

Amy Harvey

From: Dwight Bassett
Sent: Tuesday, September 29, 2020 9:26 AM
To: Pam Hemminger; Michael Parker; Jess Anderson; Allen Buansi; Karen Stegman; Hongbin Gu; Tai Huynh; Amy Ryan
Cc: Maurice Jones; Amy Oland; Bob Jessup (bob@shlawgroup.com); Ann Anderson; Laura Selmer; Amy Harvey; Christina Strauch
Subject: Legal Agreements
Attachments: EDA Sept 22 to Sept 25.docx; Improvements Agreement - New Deck (v1 - 8.27.20).docx; Wallace Deck Lease 9-30 for Council.docx

Categories: Agenda Packet Process

There was a note on the Council Agenda about potential changes in these attached Agreements and these are the final agreements for consideration. Bob Jessup has noted changes below in these documents.

Thanks,
Dwight

Bob Jessup: Here is a summary of the key changes made since the drafts considered at the September 9 meeting:
To the Economic Development Agreement

The "due diligence" period for investigating the condition of the properties to be exchanged is made mutual for Grubb and the Town.

"Last look" at the project price -- If at the time we're ready to begin construction the project budget exceeds \$32.9 million, then the Town agrees to work with Grubb and the contractor to create a budget that the Town accepts. If it can't, then the Town need not proceed with constructing the New Deck. BUT, the Town is still obligated to proceed with the land exchange.

Clarify that the Lot 2 restoration requires an 8-foot paved walkway, and retaining walls that match the remaining walls

Acceleration of the Town's repurchase option:

By Grubb: if Grubb does not receive approval of its desired entitlements by November 30, 2021, Grubb at its option can accelerate the Town's repurchase option period.

By the Town: if on November 30, 2022 Grubb has no approved building it commits to build, no active building permit and no pending applications for entitlements, then the Town at its option can accelerate the repurchase period.

[Otherwise, the option period runs from January 1, 2024, to December 31, 2025]

Changes and additional agreements – several changes throughout the agreement to provide that when it becomes appropriate to sign other related agreements (such as the final form of the staging agreement, and the final agreement with Grubb for project management), the Town Manager can approve and sign the final forms of those agreements so long as they are in substantially the same forms of the drafts available on September 30. Additionally, the Town Manager can approve and sign any additional agreements that might become necessary. This leaves it to the Town Manager's discretion as what additional changes or documents must come back to Council.

To the Wallace Deck Agreement

Clarify the terms for terminating the agreement. The agreement comes into effect when we complete the land swap next spring. The agreement then runs for five years, unless it's terminated earlier. Grubb can terminate the agreement at any time, but must then terminate public parking in the deck within 30 days (unless the parking continues as part of the Town's integrated parking system). The Town can terminate the agreement at any time after the New Deck has been in service for one year.

In both agreements

A variety of changes to coordinate all the timing provisions

A variety of minor changes to fill in blanks, clarify provisions, and to make technical improvements to the style and structure of the drafting.

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Economic Development Agreement

For the Rosemary Street Redevelopment – Opportunity Zone Project

This Economic Development Agreement (the “Agreement”) is dated as of October 1, 2020, and is between the Town of Chapel Hill, North Carolina (the “Town”), and Grubb Management LLC (“Grubb”), each a “Party” and collectively the “Parties.”

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

The parties have engaged in a series of discussions concerning an economic development project (the “Project”) whereby:

- The parties will exchange parking deck and related properties, with a cash payment settling the difference in value;
- Grubb will entitle, design and build, as a fee developer for the Town’s account and not for its own account, a new parking deck, with the Town paying for the new deck; and
- Grubb will then entitle, design and build a new office building, all as further described and provided for in this Agreement.

The Project is an economic development project for the Town. The Town expects that the Project will enhance the Town’s taxable property, employment, and business prospects.

This Agreement spells out the parties’ mutual obligations with respect to the project summarized above.

1. The parties will exchange properties

a) Exchange of deeds. At a time and place to be agreed upon by the parties, but prior to the beginning of construction on the New Deck and in any event by May 28, 2021:

i) The Town will execute and deliver to Grubb a fee simple general warranty deed conveying marketable title to the Wallace Deck Property.

ii) Grubb will execute and deliver to the Town a fee simple general warranty deed conveying marketable title to the CVS Deck Property and the ITIC Lot.

iii) The Town will pay up to \$1,750,000 to reconcile the difference in property values exchanged and an additional amount to reimburse Grubb for expenditures made by Grubb toward the New Deck Total Cost through the Closing Date.

iv) The Parties will execute and deliver a “Wallace Deck Lease and Management Agreement” in substantially the form of the draft made available to the Town Council on September 30, 2020, with only such additional changes as the parties may agree upon. The execution and delivery of the final form Lease will constitute conclusive evidence that the parties have agreed on any such changes.

v) The Parties will execute and deliver a “License Agreement” for the temporary use of Town property to support the downtown construction projects in substantially the form of the draft made available to the Town Council on September 30, 2020 (and including the terms described in Section 3(g)), with only such additional changes as the parties may agree upon. The execution and delivery of the final form License Agreement will constitute conclusive evidence that the parties have agreed on any such changes.

vi) The Town will execute and deliver a bill of sale in connection with the Wallace Deck Property.

