

# **Non-binding Letter of Intent for a new parking deck in Chapel Hill**

\_\_\_\_\_, 2021

The University of North Carolina at Chapel Hill (the “University”) and the Town of Chapel Hill, North Carolina (the “Town”), state their intent to cooperate in the development of a new parking deck in downtown Chapel Hill, as provided in this Non-binding Letter of Intent. As used herein, the University or the Town may be referred to individually as a “party” and collectively as the “parties.”

## **1. The New Deck**

The Town is undertaking a project (the “Project”) to plan, design, build and otherwise place in service a new parking deck (the “New Deck”) having approximately 1,100 standard parking spaces with an entrance on Rosemary Street in Chapel Hill between Columbia and Henderson Streets. Exhibit A shows the intended location and tentative floorplan for the New Deck.

The Town intends to begin construction of the New Deck by the end of June 2021, and expects to place the New Deck in service by August 1, 2022. The Town estimates a total cost for the New Deck of approximately \$33,200,000.

The parties believe that the New Deck will benefit the University by making additional parking available in downtown Chapel Hill as the University expands its presence of employees and activities in Chapel Hill’s core downtown.

## **2. University’s Parking Spaces**

One hundred (100) of the approximately one thousand one hundred (1,100) standard parking spaces in the New Deck will be allocated to the University for its exclusive use in a location within the New Deck as mutually agreed by the parties (the “University Spaces”). The University will have access to and control over the University Spaces 24 hours a day/7 days per week/365 days per year for so long as the New Deck remains in service. The University Spaces will be specifically designated and gate-controlled within the New Deck.

The Parties agree to cooperate in the design of the New Deck to accommodate the University Spaces. The design will include, for example, the provision or planning for electric vehicle charging stations among the University Spaces as the University may determine. The University will be responsible for directing the inclusion of design elements in the University Spaces that are appropriate to comply with the Americans with Disabilities Act and similar laws.

The Parties will cooperate in designing and implementing technology appropriate to separate the University Spaces, including the technology that will allow the recognition and distinction of incoming customers who are using University Spaces from those using Town spaces.

The University will govern all University Spaces in accordance with “The Ordinance Regulating Traffic and Parking on the Campus of The University of North Carolina at Chapel Hill” (the “Ordinance”). The University may not, however, offer free parking to the public (that is, not related to specific University events) at a time that free public parking is not otherwise available in the New Deck. Town personnel will have no responsibility for administering or enforcing any aspect of the Ordinance.

The University reserves the right to transfer its interest in the University Spaces to an associated entity. The University must give the Town 30 days advance notice of any transfer. Any transfer may only be to a governmental entity or an entity qualified under Section 501(c)(3) of the United States Internal Revenue Code unless the Town consents otherwise. The Town’s primary interest in restricting transfer is to maintain the planned tax-exempt status of the Town’s financing for the New Deck. The Town will not unreasonably withhold, delay or condition its consent.

### **3. University’s Capital Contribution**

Amount. Subject to Section 5, the University will pay to the Town a one-time share of the capital cost of the New Deck, calculated as follows:

- \* The total cost of the New Deck;
- \* Divided by the final number of standard parking spaces at the time of occupancy (the “Total Deck Spaces”);
- \* Multiplied by 100.

Based on the current estimates of \$33,200,000 for New Deck total costs and 1,100 parking spaces, the parties estimate the University’s capital contribution will be \$3,018,182.

The New Deck total cost will include all soft costs, including design, permitting, engineering, and costs of real estate entitlements. It will include the Town’s net costs of real estate acquired and used specifically for the Project. It will include all construction costs. It will not include any of the Town’s financing costs or any amounts representing interest payable by the Town. When the Town is ready to begin construction, the Town will present the University with the then-current budget of New Deck costs for the University’s review.

In addition, the University will pay all direct costs of design, engineering, construction and installation of the equipment and technology used to separate the University Spaces as contemplated by the 3rd paragraph of Section 2 (the “Gate Costs”).

Timing. When the New Deck is ready to be placed in service, but not before September 1, 2022, the Town will present the University with an invoice for its capital contribution and the Gate Costs. The invoice will document the Town’s calculation of the University’s amount payable. The University must pay one-half of the total stated amount to begin using the University Spaces.

The invoice will include a certification of all construction costs from the Town’s construction contractor. The invoice will also include, for all other costs described and included in the invoice, a certification by the Town that the costs are accurate and chargeable to the capital account of the New Deck in accordance with governmental accounting standards.

