits, consents, inspections and approvals which must be obtained for the development of real estate in the downtown district of the Town will likewise be required in conjunction with the Parking Deck and are not waived by virtue of this Agreement, notwithstanding any provision of this Agreement to the contrary. Notwithstanding the foregoing, the Town shall execute as fee simple owner of the Property, as may be required, all building permit applications, plans of development, utility permit applications, utility easements, requests for certificates or completion any occupancy and other

such documents prepared and submitted by Grubb as may be reasonably required for development and construction of the Parking Deck.

(i) Working with the Town Consultant to identify all permanent and temporary easements needed for development of the Parking Deck and assisting the Town Consultant in estimating land rights values, negotiating acquisition of needed land rights for the Parking Deck and securing assignable contracts for certain of those land rights.

4.2.2 Parking Deck Construction. The Town has agreed to employ Grubb to oversee, manage, and coordinate the construction of the Parking Deck. Pursuant to the EDA, the Town has agreed to pay Grubb the amount of four percent (4%) of the hard and soft costs for overall construction of the Parking Deck. Upon final approval by the Town of the Parking Deck Plans, Grubb shall commence construction of the Parking Deck and shall make all reasonable efforts to Substantially Complete such construction in accordance with the Development Schedule. During the construction period the Town shall, and shall cause the Design Team, its architects, engineers, quality control and testing consultants, Contractor, contractors and subcontractors to cooperate fully with Grubb to coordinate the construction of the Parking Deck to ensure that the Parking Deck shall be constructed in substantial compliance with all applicable federal, state and local laws, rules and regulations and that all construction shall be of good quality and shall be made in a workmanlike manner consistent with industry standards. Grubb agrees to supervise the construction of the Parking Deck using its best skill and attention. In connection therewith, Grubb shall:

(i) Construct or cause to be constructed the Parking Deck in substantial accordance with the Parking Deck Plans and the Site Plans approved by the Town and all applicable building codes and regulations;

(ii) Be responsible for causing the Parking Deck to be constructed;

(iii) Apply for the balance of the building permits, utility permits, utility easements and certificates of occupancy as well as all licenses and permits required for the construction and operation of the Parking Deck, if applicable; and

(iv) Cause the Property to be kept clean and in good order, reasonably free of trash and construction debris.

ARTICLE V OBLIGATIONS OF THE TOWN

5.1 Approvals/Cooperation. Whenever a matter requires the approval of the Town under this Agreement, the Town shall work closely and in good faith with Grubb to achieve the high quality Parking Deck contemplated by this Agreement. The Town, as fee owner of the Property, shall cooperate with Grubb in obtaining any easements necessary for construction of the Parking Deck.

5.2 Notice to Proceed. At such time as the Town has approved the matters set forth in Article II, and Grubb shall have caused all necessary permits for the construction of the Parking Deck to be obtained, the Town shall issue a notice to proceed to Grubb, and upon receipt thereof, Grubb shall commence construction of the Parking Deck.

5.3 Parking Deck Operation. The Town shall operate (or cause the operation of) the Parking Deck as a parking facility for the public (*subject to Grubb's rights to the Reserved Parking Spaces*), and the Town shall make the Reserved Parking Spaces available in accordance with the terms of this Agreement for a period of not less than forty (40) years.

ARTICLE VI EVENTS OF DEFAULT

6.1 Events of Default by Grubb. Each of the following shall constitute an “Event of Default” or “Default” by Grubb:

6.1.1 The failure of Grubb to perform or to observe any material covenant, obligation or requirement of Grubb arising under this Agreement not specifically named as an Event of Default in this Section 6.1, and the continuation of such failure for thirty (30) days after receipt of written notice from the Town specifying the nature and extent of such default, or if such default cannot reasonably be cured within such thirty (30) day period, the failure of Grubb to either (i) commence to cure such default within such thirty (30) day period and to diligently pursue same to completion, or (ii) to cure such default within a reasonable time after the expiration of the first thirty (30) day period, in no event to exceed one hundred twenty (120) days after the written notice of default.

6.1.2 The filing by Grubb of a voluntary proceeding or the consent by Grubb to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

6.1.3 The entering of an order for relief against Grubb or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Grubb in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of sixty (60) consecutive days.

6.1.4 Subject to Force Majeure and Town Delay, the failure of Grubb to Substantially Complete the Parking Deck in accordance with the Development Schedule, which failure is not cured within three hundred sixty-five (365) days after the date the Town notifies Grubb of such failure.