The acts of executing, delivering and paying described above will be referred to as the “Closing,” and the date of those actions will be referred to as the “Closing Date.” If the

Closing has not occurred by the end of the calendar day on May 28, 2021, neither Party shall have any further obligations under this Agreement.

The Parties will execute and deliver such certificates and other documents as may be reasonably appropriate to effect the planned conveyances. The only monetary adjustment to the transfers stated above will be to pro-rate taxes on the CVS Deck Property and the ITIC Lot to the Closing Date.

In connection with the Closing, Grubb must obtain the release of the Town's obligations under the "Lease for Parking Deck" dated March 27, 2018, related to the Town's management of the CVS Deck.

b) Provision for future tax payments. The deed referenced in (a)(i) above will include a provision to the effect that any future owner of the Wallace Deck Property that is not subject to paying ordinary ad valorem taxes to the Town must nevertheless make annual payments to the Town so as to hold the Town harmless from any loss of ad valorem tax revenues. The required payment will be calculated from year to year based on the then-current property value and tax rate. This provision must be in form and substance acceptable to the Town.

c) Warranties of Title. (i) Each Party promises to the other, as part of the consideration for the exchange, that at the time of the Closing it will be seized of and have the right to convey its particular property (that is, the Wallace Deck Property in the case of the Town, and the CVS Deck Property and the ITIC Lot in the case of Grubb) in fee simple, that the title will be free and clear of all liens and encumbrances other than "Permitted Encumbrances," that title to the property will be marketable, and that the seller will forever warrant and defend title to the property (subject to the Permitted Encumbrances) against the claims of all persons.

"Permitted Encumbrances" means minor and ordinary rights-of-way and utility easements that do not have a material adverse effect on the planned use of the property.

(ii) Notwithstanding the above, the parties acknowledge that the CVS Deck property is subject to a lien (the "Grubb Lien") recorded at Book 6603, Page 292, Orange County Registry. Grubb promises that the CVS Deck Property will be released

from the Grubb Lien at or in connection with the Closing. The Grubb Lien is not a permitted encumbrance.

d) Environmental Warranties. Each Party makes the following promises and statements of fact with respect to its own particular property (as described in (c) above), with the understanding and intent that the other Party will rely on these statements in making its decision to enter into this Agreement.

(i) It has no knowledge (A) that any industrial use has been made of its particular property, (B) that the particular property has been used for the storage, treatment or disposal of chemicals or any wastes or materials that are classified by federal, State or local laws as hazardous or toxic substances, (C) that any manufacturing, landfilling or chemical production has occurred on the particular property, or (D) that there is any asbestos or other contaminant on, in or under the particular property.

(ii) To its knowledge, the particular property complies with all federal, State and local environmental laws and regulations.

(iii) It will promptly notify the other party of any change prior to the Closing in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Party's property or used in connection therewith. It will send to the other party copies of any citations, orders, notices or other material governmental or other communication received prior to the Closing with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the particular property.

To the extent permitted by law, each Party promises that it will indemnify and hold the other Party harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including cleanup costs), judgments and expenses (including legal, consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against the other Party as a direct or indirect result of any warranty or representation made by the Party in this subsection (d) being false or untrue in any material respect.

e) Diligence Period. Beginning on the date hereof and continuing for a period of 30 days thereafter (the "Diligence Period"), (i) Grubb has the right to conduct

investigations into the Wallace Deck Property and (ii) the Town has right to conduct investigations into the CVS Deck Property. Each Party has the right to terminate this Agreement for any reason by notice delivered to the other not later than 12 noon on November 3, 2020.

(i) Town Deliverables. On or before the fifth (5th) business day following the date hereof, the Town shall deliver to Grubb copies of all of the following (collectively, "Town Deliverables") to the extent in the possession of the Town or its agents:

- a. A complete and correct list of any licenses, leases, or contracts then in effect in connection with the Wallace Deck Property and copies of all such agreements.
- b. The Town's existing title insurance policy and its most recent survey of the Wallace Deck Property, including a legal description, if any.
- c. All existing engineering, environmental, geotechnical, architectural and property condition reports, studies, drawings and plans with respect to the Wallace Deck Property.
- d. Certificates of occupancy with respect to the Wallace Deck Property.

(ii) Independent Investigation. Grubb may, during the Diligence Period, inspect and investigate each and every aspect of the Wallace Deck Property, either independently or through agents, representatives or experts of Grubb's choosing, and may, upon reasonable notice to the Town, access the Wallace Deck Property for such purpose.

f) Conditions to the Parties' Obligation to Close. Neither Party hereto shall have an obligation to effect the Closing unless and until all of the following have occurred:

- (i) All of the representations and warranties of the Parties set forth in this Section 1 hereof shall be true as of the Closing Date.
- (ii) Grubb shall be the fee owner of the ITIC Lot.