By the 90th day following the date the University receives the invoice, the University will (a) pay any amount related to New Deck total costs that are not in dispute and (b) notify the Town of any elements of New Deck total costs in dispute and the University's reasons for dispute. The parties will then work together to resolve the dispute. Any definitive agreement as contemplated by Section 5 will include provisions for resolving any dispute. Gate Costs will be billed, reviewed and paid in a substantially similar manner.

Exhibit B illustrates the calculation provided for under this Section.

#### **4. Care and Maintenance; University's Additional Payments**

The Town shall keep the New Deck in good order and repair (reasonable wear and tear excepted) and in good operating condition. The Town will maintain security for the New Deck, will pay all utility costs of the New Deck, and will carry out a regular program of routine maintenance to include maintenance of lighting, cleaning, landscaping, sweeping and surface repair and resurfacing. The Town shall make from time to time all necessary or appropriate repairs, replacements and renewals of the New Deck (whether operating or capital in nature) so as to maintain the good order and repair of the New Deck through its life. The Town will use good faith, reasonable efforts not to commit or permit any waste or any other thing to occur whereby the value or usefulness of the New Deck might be impaired.

The University will make payments toward the costs of these activities as provided in this Section. The Town will maintain the payments made by the University under this Section in separate accounts on the Town's books and records, and will only use amounts paid by the University for their intended purposes.

a) Annual Operating Payments. The Town and the University will meet on an on-going basis to determine a plan and budget for operations and on-going maintenance of the New Deck. The budget will state in reasonable detail for items such as salaries and benefits, supplies, security, utilities and insurance, routine maintenance and general administration.

Subject to Section 5, the University will pay to the Town an annual operations and maintenance fee, for so long as the New Deck remains in service, calculated as follows:

- \* \$470 per space
- \* Multiplied by 100 spaces
- \* Multiplied by an inflation adjustment, as described below (the “Annual O&M Fee”).

The Town will submit to the University annually by each July 1, beginning with the first July 1 after the New Deck is placed in service the following: (a) an invoice stating the Annual O&M Fee, (b) an itemized summary statement of actual operating and maintenance costs for the previous year, and (c) the budget for operating and maintenance costs for the next year. If in any year the Town has not spent the full amount paid by the University for that year, the Town will carry that balance forward as a credit toward the following year’s Annual O&M Fee.

The first invoice will include an additional charge for the pro-rated portion of a year for which the New Deck has previously placed in service. Exhibit C illustrates this pro ration.

Each annual invoice will include, for all costs described and included in the invoice and summary statement, a certification by the Town that the costs are accurate and chargeable to operations and maintenance of the New Deck. By the -60th day following the date the University receives the invoice, the University will (a) pay any amount related to the Annual O&M Fee that are not in dispute and (b) notify the Town of any portions of the Annual O&M Fee that are in dispute and the University’s reasons for dispute (in each case, whether the expenses relate to the prior year or the upcoming year).

The inflation adjustment for each year will be the cumulative change in the United States producer price index, as published by the United States Bureau of Labor Statistics (or any successor index), from the January 1 preceding the first invoice through the relevant invoice date. The Town will not apply an inflation adjustment to the first invoice. The parties will work together to establish a corresponding index if the baseline of the stated index is restated.

The University is required to make these annual payments so long as parking has been available in the New Deck for at least 350 of the 365 calendar days preceding the invoice date. If the parking has been available for less than 350 days, the Town will adjust the invoice amount for the following year by multiplying the amount otherwise due by a fraction, the numerator of which is the total number of days parking was available and the denominator of which is 365.

In addition, the University will must separately pay any costs of extraordinary maintenance, repairs or replacement of the equipment and technology used to separate the University Spaces as contemplated by the 3rd paragraph of Section 2.

b) Capital Payments. The University and the Town will meet on a regular basis to determine an on-going plan of capital improvements and repair for the New Deck, so as to maintain the New Deck in good operating condition and without deferred capital maintenance.

Subject to Section 5, the University will pay to the Town a proportion of all Deck Capital Expenses, as defined below, equal to the ratio of University Spaces to Total Deck Spaces.

