

**ECONOMIC DEVELOPMENT AGREEMENT  
TOWN OF CARRBORO, ORANGE COUNTY, NORTH CAROLINA**

**THIS AGREEMENT** is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2013 by and between the Town of Carrboro, a North Carolina municipality, 301 West Main Street, Carrboro, North Carolina 27510 (the “Town”) and Fleet Feet, Inc., a North Carolina corporation, 406 East Main Street, Carrboro, North Carolina 27510 (“Fleet Feet”), Kalisher Holdings, LLC, 9425 Bridle Spur, Chapel Hill, North Carolina 27516 (“Kalisher”), and Main Street Properties of Chapel Hill, LLC, 206 East Main Street, Carrboro, North Carolina 27510 (“MSP”).

WHEREAS, Fleet Feet, Kalisher and MSP (collectively referred to as the “Companies”) own and operate businesses located within the corporate limits of the Town of Carrboro, North Carolina;

WHEREAS, Fleet Feet, Kalisher and MSP contribute significantly to the success and vitality of the local economy in and around the Town of Carrboro by providing jobs, generating sales tax (and other) revenues, and otherwise acting as good corporate citizens;

WHEREAS, Fleet Feet has outgrown its current offices located at 110 East Main Street, Unit 200, in Carrboro, and at the building it owns known as 406 East Main Street in Carrboro, and it would be beneficial for Fleet Feet to consolidate its operations now conducted in these two different locations in one, larger headquarters location;

WHEREAS, Kalisher currently operates its business at 209 East Main Street in Carrboro, is in need of a larger facility for its growing business;

WHEREAS, MSP owns and is in the process of re-developing property known as 300 East Main Street (the “Project”), and expects to have commercial space suitable for Fleet Feet’s use, available for lease in Phase 2 of the Project in approximately 24 months;

WHEREAS, the Town of Carrboro desires to facilitate the creation and/or retention of jobs in Carrboro by Fleet Feet and Kalisher, and maintain and/or increase the tax base in the Town by participating in an agreement with Fleet Feet, Kalisher and MSP to help insure the continued, successful operation and growth of the respective businesses in the Town of Carrboro; and

WHEREAS, the Town, in the discretion of its governing body, and in accordance with authority granted by its charter and by N.C. Gen. Stat. 158-7.1(a) and (b), has agreed to make appropriations for the purpose of aiding and encouraging economic activity that will help increase business prospects for the benefit of the Town and its residents, in accordance with the terms of this Agreement.

NOW, THEREFORE, based on these premises and in consideration of the mutual undertakings set forth herein, and for other mutual consideration stated herein, the sufficiency of which is acknowledged by all parties, the Town, Fleet Feet, Kalisher and MSP agree as follows:

1. The Town agrees to purchase from Fleet Feet for good and valuable consideration at a price to be determined by the Town and Fleet Feet, and Fleet Feet agrees to convey to the Town by warranty deed good and marketable title, free of liens and encumbrances, to the condominium now owned by Fleet Feet and located at 110 East Main Street, Suite 200, Carrboro, North Carolina (Orange County PIN 9778-86-9017.002) (the "Condominium Property"). The Town's obligation to purchase the Condominium Property is conditioned on the submission to the Town by Fleet Feet of proof of an executed lease as set forth in paragraph 2 below. Closing of this transaction shall occur within \_\_\_\_ days of satisfaction of all the terms of paragraphs 2 and 3 of this Agreement.

2. Fleet Feet shall lease from MSP a minimum of 15,000 square feet of retail and office space in a building to be constructed by MSP known as Phase 2 of the Project at 300 East Main Street, for a minimum ten year lease term with two five-year options, so that Fleet Feet's minimum lease term at the Project will be ten years with an option to extend that term for up to ten additional years. The lease agreement between Fleet Feet and MSP Fleet Feet shall also include a right of first refusal for Fleet Feet to lease an additional 10,000 square feet in the building to be constructed as part of the Phase 2 of the 300 East Main Street Project in Carrboro.