- (iii) Any lender holding a deed of trust on the CVS Deck Property, the ITIC Lot, or both shall have consented to the transactions contemplated herein (except that it is Grubb's obligation to obtain the release of the Grubb Lien).
- (iv) There shall have been no material adverse change in the state of the title to any of the CVS Deck Property, the ITIC Lot, or the Wallace Deck Property, nor to the physical condition of the Wallace Deck Property.
- (v) The management plan contemplated in Section 2(d) has been accepted by the Parties.
- (vi) No notice has been received by either Party that any portion of the CVS Deck, the ITIC Lot, or the Wallace Deck Property will be or has been taken by any governmental authority exercising its powers of eminent domain or by purchase resulting from the contemplated use of such authority.

g) Representations. The Town hereby represents and warrants to Grubb, as to the Wallace Deck Property, and Grubb represents and warrants to the Town, as to the CVS Deck, and shall represent and warrant to the Town as to the ITIC Lot as of Closing, each in its role as "Grantor" of the parcels to be conveyed by it at Closing, as follows:

- (i) To Grantor's knowledge, this Agreement and all closing documents to which Grantor is a party (aa) are, or at the time of Closing will be, duly authorized, executed and delivered by Grantor, (bb) do not, and at the time of Closing will not, violate any provision of any agreement or order to which Grantor is a party or to which Grantor is subject and (cc) constitute or will constitute at Closing the valid and legally binding obligations of Grantor, enforceable in accordance with their terms, subject to bankruptcy and other debtor relief laws limiting enforceability;
- (ii) To Grantor's knowledge, there are no judicial or administrative proceedings (including, but not limited to, condemnation proceedings) pending against all or any portion of such property

which would have a material adverse impact on the property after Closing, nor has Grantor received notice of any such proceeding.

2. Grubb will work to entitle the New Deck, and Grubb and the Town will work together on the design

a) Grubb will continue its process to obtain entitlement to build the New Deck through the Town's land use regulatory process. Grubb and the Town, as the prospective future owner of the New Deck and the related property, will work together to complete this process by November 30, 2020.

b) Grubb and the Town will work together to design the New Deck to sit on the CVS Deck Property plus the ITIC Lot. Grubb and the Town will continue to cooperate for the final design of the New Deck so as to meet the construction and other deadlines specified in Sections 3 and 4. The New Deck will be designed to encompass 1,100 standard sized parking spaces, with a final as-built tolerance of plus or minus 10%.

(i) Grubb shall submit preliminary plans for the New Deck to the Town on or before October 16, 2020, and the Town shall provide any comments and requests thereto on or before October 30, 2020.

(ii) All comments and requests timely received by Grubb from the Town shall be reflected in the final design drawings to be submitted to the Town for review on or before December 1, 2020, and the Town shall provide any comments and requests thereto on or before December 15, 2020.

(iii) All comments and requests received by Grubb from the Town shall be reflected on the construction drawings for the New Deck to be attached as exhibits to the New Deck Contract.

c) The Town ratifies and consents to the following firms' providing professional services for the design and construction of the New Deck: Perkins & Will, Ballentine Associates, P.A. and NV5, Inc. (these firms, and such others as may be agreed from time to time by the Parties, the "Design Consultants").

d) The parties will work together on a parking and construction management plan designed to minimize the disruption and adverse effects of the New Deck and New Office Building construction and Renovation projects on downtown traffic and parking, and on the operation of downtown businesses. This management plan will include the terms and follow the approach of the “Preliminary Construction Approach” made available to the Town Council on September 30, 2020, with such additional changes as the parties may agree upon. The Parties acknowledge that this plan will need to be flexible and adaptable to changing conditions as work progresses.

3. The Town will contract for and pay for the New Deck

a) Grubb and the Town have selected Samet Corporation (“Samet”) to be the general contractor for the New Deck construction project. The Town has elected to work with Samet as the general contractor under the authority of the Town Charter provisions (Sections 4.20 through 4.25) that allow the Town to enter into private construction contracts related to economic development projects. The Town ratifies prior action by Grubb to retain Samet for the work.

b) Grubb and the Town will work with Samet and the Design Consultants to prepare final design, drawings, plans and specifications for the New Deck so that the Town will have in hand by March 1, 2021 (the “Contract Deadline”) the following items (the “LGC Requirements”):

i) A construction contract between Samet and the Town that states a guaranteed maximum price

ii) Written approval from Walker Consulting to the Town as to the fairness of the stated maximum price

iii) A letter from Samet or a project architect confirming that all major regulatory permits that are conditions to the start of construction are in hand, including approval of plans from the North Carolina Department of Insurance

iv) An overall project budget for the New Deck Total Cost (not including contingencies, amounts to be paid by third parties or Town indirect costs) that does not exceed \$32,900,000.