“Deck Capital Expenses” means all costs of design, engineering, construction and general carrying-out of capital repairs and improvements that are chargeable to the New Deck’s capital account in accordance with governmental accounting standards. Before beginning a project that is expected to create Deck Capital Expenses (a “Capital Project”), the University and the Town will meet and confer about the need, scope, expected budget and expected timeline for the project. The Town will have the sole responsibility and authority to carry out Capital Projects.

Upon completion of a Capital Project, the Town will provide an invoice to the University for the University’s share of the Deck Capital Expenses related to that Capital Project. The invoice will include a certification of all construction costs from the Town’s construction contractor and an itemized summary statement for such costs. The invoice will also include, for all other costs described and included in the invoice, a certification by the Town that the costs are accurate and chargeable to the capital account of the New Deck under

governmental accounting standards and an itemized summary statement for such costs, and will also include the Town's calculation of the University's share of expenses.

By the 60th day following the date the University receives the invoice, the University will (a) pay any amount related to Deck Capital Expenses that are not in dispute and (b) notify the Town of any Deck Capital Expenses that are in dispute and the University's reasons for dispute. The illustration in Exhibit B applies to these payments and calculations.

## **5. Nature of this Letter of Intent**

The parties agree that upon the signing and delivery of this Letter of Intent, they will begin to negotiate in good faith and due diligence for a definitive agreement to confirm their mutual obligations. The parties agree that this letter, though not binding, will serve as the initial basis for negotiating the definitive agreement, but that the definitive agreement may contain different terms or material terms not mentioned in this letter.

Either party may terminate negotiations at any time in its sole discretion with no further liability, provided that the party has negotiated in good faith and with due diligence to that time. Partial performance by either party of the terms of this letter, or the efforts by either party to perform due diligence or carry out other acts in contemplation of consummating this transaction, shall not be deemed evidence of intent by either party to be bound by the terms of this letter. The subsequent approval or acknowledgement of an agreement by email, text, or any other electronic communication service shall not be binding upon either party. The parties will not be bound to an agreement unless and until they execute and deliver a final and definitive written agreement.

Without a definitive agreement, the University has no obligations under Sections 3 and 4. The Town has no obligation, in any case, to undertake or continue the Project.

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

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

**ATTEST:**

**TOWN OF CHAPEL HILL,  
NORTH CAROLINA**

\_\_\_\_\_  
Sabrina Oliver  
Town Clerk

By: \_\_\_\_\_  
Maurice Jones  
Town Manager

**ATTEST:**

**THE UNIVERSITY OF NORTH  
CAROLINA AT CHAPEL HILL**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Nathan Knuffman  
Vice Chancellor for  
Finance and Operations  
Date: \_\_\_\_\_

[Letter of Intent  
For a new parking deck in Chapel Hill,  
dated as of \_\_\_\_\_, 2021]

Exhibit A – vicinity map and tentative floorplan  
Exhibit B – illustration of Section 3 calculation  
Exhibit C – illustration of pro ration under Section 4(a)



**Exhibit A – vicinity map and tentative floorplan**

### **Exhibit B – illustration under Section 3, “Timing”**

Assume that the Town builds a deck of 1,100 standard parking spaces. Under Section 3, the University’s share of capital costs is then 100 divided by 1100, or 1/11.

Assume the Town presents an invoice to the University on October 1, 2022, that states a certified total New Deck cost of \$33,200,000 and calls for a resulting University contribution of \$3,018,182.

Assume that after review, the University disputes capital costs of \$1,000,000 but does not dispute the remaining capital costs of \$32,200,000. In that case, by January 1, 2023 the University must pay 1/11 of \$32,200,000 (the undisputed costs), or \$2,927,273 (with credit for any amounts previously paid).

At the same time, the University would state its reasons for disputing the remaining \$1,000,000 of costs, and the parties would work to resolve the dispute as may be provided in the definitive agreement.

### **Exhibit C – initial year pro ration under Section 4(a)**

The Town is to present invoices for operations and maintenance annually on each July 1, beginning with the July 1 following the New Deck’s placed in service date. Section 4(a) says the first invoice will include an additional pro-rated amount for the period between the New Deck’s placed in service date and that ensuing July 1. By way of illustration:

The first July 1 invoice (for the year beginning that July 1) will be for 100 x \$470, or \$47,000. Assume the New Deck was placed in service the March 15 prior to that July 1, or 108 days prior. The first invoice will therefore carry an additional charge equal to 100 x \$470 x (108/365), or \$13,907.