6.2 Events of Default by the Town. The following shall constitute an Event of Default by the Town:

6.2.1 The failure of the Town to perform or to observe any covenant, obligation or requirement of this Agreement not specifically named as an Event of Default in this Section 6.2, and the continuation of such failure for thirty (30) days after receipt of written notice from Grubb

specifying the nature and extent of any such default, or if such default cannot reasonably be cured within such thirty (30) day period, the failure of either (i) to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such efforts to cure to completion, or (ii) to cure such Event of Default within a reasonable time after the expiration of the first thirty (30) day period, and to diligently pursue the same to completion.

6.3 Town Remedies. Should an Event of Default by Grubb occur hereunder, the Town may, by written notice to Grubb, terminate this Agreement and receive any Parking Deck Plans or Parking Deck Agreements from Grubb. The Town may also exercise any other remedies available to it at law or in equity, with or without terminating this Agreement, including the right to monetary damages resulting from the Event of Default, provided, however, in no event shall Grubb be liable to the Town for damages that are consequential, incidental or punitive in nature. Notwithstanding the foregoing, in no event shall Grubb be obligated to reimburse the Town for the costs and expenses of the site preparation work pursuant to Section 2.1.4 herein or for other costs of improving the Property or the Parking Deck. All remedies provided to the Town under this Agreement shall be cumulative, and not restrictive of other remedies, including the remedy of specific performance.

6.4 Grubb's Remedies. Should an Event of Default by the Town occur hereunder, Grubb may, by written notice to the Town, terminate this Agreement, upon which termination Grubb shall furnish the Parking Deck Plans and Parking Deck Agreements to the Town and may exercise any remedies available to it at law or in equity, except that the Town shall not be liable to Grubb for damages that are consequential, incidental or punitive in nature, but shall be liable only for recovery of out-of-pocket costs, including, without limitation, those incurred in the design stage of the Parking Deck, and construction costs actually incurred after execution of this Agreement. All remedies provided to Grubb hereunder shall be cumulative and not restrictive of other remedies, including, without limitation, specific performance.

6.5 Attorneys' Fees. If either the Town or Grubb brings suit or other legal proceedings to enforce the provisions of this Agreement against the other, then the party prevailing in such suit or proceeding shall be reimbursed by the other for all reasonable attorneys' fees and litigation costs and expenses incurred by the prevailing party in connection with such suit or proceeding.

~~6.6 Termination of Reserved Parking Spaces. In the event that the Town elects to convey, sell or transfer ownership of the Parking Deck to any third party, such conveyance, sale or transfer shall include and be subject to the obligation of this Agreement with respect to the Reserved Parking Spaces. Notwithstanding anything herein to the contrary, the Town may, after the Reserved Parking Spaces have been in place for forty (40) years, terminate Grubb's rights to lease the Reserved Parking Spaces as set forth in Section 3.8 only upon the occurrence of any of the following events:~~

~~6.6.1—A major casualty occurs with respect to the Parking Deck and the Town, or successor owner, elects not to rebuild/repair the Parking Deck.~~

~~6.6.2—The Town, its agents or successors are no longer operating the Parking Deck as a parking facility.~~

ARTICLE VII INSURANCE; INDEMNIFICATION

7.1 General Liability or Professional Liability Insurance. Grubb shall carry comprehensive general liability insurance insuring the Town and Grubb against any and all liability for injury to or death of a person or persons and for damage to property in any way occasioned by or arising out of the activities of Grubb or the Town and their respective agents, contractors or employees, in connection with the design and construction of the Parking Deck in the amount of Two Million Dollars (\$2,000,000.00) for property damage and Ten Million Dollars (\$10,000,000.00) for bodily injury or death of persons, or in such larger amounts as may be reasonably acceptable to the Town. Grubb may procure and maintain a “blanket” All Risk policy to satisfy the requirements of this Section 7.1, which may cover other property or locations of Grubb and its affiliates and/or the affiliates of a member of Grubb, so long as the coverage required in this Section 7.1 is separate and specific to the Parking Deck. Grubb shall also require all firms comprising the Design Team to carry professional liability insurance in the amount of Three Million Dollars (\$3,000,000.00).