Grubb, the Town, Samet and Walker Consulting will work together to allow Walker Consulting's on-going review of estimated construction costs. The parties will work together with Samet and Walker Consulting to resolve any disagreements over construction costs and contract amounts, so as to allow Walker Consulting to give its approval as contemplated in the previous paragraph prior to the Contract Deadline.

If the project budget described in (b)(iv) above exceeds the stated limit, then the Parties will consult with Samet and work together in good faith to reduce the project cost or otherwise make the project budget acceptable to the Town. If the Parties are unable to determine a project budget acceptable to the Town, then the Town can terminate its obligations under this Agreement to build the New Deck. The Town's obligations to exchange property under Section 1 in that case would nevertheless remain in effect.

c) Grubb may extend the Contract Deadline by prior notice to the Town to a stated time not beyond May 1, 2021, provided that Grubb waives any damages or allowances for additional time. If the Contract Deadline is not met, neither Party shall have any additional rights or obligations under this Agreement.

d) The parties acknowledge as follows: The Town plans to borrow money to pay the New Deck Total Costs. This borrowing requires the LGC's approval. The Town will pursue LGC approval in a timely and professional manner, but the Town cannot guarantee the outcome of the LGC approval process. As part of the approval process, the LGC will require delivery of the LGC Requirements.

e) The New Deck Contract must include the following, along with any other terms and conditions the Town may specify:

i) Payment and performance bonds from Samet in favor of the Town as would be required in a conventional Town construction project;

ii) Construction warranty bonds in favor of the Town;

iii) Identification of the Town as a loss payee or additional insured, as appropriate, on all policies of insurance provided by the contractor. These policies must include builders' risk insurance and property and liability insurance;

iv) A requirement that Samet and all subcontractors maintain workers' compensation as provided by law;

v) That Samet must begin construction (which may include the start of demolition) promptly upon Samet's receipt of a notice to proceed from the Town; and

vi) A construction period of not more than 13 months.

f) The Town will pay Samet for the costs of construction as provided in the New Deck Contract. The Town expects that the payment process will proceed substantially as described in Exhibit B.

g) The Town will provide Grubb, Samet and their contractors and subcontractors a license to use the Staging Area in accordance with the License Agreement described in Section 1(a)(v) and the following terms:

i) Grubb, Samet and their contractors and subcontractors may use this Staging Area for all purposes of constructing the New Deck, constructing the New Office Building and carrying out the Renovation, until the "Staging End Date."

The "Staging End Date" is the date that is 90 days after the first to occur of (A) the date the New Office Building is placed in service or (B) the Town's option period begins under Sections 6 or 4(c).

(ii) Promptly after the Staging End Date, Grubb will promptly prepare the Staging Area by removing all asphalt, seeding the property with grass, construct a minimum 8-foot wide paved walkway from Rosemary Street through the Staging Area to Franklin Street, cutting off the access between the currently existing upper and lower portions of Lot 2, and constructing any

appropriate retaining walls, with the new walls to be consistent in material and appearance with any existing or remaining walls.

(iii) Grubb will indemnify the Town and hold it harmless for any claims or losses asserted against the Town by any person or entity related to or arising out of actions taken at the Staging Area, activities at the Staging Area, or the condition of the Staging Area while the license is in effect. This indemnification will not apply in the case of actions or omissions on the part of Town employees.

h) The Parties will execute and deliver an “Improvements Agreement” in substantially the form of the draft made available to the Town Council on September 30, 2020, with only such additional changes as the parties may agree upon. This Agreement sets out Grubb’s obligations for management of New Deck Construction. The execution and delivery of the final form Improvements Agreement will constitute conclusive evidence that the parties have agreed on any such changes

i) The Town will be responsible for payment of the New Deck Total Cost, including, without limitation, payments required under the New Deck Contract, and reimbursement of Grubb, at Closing, for all costs and expenses comprising part of the New Deck Total Cost expended by Grubb on or before the Closing Date. If the Closing does not occur, the Town shall reimburse Grubb for such costs and expenses within 30 days after any termination of this Agreement whether as a result of denial of any required entitlement or for any other reason, including (without limitation) the Town’s failure to receive LGC approval for its financing, non-approval of construction permits, the Town’s not starting construction of the New Parking Deck or any other action that prevents the commencement of construction.

4. Grubb will apply to build the New Office Building

a) Grubb will apply for all necessary land use approvals for the New Office Building construction, on its own behalf. Grubb will make a concept plan presentation for the New Office Building, as required under the Town’s land use ordinance, by the end of November 2020. The Town promises to act with all diligence to complete the land use entitlement process for the New Office Building by November 30, 2021,

subject to Grubb's timely completion of applications and other required filings and subject to the provisions of Section 9(c).

b) The initial applications for entitlement must allow or provide for, as applicable, the following features for the New Office Building:

i) Approximately 250,000 square feet of office space across not more than six floors, which may include two levels of parking at or below street grade.

ii) At least two floors that constitute Wet Lab space

iii) A building profile that steps back from the street above the fourth aboveground level on Rosemary Street.

iv) A community green space in the corner of the Wallace Deck property at Rosemary and Henderson Streets, developed in conjunction with the building as further described in Section 5(c)

The parties acknowledge that through the land use entitlement process, Grubb may not receive permission to build a building that includes all the features described above.