3. Kalisher shall purchase from Fleet Feet and Fleet Feet shall convey to Kalisher by warranty deed good and marketable title, free of all liens and encumbrances, to the property and building now owned by Fleet Feet and known as 406 East Main Street in Carrboro (Orange County PIN No. 9788-06-0243) (the "Property") at a purchase price to be determined by Kalisher and Fleet Feet. Closing on this transaction shall occur on or before \_\_\_\_\_.

4. Provided that Kalisher purchases the Property as stated in paragraph 3 above, then beginning on the date that Kalisher commences occupancy of the Property, and continuing for ten years thereafter, MSP shall make available to Kalisher, and Kalisher shall lease from MSP, up to twenty (20) parking spaces in the parking deck now being constructed by MSP as part of Phase 1 of the 300 East Main Street Project. Kalisher shall pay to MSP during the first year of the parking space lease term an annual rental rate of \$250.00 per parking space for each space actually leased by Kalisher, such rate to increase three percent (3%) per year during the initial ten year term.

5. Kalisher and the Town agree that should MSP notify them in writing during the initial ten year term referred to in paragraph 4 above, that MSP has determined that there is, or may be, insufficient parking space available in the parking deck at The Project, then Kalisher and the Town shall make a good faith effort to identify and negotiate for the right to use parking spaces within a reasonable distance of the Property for Kalisher's use. If the Town and Kalisher are successful in identifying and negotiating for the lease, purchase or right to use other parking spaces, Kalisher will surrender its rights to the parking spaces in the parking deck at the Project.

6. MSP shall provide 20 parking spaces in the parking garage for Kalisher for an additional ten year term, if spaces are available (i.e., if such spaces are not allocated to other tenants/uses pursuant to either lease agreements or Town land use regulations). However, if

parking spaces are not available at the parking garage located at 300 East Main Street upon the expiration of the initial ten year term provided pursuant to paragraph 4 above, then the Town shall assist Kalisher by either (a) locating additional parking spaces available for Kalisher's use within a reasonable distance (to be determined by mutual agreement of the Town and Kalisher) from the Property, or (b) making a lump sum payment to Kalisher in the amount of \$80,000 (the "Parking Assistance Payment", representing \$400.00 per parking space, per year, for a ten year period).

7. The Town shall reimburse Kalisher for the actual rent paid to MSP by Kalisher during the initial ten year term of the lease for up to 20 parking spaces in the parking garage located at 300 East Main Street in accordance with paragraph 4 above, upon presentation by Kalisher to the Town of an invoice for other proof of payment of rent for parking spaces by Kalisher to MSP.

8. In the event that Kalisher ceases operation of its business at the Property during the additional 10 year term referred to in paragraph 5 above, then Kalisher shall re-pay the Town a prorata portion of the Parking Assistance Payment, the repayment amount being calculated by multiplying \$80,000 by a fraction, the numerator of which is the number of years remaining in the additional 10 year term at the time that Kalisher ceases operation at the Property, and the denominator of which is ten (10) (e.g., if Kalisher cease operations during the 4<sup>th</sup> year of the additional 10 year term, then Kalisher shall repay the Town \$48,000 (\$80,000 times 6/10).

9. The Town agrees to lease the Condominium Property referred to in paragraph 1 above back to Fleet Feet, Inc. for a period of two years commencing on the date that the Town acquires title to the Condominium Property from Fleet Feet, Inc. Fleet Feet agrees to pay the Town, and the Town agrees to accept from Fleet Feet in consideration for the lease of the Condominium Property, lease payments in the amount per square foot, per year, payable in monthly installments of \$\_\_\_\_\_, for the term of the lease. Fleet Feet shall be responsible for all insurance, property taxes, utilities, repair and maintenance costs for the Condominium Property during the lease term.