7.2 Policy Requirements. The following general requirements shall apply to all insurance coverage carried by Grubb pursuant to Section 7.1:

7.2.1 Waiver of Subrogation. To the extent available, each policy shall contain a clause whereby the insurer waives all rights of subrogation against the Town.

7.2.2 Additional Insured. The Town shall be named as additional insured in all policies hereunder, with the exception of the Design Team’s professional liability insurance certificates which shall be delivered to the Town on or before the date of this Agreement.

7.2.3 Financially Sound Company. Such policies shall be procured from financially sound and reputable insurers licensed to do business in the State of North Carolina and have an A.M. Best rating of not less than A-8 or, if not rated with A.M. Best, the equivalent of A.M. Best’s surplus size of A-8 (or otherwise approved by the Town).

7.2.4 Certificates of Insurance. Grubb shall deliver to the Town policies or certificates of insurance evidencing such coverage before the Commencement of Construction of the Parking Deck.

7.2.5 Replacement Certificates of Insurance. Within thirty (30) days before expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal and payment of premium shall be delivered by Grubb to the Town.

7.2.6 Non-Cancelable Without Notice. The coverages shall be non-cancelable unless the carrier gives to the Town thirty (30) days' prior written notice of cancellation.

7.3 Indemnification.

7.3.1 Grubb shall indemnify, defend and hold the Town and all entities claiming by, through or under the Town harmless from and against all claims, suits, actions and proceedings whatsoever which may be brought or instituted on account of, growing out of, occurring from, incident to or resulting from, directly or indirectly, (i) Grubb's breach of this Agreement, (ii) any and all injuries or damages (including, without limitation, death) to persons or property arising out of the construction, use and occupation of the Parking Deck during construction thereof, and thereafter, arising out of the use and occupation of the Parking Deck and the negligent or willful acts and omissions of Grubb and those for whom it is legally liable, and all losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees), unless and to the extent such injuries or damages (including, without limitation, death) result from, or are claimed to have resulted from the negligence, acts or omissions of the Town. Grubb shall assume on behalf of the Town and all entities claiming by, through or under the Town, and conduct with due diligence and in good faith, the defense of all such claims, suits, actions and proceedings against the Town or any entity claiming by, through or under the Town, whether or not Grubb is joined therein, even if such claims, suits, actions or proceedings be groundless, false or fraudulent, and Grubb shall bear the costs of all judgments and settlements in connection therewith; provided, however, without relieving Grubb of Grubb's obligations under this Agreement, the Town or any entity claiming by, through or under the Town may defend or participate in the defense of any or all of such claims, suits, actions or proceedings. Maintenance of the insurance referred to in this Agreement shall not affect the obligations of Grubb under this Agreement, and the limits of such insurance shall not constitute a limit on the liability of Grubb under this Section 7.3.

7.3.2 If and to the extent allowed by North Carolina law, the Town shall indemnify, defend and hold Grubb and all entities claiming by, through or under Grubb harmless from and against all claims, suits, actions and proceedings whatsoever which may be brought or instituted on account of, growing out of, occurring from, incident to or resulting from, directly or indirectly, (i) the Town's breach of this Agreement, (ii) any and all injuries or damages (including, without limitation, death) to persons or property arising out of the construction, use and occupation of the Parking Deck during construction thereof, and thereafter, arising out of the use and occupation of the Parking Deck and the negligent or willful acts and omissions of the Town and those for whom it is legally liable, and all losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees), unless and to the extent such injuries or damages (including, without limitation, death) result from, or are claimed to have resulted from the negligence, acts or omissions of Grubb. The Town shall assume on behalf of Grubb and all entities claiming by, through or under Grubb, and conduct with due diligence and in good faith, the defense of all such claims, suits, actions and proceedings against Grubb or any entity claiming by, through or under Grubb, whether or not the Town is joined therein, even if such claims, suits, actions or proceedings be groundless, false or fraudulent, and the Town shall bear the costs of all judgments and settlements in connection therewith; provided, however, without relieving the Town of the Town's obligations under this Agreement, Grubb or any entity claiming by, through or under Grubb may defend or participate in the defense of any or all of such claims, suits, actions or proceedings. This indemnity (regardless of whether it is binding on or enforceable against the Town) shall be binding on the Town's successors and assigns.