(c) (i) If the entitlement process for the New Office Building is not complete by November 30, 2021, or if the resulting entitlements do not permit, at a minimum, the uses and development rights contemplated above or such lesser level of entitlement as shall be acceptable to Grubb in its sole discretion, then Grubb may at its option either (A) make subsequent submissions for entitlement approvals in its discretion or (B) by notice to the Town accelerate the Town's repurchase option under Section 6 to a 24-month period beginning on the notice date.

(ii) If, however, as of November 30, 2022, Grubb has received no entitlements that it promises to build out, has no building permits in hand and no pending applications for land use entitlements (all with respect to the planned site of the New Office Building), then the Town, at its option, by notice to Grubb accelerate the Town's repurchase option under Section 6 to a 24-month period beginning on the notice date.

5. Other provisions related to the New Office Building

a) Any office space must be finished to a Class A level.

b) Parking in the New Office Building must be restricted to use by tenants, customers and visitors to the New Office Building and the buildings that are the subject of the Renovation. The parking may not be made available to members of the general public from and after the date on which a certificate of occupancy has been issued by the Town for the New Deck, unless the public parking is operated as part of the Town's overall parking system and managed by the Town under a separate agreement with the building owner."

c) In connection with the New Office Building construction, Grubb will develop the portion of the Wallace Deck Property at the corner of Rosemary and Henderson Streets into a community green space with plantings and amenities (such as grass, trees and benches) reasonably appropriate to a space of that size in that location. Promptly upon taking occupancy of the New Office Building, Grubb will dedicate the community green space to the Town.

d) At any time and from time to time, between the Closing Date and Office Building Occupancy, at the Town's request, Grubb will provide for a representative to appear before the Town Council to provide a narrative update on the Project and to provide full and complete answers to questions from Councilmembers. The Town does not expect that these requests will occur more frequently than quarterly.

6. Town has a repurchase option

(a) Time of the Option. If, as of January 1, 2024, or any time between January 1, 2024, and December 31, 2025, after which the Option shall be forfeited by the Town, if

(i) Grubb has not received a certificate of occupancy for the New Office Building; and

(ii) There is no active building permit for construction at the planned site of the New Office Building, and

(iii) The New Deck has been placed in service

then the Town has the option to repurchase the Wallace Deck Property, as described in this Section 6 (the “Option”). The time period during which the Town has the Option to repurchase the Wallace Deck Property may be accelerated pursuant to Section 4(c). Items (i) through (iii) above are not conditions to the option in the case of an acceleration.

(b) Option Price. The price at which the Town may repurchase the property is the “Make Whole Price.”

The “Make Whole Price” equals (a) \$6,760,000, plus (b) a 6% rate of return on that \$6,760,000, compounded annually from the Closing Date, plus (c) all costs incurred to the purchase date in entitling (for any entitlements still in effect on the purchase date), designing, and constructing the New Office Building. The Make Whole Price does not include any allocation of indirect costs by Grubb, and does not include any allowances for taxes or principal or interest on money borrowed for the Project. It does not include any allowance for general increases in land values, or increases in values attributable to development entitlements attached to the land. It does not take into account any value of the CVS Deck Property above that included in the calculation of the swap price calculation.

(c) Means of Exercise. The Option may be exercised as follows:

(i) The Town may give notice of its exercise by notice under Section 9 under the conditions set forth in Section 6(a). The Town may complete its purchase even if those conditions do not continue through the purchase date (including closing the purchase after December 31, 2025).

(ii) At the time of giving notice, the Town must pay an earnest money deposit of \$100,000. The Town then has 120 days to perform due diligence and complete the purchase.

(ii) The amount of the earnest money deposit will be applied to the purchase price at closing or retained by Grubb if there is no closing. The Town is only entitled to return of the earnest money deposit if it abandons the transaction (a) as a result of a finding during the due diligence period or (b) as a result of the parties’ being unable to reach an agreement on the calculation of the Make Whole Price. The Town is not entitled to a return of the deposit based on a failure to secure financing.

(d) Other matters. The Town may assign the Option in its discretion, including assigning between the option notice date and the closing date. Grubb can sell the property to any other purchaser during the Town's option period if the Town has not given its notice of exercise, but the Town's option survives any sale by Grubb (either before or during the option period). The Town will cooperate with Grubb to subordinate its Option to the interests of any lender for the project, so long as the subordination does not reach any liabilities of Grubb not related to the New Office Building.

