

OPTION TO EXTEND LEASE AGREEMENT

THIS OPTION TO EXTEND LEASE AGREEMENT ("Agreement") is made this ____ day of _____, 2017, by and between Main Street Properties of Chapel Hill, LLC, a North Carolina Limited Liability Company, ("Lessor"), having a mailing address of _____ and the Town of Carrboro, a North Carolina municipal corporation, ("Lessee"), having its offices at 201 W. Main Street, Carrboro, NC 27510.

I. OPTION TO EXTEND LEASE

1. **Grant of Option.** Lessor is the owner of certain real property and improvements thereon, known as 300 East Main Street in Carrboro (the "Property"). Presently there is a parking garage and a parking lot owned and operated by Lessor situated on a portion of the Property, and the Town and Lessor are parties to an existing Parking Lease and Agreement with a term that expires in August 2018. A copy of that Parking Lease and Agreement is attached hereto as Exhibit A. In accordance with the conditions attached to a Conditional Use Permit Modification for the Property granted on March ____, 2016, Lessor hereby grants to the Town and the Town accepts from the Lessor an option to extend the Parking Lease and Agreement as more particularly stated below.

2. **Option Term.** The Town may exercise its right to extend the Parking Lease and Agreement by notifying Lessor in writing of its intention to do so at any time on or before February 19, 2018.

3. **Consideration for Option.** Consideration for the Initial Term of the Option granted hereunder shall be Ten and No/100 Dollars (\$10.00) ("Option Consideration"), the receipt and sufficiency of which Lessor acknowledges..

4. **Extension of Option.** This Option may be further extended by written agreement of Lessor and the Town at any time prior to the expiration of the then-existing term of this Option.

5. **Title.** Lessor warrants that Lessor is seized of good and marketable title to the Property and Premises and has the full authority and power to enter into and execute this Agreement. Lessor further warrants that there are no deeds to secure debt, mortgages, liens, judgments, restrictive covenants, or other encumbrances on the title to the Property and Premises that would prevent Lessee from using the Premises for the uses intended by Lessee as set forth in this Agreement.

6. **Transfer of Option.** The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective heirs, successors, and assigns, as may be applicable. Lessor may not assign or otherwise transfer its rights under this Option without Lessor's written consent.

7. **Lapse of Option.** Should the Town fail to timely exercise its option within the term of the Option, all rights and privileges granted in this Agreement shall be deemed

completely surrendered, this Option terminated, no additional money shall be payable by either party to the other in connection with this Option, and the parties shall have no further rights, obligations or liabilities with respect to each other in connection with this Option.

9. **Exercise of Option.** Should the Town exercise this Option, notice shall be given to the Lessor by regular as well as certified mail, return receipt requested, addressed to Lessor's mailing address set forth in the introductory paragraph of this Agreement. Mailed notice shall be deemed effective on the date it is posted. Upon the tender of written notice of the Town's intent to exercise the Option, the terms of this Agreement applying to the lease of the Premises shall govern the relationship of the parties and this Agreement shall thereafter be referred to as the "Lease."

II. LEASE AGREEMENT

The terms of the existing Parking Lease and Agreement (Exhibit A) shall remain in effect upon exercise by the Town of its option to extend such Agreement, except that the existing Agreement shall be modified as follows:

1. **Term and Rental.** The Parking Lease and Agreement may be extended for up to three (3) years beyond its current expiration date of August 19, 2018. During any such extension term, the Town shall pay to Lessor as "rent" for the number and type of parking spaces described in paragraph 2 below, an annual payment equal to three percent (3%) of the combined gross receipts of the Hampton Inn & Suites hotel now existing on the Property and the Hilton Garden Inn hotel planned to be constructed on the Property up to a maximum annual rate of \$90,000.00 and (b) upon the issuance of a certificate of occupancy for the proposed Hilton Garden Inn to be built at 107 Padgett Lane the maximum annual rent shall increase to \$120,000.00.

2. **Parking Spaces Leased – Number, Location and Time.** During any option term, the Town may lease from Lessor, and Lessor shall make available "public parking", at least 150 undesignated parking spaces at the Property during daytime hours (7:00 a.m. until 5:30 p.m.) and at least 250 undesignated parking spaces during night time hours (5:30 p.m. until 3:00 a.m.). These "public parking" spaces shall be available free of charge to the public for increments of at least three (3) consecutive hours per user on terms at least as favorable as the most favorable terms offered for other "undesignated" parking spaces at the Property. During any option term, Lessor may not reduce the number of undesignated parking spaces made available to the public pursuant to the terms of the Parking Lease and Agreement without the Town's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

3. **Town's Right to Opt Out.** Upon six (6) months advance written notice to Lessor, the Town may during any "option year" (i.e., during any year beginning on or after August 19, 2018), (a) "opt out" of the remaining term of the Parking Lease and Agreement, or (b) reduce the number of parking spaces available to the Town and the public as "public parking", and if the Town does so then the annual rent payable at that time shall be reduced proportionately.

4. **Roberson Street/Main Street Parking Lot.** Lessor and the Town acknowledge that Lessor owns additional property used as a parking lot, located at the corner of Roberson Street and Main Street, and that parking spaces at this lot are now counted toward satisfying Lessor's parking requirements at the Property. Should any of the parking spaces located in the Roberson Street/Main Street parking lot be eliminated by Lessor for any reason, the elimination of such parking spaces shall not reduce the number of undesignated parking spaces required by the Parking Lease and Agreement to be made available as "undesignated public parking".

5. **Special Event Parking Coordination.** Lessor and the Town acknowledge that better coordination of parking spaces available at the Property during "special events", including Town-sponsored events, would be mutually beneficial to Lessor and the Town. Therefore, and with this mutual interest in mind, Lessor and the Town agree to work together to develop a plan to improve communication and coordination concerning the availability and use of parking spaces at the Property and at the parking garage, particularly during events for which the Lessor or the Town anticipate significant extraordinary demand for parking. Furthermore, Lessor and Town agree that notwithstanding any provision in this Agreement to the contrary, Lessor shall suspend the maximum time limitation on parking established in paragraph 2 above (relating only to spaces covered by this Agreement) for up to eight (8) days each calendar year for Town-sponsored special events, provided that the Town must give Lessor at least sixty (60) days advance written notice of each date for which the time limitation is to be suspended. The Town may request additional suspensions of the time limitations on a case-by-case basis in connection with special events sponsored by Carrboro-area community organizations. Provided that the Town provides parking monitoring services at its expense for large or weekend special events, Lessor will use reasonable efforts not to refuse access to parking spaces available for Town use during special events unless the maximum number of undesignated available parking spaces are occupied, and the Town and Lessor shall cooperate to provide sufficient qualified staff to be paid by the Town to monitor the use of parking spaces on the Property during Town-sponsored special events.

6. **Survival of Existing Parking Lease and Agreement Terms.** Except as specifically set forth herein, the terms of the existing Parking Lease and Agreement shall remain in full force and effect during any option year under this agreement. To the extent that there may be any conflict between the terms of this Option to Extend Lease Agreement and the Parking Lease and Agreement, the terms of this Agreement shall control.

LESSOR:

Main Street Properties of Chapel Hill, LLC

By: _____

Name: _____

Title: _____

TOWN OF CARRBORO

By: _____

David Andrews, Town Manager

EXHIBIT A TO LEASE

Deed/Legal Description of Property

(TO BE PROVIDED)