7.4 Workers' Compensation Insurance.

7.4.1 Grubb shall maintain such workers' compensation insurance as may be required pursuant to the laws of the State of North Carolina, and shall indemnify and hold the Town and all entities claiming by, through or under the Town harmless from and against all claims, suits, actions and proceedings whatsoever which may be brought by Grubb's employees and statutory employees, as determined under the workers' compensation laws of the State of North Carolina.

7.4.2 Grubb shall require that each contractor and subcontractor performing work on the Parking Deck shall obtain and maintain, for the duration of such work, such workers' compensation insurance as may be required pursuant to the laws of the State of North Carolina.

**ARTICLE VIII
REPRESENTATIONS AND WARRANTIES OF GRUBB**

In order to induce the Town to enter into this Agreement, Grubb and Guarantor, jointly and severally represent and warrant to the Town as follows:

8.1 Organization. Grubb is a duly organized and validly existing limited liability company under the laws of the State of North Carolina and has the power and authority to own its properties and other assets and to transact the business in which it is now engaged or proposed to engage. Grubb is duly qualified or licensed as a foreign entity in each jurisdiction in which the nature of the business it is engaged, or the character of the properties owned by it, makes such qualification or licensing necessary, including the State of North Carolina.

8.2 Authority. Grubb has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all other instruments to be executed and delivered by Grubb in connection with its obligations hereunder. The execution, delivery and performance by Grubb of this Agreement have been duly authorized by all requisite action by Grubb, and this Agreement is a valid and binding obligation of Grubb enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally.

8.3 No Default. Grubb is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any evidence of indebtedness of Grubb or contained in any instrument under or pursuant to which any such evidence of indebtedness has been issued or made and delivered. Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, will conflict with or result in a breach of any of the terms, conditions or provisions of the Articles of Organization of Grubb or of any agreement or instrument to which Grubb is now a party or otherwise bound or to which any of its properties or other assets is subject, or of any order or decree of any court or governmental instrumentality, or of any arbitration award, franchise or permit, or constitute a default thereunder, or, except as contemplated hereby, result in the creation or imposition of any lien or other encumbrance upon any of the properties or other assets of Grubb.

8.4 Actions or Claims. There are no actions, suits, investigations or proceedings (whether or not purportedly on behalf of Grubb) pending or, to the knowledge of Grubb, threatened against or affecting Grubb, or any other of the assets or properties of Grubb at law or in equity or before or by a governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before an arbitrator of any kind, which involve the possibility of liability in excess of \$100,000 or of any material adverse effect on the business operations, prospects, properties or other assets or in the condition, financial or otherwise, of Grubb, and Grubb is not in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

8.5 Business Dealings. To its best knowledge, Grubb is not a party to or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially and adversely affect the business, operations, prospects, properties or other assets, or the condition, financial or otherwise, of Grubb. Grubb has not received any notice of, and to their best knowledge, are not in default (a) under any obligation for borrowed money, or (b) in the performance, observance or fulfillment or any of the obligations, covenants or conditions contained in any other agreement or instrument to which it is a party, by which it is otherwise bound or to which any of their property or the Parking Deck is subject.

ARTICLE IX REPRESENTATIONS AND WARRANTIES OF THE TOWN

In order to induce Grubb to enter into this Agreement, the Town represents and warrants to Grubb as follows:

9.1 Organization. The Town is a political subdivision of the State of North Carolina, duly organized and validly existing under the laws of the State of North Carolina, with full legal right, power, and authority to enter into and perform its obligations under this Agreement.

9.2 Authority. The Town has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all other instruments to be executed and delivered by the Town in connection with its obligations hereunder. The execution, delivery and performance by the Town of this Agreement have been duly authorized by all requisite action by the Town, and this Agreement is a valid and binding obligation of the Town enforceable in accordance with its respective terms, except as may be affected by applicable laws.

9.3 No Default. The Town is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any evidence of indebtedness of the Town or contained in any instrument under or pursuant to which any such evidence of indebtedness has been issued or made and delivered that would have a material adverse effect on the Parking Deck. Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, will conflict with or result in a breach of any of the terms, conditions or provisions of the legislation creating the Town or of any agreement or instrument to which the Town is now a party or otherwise bound or to which any of its properties

or other assets is subject, or of any order or decree of any court or governmental instrumentality, or of any arbitration award, franchise or permit, or constitute a default thereunder, or, except as contemplated hereby, result in the creation or imposition of any lien or other encumbrance upon any of the properties or other assets of the Town.