7. Defaults and Remedies; Dispute Resolution

a) Defaults. A Party is in default under this Agreement (i) if it fails to observe and perform any covenant, condition or agreement on its part to be observed or performed for a period of 30 days after notice specifying the failure and requesting that it be remedied has been given by the other Party or (ii) if any representation or warranty provided in this Agreement is found to be incorrect or incomplete in any material respect as of the Closing.

b) Remedies. Whenever any default is continuing, the non-defaulting Party may take any or all of the following remedial steps:

- (i) At its option, cure the default by paying money or taking any other appropriate action, in which case the defaulting Party must reimburse the defaulting Party for all costs and expenses reasonably incurred in curing the default, including legal costs.
- (ii) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of a Party under this Agreement.
- (iii) Where the default is a failure to effect the Closing, either Party hereto shall be entitled to the remedy of specific performance.

c) No remedy exclusive; other provisions. No remedy conferred or reserved in this Agreement is intended to be exclusive, but instead is intended to be

cumulative. No delay or omission to exercise any right or power accruing upon any default constitutes a waiver of that right or power. A waiver of any default is limited to the default so waived and does not waive any other default. If a Party incurs legal or other costs and expenses to collect any payments due under this Agreement, or to enforce the performance or observance of any obligation or covenant under this Agreement, then to the extent permitted by law each Party promises to reimburse a non-defaulting Party for all reasonable legal and other fees and costs incurred in the collection or enforcement.

d) Dispute resolution. In the event of a dispute between the parties concerning the terms or performance of this Agreement, the parties will take the following steps prior to commencing any proceeding before a court or administrative body:

(i) Exchange of positions. Any Party noting a dispute under this Agreement will notify the other Party of the nature of the dispute and the first Party's proposed resolution. Within ten days after the effective date of the notice, the other Party must respond in writing as to its view of the dispute and its position on the proposed resolution.

(ii) Meet and confer. If the parties are unable to reach an agreement on the dispute and upon notice from any Party, the parties will promptly hold a meeting attended by representatives with appropriate authority to resolve the dispute. At this meeting, the parties will attempt in good faith to negotiate a resolution of the dispute.

(iii) Mediation. If the dispute remains unsettled by negotiation, the parties will engage the services of a professional mediator agreed upon by the parties. The parties will then attempt in good faith to resolve the dispute through mediation. The Town and Grubb will each pay one-half of the mediator's fees and expenses and each Party will pay all its own legal fees and other expenses related to the mediation. Each Party must be represented at the mediation by a representative with appropriate authority to resolve the matters in dispute. Only after mediation may a part initiate legal or administrative proceedings.

8. Additional agreements; instruments of further assurance

a) Upon a Party's request, the other Party shall execute, acknowledge and deliver such further instruments or agreements reasonably desired by any Party to carry out more effectively the purposes of this Agreement or the purposes of any other contract related to the transactions contemplated by this Agreement.

b) By its approval of this Agreement, the Town authorizes the Town Manager or the Manager's designee to take all proper steps (i) to carry out the purposes and intents of this Agreement in cooperation with Grubb, including executing and delivering any instruments or agreements as described in (a), and (ii) for the efficient and convenient carrying out of the Town's on-going responsibilities under this Agreement and the related Agreements.

9. Miscellaneous provisions.

a) Notices. Any communication provided for in this Agreement must be in writing (not including facsimile transmission or electronic mail). Any communication under this Agreement will be deemed given on the delivery date shown on a certified mail receipt, or a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

If intended for the Town, to Town of Chapel Hill, c/o Town Manager, Re: Notice under 2020 Grubb Economic Development Agreement, Town Hall, 405 Martin Luther King, Jr. Blvd., Chapel Hill, NC 27514

If intended for Grubb, to Grubb Management LLC, 117 Edinburgh Drive South, Suite 110, Cary, NC 27511, Attn: Joe Dye

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

b) General Representations. The Town and Grubb each represents, covenants and warrants for the other's benefit as follows:

(i) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a material breach of the terms, conditions and provisions of any agreement or instrument to which either is now a party or by which either is bound, or constitutes a material default under any of the foregoing.

(ii) To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against that Party (or against any other person) concerning that Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither the Party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

c) Limits on Town's power to agree. (i) Grubb acknowledges that the Town's ability to agree to provisions in this Agreement, and to carry out its agreements, is limited by its status as a unit of local government, and in particular its role as a land use regulator. The Town acts in separate capacities as a party to a business agreement such as this EDA, and as a land use regulator. The Town makes no representation, and can give no assurances, that any land use or related approvals necessary for the Project will be forthcoming at any time.

(ii) Grubb acknowledges that the Town is a governmental entity, and the Agreement's validity is based in part upon the availability of public funding under the authority of its statutory mandate. If public funds are unavailable and not appropriated for the performance of Town's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the Town thirty (30) days after notice to Grubb of the unavailability and non-appropriation of public funds. It is expressly agreed that the Town shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis that generally affects its governmental operations.