10. Fleet Feet agrees that it expects to continue to operate its business in the Town of Carrboro for a period of at least \_\_\_\_ years from the date of this Agreement, and that it shall establish or maintain the equivalent of at least \_\_\_\_ full time employment positions in the Town of Carrboro during that period of time, with an average annual payroll of \$\_\_\_\_\_.

11. Kalisher agrees that it expects to continue to operate its business in the Town of Carrboro for a period of at least \_\_\_\_ years from the date of this Agreement, and that it expects to establish or maintain the equivalent of at least \_\_\_\_ full time employment positions in the Town of Carrboro during that period of time, with an average annual payroll of \$\_\_\_\_\_.

12. Performance by each of the parties to this Agreement of their respective obligations stated herein is expressly conditioned on the performance of each other party of its obligations, and if any party shall fail, or be unable, to perform its obligations as set forth in this Agreement then this Agreement shall terminate, with no party having any contractual obligation to any other party under this Agreement

13. Indemnification. Fleet Feet, Kalisher and MSP each hereby agree to indemnify, protect and save the Town and its officers, councilmembers and employees harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Project or the transactions contemplated by or relating to this Agreement, including without limitation, the possession, condition, construction or use thereof, insofar as such matters relate to events subject to the control of the Companies, and not the Town. The indemnification arising under this paragraph shall survive the Agreement's termination.

14. Disclaimer Of Warranties. The Companies acknowledge that the Town has not designed the Project, that the Town has not supplied any plans or specifications with respect thereto and that the Town is not, in any way, a guarantor or warrantor of the Project or any component parts of the Project, and that the Town has not made any warrant or other representation, express or implied, regarding the Project or any component part thereof or any property or rights relating thereto; it being agreed that the Companies bear all risks relating to the Project and to the success of their respective business operations.

15. Assignment. No party shall sell or assign any interest in or obligation under this Agreement without the prior written consent of the other party.

16. Limited Obligation Of Town. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the Town within the meaning of any constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as delegating governmental powers nor as a donation or a lending of the credit of the Town within the meaning of the State constitution. This Agreement shall not directly or indirectly or contingently obligate the Town to make any payments beyond those appropriated in the Town's sole discretion for any fiscal year in which this Agreement shall be in effect. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the Town's moneys, nor shall any provision of the Agreement restrict to any extent prohibited by law, any action or right of action on the part of any future Town governing body. To the extent of any conflict between this paragraph and any other provisions of this Agreement, this paragraph shall take priority.

17. Governing Law. The parties intend that this Agreement shall be governed by the laws of the State of North Carolina.

18. Notices.

- (a) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.
- (b) Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, and addressed as follows:

(1) Fleet Feet, Inc.  
\_\_\_\_\_  
\_\_\_\_\_

(2) Kalisher Holdings, LLC  
\_\_\_\_\_  
\_\_\_\_\_

(3) Main Street Partners  
\_\_\_\_\_  
\_\_\_\_\_

(4) Town of Carrboro  
\_\_\_\_\_  
\_\_\_\_\_

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

19. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

20. Entire Agreement. This Agreement constitutes the entire contract between the parties, and this Agreement shall not be changed except in writing signed by both parties.

21. Binding Effect. Except as otherwise provided in this Agreement, the rights and obligations herein shall be binding upon and inure to the benefit and be enforceable by the parties and their respective successors and assigns.

22. Time. Time is of the essence in this Agreement and each and all of its provisions.

. Liability Of Officers And Agents. No officer, agent or employee of the Town shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This paragraph shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

IN WITNESS WHEREOF, the parties hereto, acting pursuant to authority duly given, have caused this Agreement to be duly executed the day and year first above written.

TOWN OF CARRBORO

By: \_\_\_\_\_  
Mark Chilton, Mayor

FLEET FEET, INC.

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ President

KALISHER HOLDINGS, LLC

By: \_\_\_\_\_  
\_\_\_\_\_, Member/Manager

MAIN STREET PROPERTIES OF CHAPEL HILL, LLC

By: \_\_\_\_\_  
\_\_\_\_\_, Member/Manager