9.4 Actions or Claims. There are no actions, suits, investigations or proceedings (whether or not purportedly on behalf of the Town) pending or, to the knowledge of the Town, threatened at law or in equity or before or by a governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before an arbitrator of any kind, which if decided adversely to the Town would have a material adverse effect on the Parking Deck, and the Town is not in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign which would have a material adverse effect on the Parking Deck.

9.5 Business Dealings. To its best knowledge, the Town is not a party to or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially and adversely affect the Parking Deck. The Town has received no notice of, and to its best knowledge, is not in default (a) under any obligation for borrowed money, or (b) in the performance, observance or fulfillment or any of the obligations, covenants or conditions contained in any other agreement or instrument to which it is a party, by which it is otherwise bound or to which any of its property or the Parking Deck is subject that would have a material adverse effect on the Parking Deck.

9.6 Financial Statements. To the Town's best knowledge, neither this Agreement nor any document, certificate or financial statement furnished to Grubb by or on behalf of the Town in connection herewith, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained herein and therein not misleading. There is no fact known to the Town which materially adversely affects or in the future may (so far as it is now known to the Town) have a material adverse effect upon the Parking Deck which has not been set forth in this Agreement or in other documents, certificates and financial statements furnished to Grubb or on behalf of the Town in connection with the transactions contemplated hereby.

ARTICLE X MISCELLANEOUS

10.1 Assignment.

10.1.1 This Agreement is binding upon and shall inure to the benefit of the Town, Grubb and their respective successors and assigns.

10.1.2 Except as provided in Section 1.6, Grubb may not assign its interest or any part thereof in this Agreement without the prior written approval of the Town, which shall not be unreasonably withheld, conditioned or delayed, and upon such approval, the assignee shall assume all of the obligations of Grubb under this Agreement and shall not relieve the assignor of any

liability hereunder. Notwithstanding the limitation imposed above, Grubb may assign its interest in this Agreement to an Affiliate of Grubb, and upon the assumption of such by such Affiliate, Grubb shall be released from any and all duties under this Agreement.

10.2 Consents and Approvals. The Town and Grubb commit to work harmoniously with each other, and except in instances (if any) where a consent or approval is specified to be within the sole discretion of either party, any consent or approval contemplated under this Agreement shall not be unreasonably withheld, conditioned or delayed.

10.4 Entire Agreement. This Agreement and all the exhibits attached hereto incorporate all prior negotiations and discussions between the parties regarding its subject matter and represent the entire agreement of the Town and Grubb for the Parking Deck. This Agreement may only be modified by written instrument executed by the Town and Grubb. To the extent this Agreement is inconsistent with the EDA, this Agreement shall control. Otherwise, the provisions of the EDA shall remain in full force and effect.

10.5 Headings. The captions and headings of the articles and sections contained herein are for convenience of reference only and shall not be considered in any interpretation of the provisions of this Agreement.

10.6 Notices. A notice, communication, or request under this Agreement by the Town to Grubb or by Grubb to the Town shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) e-mail with confirmation of receipt, (c) nationally recognized overnight delivery service (next business day service) or (d) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the applicable parties as follows:

Grubb: Grubb Management LLC
117 Edinburgh Drive South, Suite 110
Cary, NC 27511
Attention: Joe Dye, Executive Vice President
Email: JDye@grubbproperties.com

with a copy to: Weatherspoon & Voltz LLP
3700 Glenwood Avenue, Suite 250
Raleigh, NC 27612
Email: beth@wvllp.com

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

with a copy to:

Any notice, communication, or request so sent shall be deemed to have been given (a) the same day as sent via email provided the sender receive electronic confirmation of successful transmission (b) as of the next business day after being sent, if sent by nationally recognized express mail service, (c) as of the fifth business days after being sent, if sent by Registered or Certified U.S. Mail or (d) upon receipt, if sent by hand delivery. Either party may change its address for notice purposes by giving notice thereof to the other parties, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

10.7 Partial Invalidity. If any term, covenant, condition, or provision of this Agreement, or the application to any person or circumstance shall, at any time or to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall (except to the extent such result is clearly unreasonable) not be affected thereby, and under such circumstances each term, covenant, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, insofar as such enforcement is not clearly unreasonable.

10.8 Counterparts. This Agreement may be executed in counterparts (including electronic [.PDF] counterparts), each of which shall be deemed to an original, and such counterparts shall constitute one and the same instrument.