(iii) A failure of the Town to receive LGC approval or to appropriate funds, or the failure of any aspect of the Project to receive a necessary land use approval from the Town, will not be an event of default on the part of the Town. The Town,

however, promises to process requests for regulatory approvals and necessary appropriations in a timely and professional manner.

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

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

d) Each Party will bear its own costs. Except as specifically set forth herein, each Party will bear its own costs of the fees and expenses of its counsel and consultants, and of the studies or surveys required under this Agreement or that it otherwise commissions or obtains for its use under this Agreement.

e) Limitation on liability of officers and agents. No officer, agent or employee of the Town will be subject to any personal liability or accountability because of the execution of this Agreement or any other documents related to the transactions contemplated by this Agreement. Those officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This provision does not relieve any officer, agent or employee from the performance of any official duty provided by law.

f) Assignment. (i) Neither Party may assign any of its rights or obligations under this Agreement without the express consent of the other, except as described in (ii).

(i) Grubb may assign this Agreement without the Town's prior consent of the Town to a partnership, corporation or limited liability entity which is controlled by, controlling, under common control with or affiliated with Grubb (each, a "Permitted Assignee"), provided that Grubb must either (x) remain liable for all of the obligations of the Permitted Assignee, or (y) follow the procedures set forth in the remainder of this paragraph to demonstrate the financial and technical wherewithal of the assignee: First provide the Town with notice of the proposed assignment and a representation that the assignee has the technical and financial ability to carry out Grubb's obligations under this Agreement. Within five business days after the receipt of any such notice, the Town may request appropriate additional evidence of the capacity of the prospective assignee. If the Town makes no such request, then Grubb

may complete the assignment. If the Town makes a request, then Grubb must provide the Town with such information as the Town may reasonably request and obtain the Town's consent. The Town will act reasonably and without undue delay to review and provide consent. The Town may not withhold consent except on the basis of the prospective assignee's technical and financial capacity.

Upon an assignment of this Agreement to a Permitted Assignee, as used in this Agreement, the term "Grubb" shall be deemed to include such Permitted Assignee. Subject to the foregoing, this Agreement shall inure to the benefit of and shall be binding upon the Town and Grubb and their respective successors and assigns.

g) Amendments. This Agreement may only be modified in writing signed by all parties.

h) Governing law. The parties intend that North Carolina law will govern this Agreement and all matters of its interpretation. To the extent permitted by law, the parties agree that any action brought with respect to this Agreement must be brought in the North Carolina General Court of Justice in Orange County, North Carolina.

i) Severability. If any provision of this Agreement is determined to be unenforceable, that will not affect any other provision of this Agreement.

j) Binding effect. Subject to the specific provisions of this Agreement, this Agreement will be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

k) Entire agreement. This Agreement constitutes the entire agreement between the Town and Grubb with respect to its general subject matter.

l) No third-party beneficiaries. There are no parties intended as third-party beneficiaries of this Agreement.

m) Recording. Either party may provide for this Agreement to be recorded with the Register of Deeds of Orange County, North Carolina.

n) Time. Time is of the essence of this Contract and each and all of its provisions.

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

p) Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each will be an original, but all of them together constitute the same instrument.

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

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

(SEAL)

ATTEST:

**TOWN OF CHAPEL HILL
NORTH CAROLINA**

Sabrina Oliver
Town Clerk

By: _____
Maurice Jones
Town Manager

GRUBB MANAGEMENT LLC

By: _____

Printed name: _____

Title: _____

Exhibits:

A – Definitions

B – Contract payment terms

[Economic Development Agreement dated as of October 1, 2020]

**STATE OF NORTH CAROLINA;
ORANGE COUNTY**

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

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

[SEAL]

Notary Public

My commission expires: _____

* * * * *

**STATE OF NORTH CAROLINA;
_____ COUNTY**

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

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

[SEAL]

Notary Public

My commission expires: _____

[Economic Development Agreement dated as of October 1, 2020]

Exhibit A – Definitions

References to Columbia Street, Rosemary Street, Franklin Street, and Henderson Street are references to those streets in downtown Chapel Hill, North Carolina.

“CVS Deck” means the existing 270-space parking deck located at 125 E. Rosemary Street. “CVS Deck Property” means this deck and its related real estate, which comprises approximately 0.87 acres and is further identified by PIN # 9788-37-4748 in the Orange County land records.

“ITIC Lot” means the existing 91-space parking lot located at 135 E. Rosemary Street and its related real estate, which comprises approximately 0.81 acres and is further identified by PIN # 9788-37-6817 in the Orange County land records.

“LGC” means the North Carolina Local Government Commission, a department of the office of the North Carolina State Treasurer, or any successor to its functions.

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

“New Building Completion” means the earliest date of substantial completion of permitted work for the New Office Building, whether or not the property is occupied, or a certificate of occupancy issued.

“New Deck” means the new 1,100-space parking deck to be constructed on the CVS Deck Property and ITIC Lot for the Town under Section 3.