10.9 Choice of Laws. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina, including conflicts of laws.

10.10 Force Majeure. For the purpose of any of the provisions of this Agreement, neither the Town, nor Grubb, as the case may be, nor any successor in interest, shall be considered in breach of or default in any of its obligations, including, but not limited to, the beginning and completion of construction, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to causes beyond its control that make compliance in a timely manner impractical or impossible, and, in any event, that are not foreseeable, including but not restricted to, strikes, lockouts, actions of labor unions, riots, storms, floods, litigation, explosions, acts of God or of the public enemy, acts of government, insurrection, mob violence, civil commotion, sabotage, terrorism, malicious mischief, vandalism, inability (notwithstanding good faith and diligent efforts) to procure, or general shortage of, labor, equipment, facilities, materials, or supplies in the open market, failures of transportation, fires, other casualties, epidemics, quarantine restrictions, freight embargoes, severe weather, inability (notwithstanding good faith and diligent efforts) to obtain governmental permits or approvals, or delays of subcontractors due to such causes, it being the purpose and intent of this Section 10.10 that in the event of the occurrence of any such enforced delays, the time or times for the performance of the covenants, provisions, and agreements of this Agreement shall be extended for the period of the enforced delay (including any time reasonably required to recommence performance due to such enforced delay). Notwithstanding the above, no time delays shall be granted unless the affected party notifies the non-affected party in writing of the occurrence of such delay and of the expected period

of delay, promptly after discovery of such occurrence, and the affected party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; provided however, the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected party, and the affected party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected party, unfavorable to the affected party. Notwithstanding anything to the contrary above, (a) neither Grubb nor the Town may rely on its own acts or omissions as grounds for delay in its performance, (b) the absence of immediately available funds shall not be grounds for delay by Grubb or the Town, (c) general economic downturns shall not be grounds for delay by Grubb or the Town, (d) defaults of independent contractors or subcontractors shall not be grounds for delay by Grubb or the Town, and (e) no extension shall be granted for the first 60 days of weather related delays

10.11 Sale of Property. If the Town receives, and desires to accept, an offer (“Offer”) from any bona fide non-governmental third party to purchase the Property and the Parking Deck (for purposes of this Section 10.11, the “Town Property”), or the Town elects to sell the Town Property under any of the methods provided by law for the sale of public property, the Town shall deliver to Grubb written notice (an “Offer Notice”) of such Offer, which Offer Notice shall include all terms of such Offer or of the terms and procedures which the Town proposes to use to sell the Town Property. The Offer Notice shall be delivered to Grubb at least thirty (30) days before the Town undertakes to initiate any of the statutory proceedings required to sell the Town Property.

10.12 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture between the Town and Grubb or as constituting Grubb as the agent or representative of the Town for any purpose or in any manner under this Agreement, it being understood that Grubb is an independent contractor hereunder.

10.13 Representatives Not Individually Liable. No council member, official, representative, or employee of the Town shall be personally liable to Grubb or any successor in interest in the event of any default or breach by the Town for any amount which may become due to Grubb or successor or on any obligations under the terms of the Agreement. Except for the Guarantor, no officer, director, representative, or employee of Grubb shall be personally liable to the Town in the event any default or breach by Grubb for any amount which may become due to the Town or on any obligations under the terms of this Agreement.

10.14 Ancillary Documents. The Town Manager is hereby authorized, on behalf of the Town, to execute any and all other documents necessary or appropriate to effectuate the transactions contemplated by this Agreement, provided such documents do not materially alter the relationship of the parties or the principal elements of the Parking Deck, and to grant such approvals and consents on behalf of the Town.

10.15 Broker. The Town and Grubb each represent and warrant for itself that it has not dealt with any broker in connection with this Agreement and each covenants and agrees to

indemnify and hold the other harmless from and against any claim, cost, liability, or expense (including reasonable attorney's fees) arising or resulting from a breach of this warranty.

10.16 Third Party Beneficiary. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third party beneficiary.

10.17 Payment or Performance on Saturday, Sunday, or Holiday. Whenever the provisions of this Agreement call for any payment or the performance of any act, including the expiration date of any cure periods provided herein, on or by a date that is not a "Business Day", then such payment or such performance shall be required on or by the immediately succeeding "Business Day", which term shall mean a day other than a Saturday, Sunday, or legal holiday in the State of North Carolina.

10.18 Incorporation into Agreement. All exhibits, schedules, and recitals form a part of this Agreement.

10.19 Conflict of Terms. It is the intention of the Town and Grubb that if any provision of this Agreement is capable of two constructions, one of which would render this provision valid and enforceable, then the provision shall have the meaning that renders it valid and enforceable.

10.20 No Waiver. No failure on the part of the Town or Grubb to enforce any covenant or provision contained in the Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other party to enforce the same in the event of any subsequent default.

10.21 Compliance with Laws. Grubb shall, at all times, be subject to all applicable governmental laws, ordinances, rules and regulations (collectively, the "Applicable Laws") pertinent to the Parking Deck, this Agreement, and Grubb's actions in connection with the Parking Deck and this Agreement. Nothing in this Section 10.21 or any other part of this Agreement, however, shall be construed to (a) limit or prevent Grubb from challenging at law or in equity the applicability of any Applicable Law and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (b) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Agreement, no provision of this Agreement shall be construed to require Grubb to comply with any Applicable Law during the period that Grubb may be pursuing a bona fide challenge of the applicability, lawfulness, and/or enforceability of such Applicable Law (unless such law requires compliance during any such challenge). If Grubb's challenge is successful, Grubb shall not be required by the provisions of this Agreement to comply with such Applicable Law.

10.22 Estoppel Certificates. The Town and Grubb, at any time and from time to time, upon not less than thirty (30) days' advance written notice from a party hereto, or to a person designated by such party, such as a tenant or a mortgagee or lender of Grubb, shall execute, acknowledge, and deliver to the party requesting such statement, a statement in reasonably acceptable form to the requesting party certifying, among other matters, (a) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) stating whether or not, to the best

knowledge of the signer of such certificate, the Town or Grubb is in breach and/or default in performance of any covenant, agreement, or condition contained in this Agreement and, if so, specifying each such breach and/or default of which the signer may have knowledge, and (c) any other factual matters reasonably requested in such estoppel certificate, it being intended that any such statement delivered hereunder may be relied upon by the party requesting such statement and/or any person not a party to this Agreement (if such other person is identified at the time such certificate was requested). At any time after completion of the Parking Deck as provided herein, the Town shall, at the request of Grubb, promptly execute, acknowledge and deliver to Grubb a statement to that effect and to the effect, to the extent true, that all of Grubb's obligations under this Agreement have been fulfilled. The Town Representative is hereby authorized to execute, acknowledge, and deliver such certificates on behalf of the Town.

10.23 Good Faith and Fair Dealing. The parties covenant and agree each to the other that its conduct under this Agreement, and the interpretation and enforcement of the provisions hereof, shall be characterized by good faith and fair dealings so that the objectives of each party as set forth in this Agreement may be achieved.

10.24 Default Interest. All sums due under this Agreement shall bear interest from and after the due date until paid at the rate of five percent(5%) over the Prime Rate.

10.25 E-Verify Compliance. Grubb shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Grubb shall require all of Grubb's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). The Town shall comply with North Carolina General Statute § 160A-169.1 (E-Verify).

10.26 Survival. The terms and conditions of this Agreement shall survive the expiration or earlier termination of this Agreement.

10.27 Time of the Essence. In all matters under this Agreement, time shall be of the essence.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Town has caused this Improvements Agreement to be duly executed in its name and on its behalf, and Grubb has caused this Improvements Agreement to be duly executed in its name and behalf .

TOWN:

TOWN OF CHAPEL HILL,
a political subdivision of the State of North Carolina

CLERK

LEGAL

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

By: _____

Printed Name: _____

Title: Finance Officer/Deputy Finance Officer (*select one*), Town of Chapel Hill

GRUBB:

GRUBB MANAGEMENT, LLC,
a North Carolina limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A
PROPERTY

[to be attached]

EXHIBIT B
PARKING DECK TEAM

[to be attached]

EXHIBIT C
SCHEMATIC DESIGN

[to be attached]

EXHIBIT D
PARKING DECK

[to be attached]

EXHIBIT E
DEVELOPMENT SCHEDULE

[to be attached]

EXHIBIT F
PRE-DEVELOPMENT SERVICES BUDGET

[to be attached]

EXHIBIT G
DEVELOPMENT BUDGET

[to be attached]