“New Deck Contract” means the final construction contract for the New Deck between the Town and Samet as contemplated by Section 3.

“New Deck Total Cost” means the total of all costs related to placing the New Deck in service for its intended purposes. These costs include land acquisition, design, construction, traffic impact assessment, and related legal, administrative and financing costs.

“New Office Building” means the new office building to be designed and constructed at 150 E. Rosemary Street as described in Sections 4 and 5.

“Project” means the project as described in the preambles to this Agreement.

“Renovation” means Grubb’s planned renovation of the existing buildings located at 137 East Franklin and 136 East Rosemary Streets. The Renovation will be considered complete under this Agreement upon substantial completion of the permitted work, whether or not in either case the property is occupied, or a certificate of occupancy issued. Renovation may be considered complete for one building before the other.

“Staging Area” means the construction lay-down and staging area provided for in the License Agreement referenced in Section 1(a)(5). The Parties expect that the Staging Area will consist of the lower, eastern portion of Lot 2.

“Wallace Deck” means the existing Town-owned, 309-space parking deck located at 150 E. Rosemary Street. “Wallace Deck Property” means this deck and its related real estate, which comprises approximately 1.49 acres and is further identified by PIN # 9788-37-9717 in the Orange County land records.

“Wet Lab” means a laboratory equipped with appropriate plumbing, ventilation, and equipment to allow for hands-on scientific research and experimentation, including the direct handling of potentially hazardous materials.

Exhibit B – Standard construction contract payment terms

The Town will pay construction cost requests to Samet upon Samet's providing a payment request to the Town in the form provided in the New Deck Contract, which will require Samet to provide proof of any stated third-party expenditures and appropriate lien waivers. The Town will have the right as the owner (but not the obligation) to inspect the work done from time to time and to request additional information from Samet to resolve any questions or apparent discrepancies. The Town will generally pay requisitions based on a "percentage of completion" basis, subject to the contract's retainage provisions, and will make payments within 30 days of the receipt of a payment request. The Town will not process more than one payment request in any calendar month.

To the extent the final terms of the New Deck Contract provide for different procedures, the terms of the New Deck Contract will govern.

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.

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.

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 27514
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]

Prepared by and return after recording to:

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

NORTH CAROLINA

ORANGE COUNTY

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

Orange County PINs:

WALLACE DECK LEASE

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

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

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

1. Lease Term. The term of this Lease (the "Term") begins on _____, 2021 (the "Effective Date"). The Term ends on the earliest to occur of the following:

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

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

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

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

3. Rent.

(a) The Town will pay monthly rent to Grubb in the amount of \$30,000.00 per month. Rent is due on _____, 2021, and on the 5th day of each month thereafter during the Term, except as provided in Section 3(b) below (the time period during which rent is paid as set forth in this Section 3(a), the "Flat Rent Period"). Rent for the first and last months of the Term or Flat Rent Period, as applicable, will be pro-rated, if appropriate, on the basis of the number of days elapsed and the total number of days in that month. If the 5th of any month is a holiday observed by the Town, the Town may pay the rent on the subsequent business day without penalty. The Town will pay the rent **by mailing a check by the due date** to the address designated by Grubb from time to time (which need not be the address designated in Section 10).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Insurance.

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

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

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

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

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

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

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

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

8. **Non-Appropriation of Public Funds.** Grubb acknowledges that the Town is a governmental entity, and the Lease's validity is based upon the availability of public funding under the authority of its statutory mandate. If public funds are unavailable and not appropriated for the performance of Town's obligations under this Lease, then this Lease shall automatically expire without penalty to the Town

thirty (30) days after notice to Grubb of the unavailability and non-appropriation of public funds. It is expressly agreed that the Town shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Lease, but only as an emergency fiscal measure during a substantial fiscal crisis that generally affects its governmental operations. The Town reasonably believes funds will be available to satisfy all its obligations under this Lease.

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

10. Notices.

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

b) Any communication under this Lease will be deemed given on the delivery date shown on a certified mail receipt, or a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

If intended for the Town, to Town of Chapel Hill, c/o Town Manager,
Town Hall, 405 Martin Luther King, Jr. Blvd., Chapel Hill, NC 27514

If intended for Grubb, to _____

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

11. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(SEAL)

ATTEST:

**TOWN OF CHAPEL HILL
NORTH CAROLINA**

Sabrina Oliver
Town Clerk

By: _____
Maurice Jones
Town Manager

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

Finance Officer
Town of Chapel Hill, North Carolina

GRUBB MANAGEMENT LLC

By: _____

Printed name: _____

Title: _____

[Wallace Deck Lease dated as of _____, 2020]

**STATE OF NORTH CAROLINA;
ORANGE COUNTY**

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

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

[SEAL]

Notary Public

My commission expires: _____

* * * * *

**STATE OF NORTH CAROLINA;
_____ COUNTY**

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

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

[SEAL]

Notary Public

My commission expires: _____

[Wallace Deck Lease dated as of _____, 2020]