

**STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD**

**MEMORANDUM OF  
UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING** (herein the “MOU”) made and entered into as of \_\_\_\_\_, 2015, by and between the City of Greensboro, a political subdivision of the State of North Carolina, whose business mailing address is 300 West Washington Street, Greensboro, North Carolina, 27402, herein referred to as “City”, and Greensboro Downtown Parks, Inc., a North Carolina non-profit corporation organized and existing under the laws of North Carolina, whose business mailing address is 330 South Greene Street, Suite 100, Greensboro, North Carolina, 27401, herein referred to as “GDP”.

WHEREAS, upon the death of Carolyn Weill LeBauer, the establishment of The Carolyn LeBauer Fund at the Community Foundation of Greater Greensboro (CFGG) made provisions so that \$10 million could be used for the development of an outstanding public park to be named The Carolyn and Maurice LeBauer Park (herein referred to as “LeBauer Park”);

WHEREAS, pursuant to the bequest and establishment of the Carolyn LeBauer Fund terms directed the CFGG to partner with the governing body of the City to execute the vision, site location, construction and development of LeBauer Park. Additionally the bequest recommends the CFGG to create and hold, from that part of the Fund not utilized for site acquisition and development, a permanent Fund which can be utilized for ongoing park operations, improvements and maintenance.

WHEREAS, on April 1, 2014, the City Council by adoption of Resolution No. 86-14 agreed to accept the gift of a new park in downtown Greensboro, and directed the City Manager to work with the CFGG to develop a Memorandum of Understanding for construction of LeBauer Park;

WHEREAS, on December 16, 2014, the City Council by adoption of Resolution No. 330-14 authorized the City Manager to enter into a lease agreement with LeBauer Park, LLC to construct the park;

WHEREAS, the City intends to enter into a public-private partnership for the operation of the Carolyn and Maurice LeBauer Park and the operation of Center City Park, should that Park be acquired by the City and/or to the extent that the City contributes to the operation and maintenance of that park, herein collectively referred to as “the Park”;

WHEREAS, it is desirable for the City, in accordance to the bequest and in the public interest to increase efficiencies that the partnership with CFGG continues, and the Park is managed and operated by a third party GDP, which includes but not limited to the following: scheduling, planning, implementing, managing, operating, maintaining and evaluating programs, events, space and amenities and employing staff responsible for the operation, management, janitorial, maintenance and general upkeep as outlined within the MOU;

WHEREAS, pursuant to the bequest, consideration and attention will be given to including, within the Park, outstanding recreational equipment and facilities for children, suitable athletic facilities for people of all ages, educational and learning environments and facilities that may relate to matters of nature study, science and natural history, and attractive landscaping and the creation of tasteful manmade features.

WHEREAS, the City desires and intends to provide for the continued operation of the Park as public recreational and park facilities in a manner as will honor the bequest of and serve the needs of the residents, and provide for its residents a learning and recreational environment with a customer service level commensurate with other facilities, where all services provided shall compare favorably to the services, standards and practices of similar parks in the United States, and where the facilities are operated in accordance with the highest standards, including the management of the operations. The City will enter into the public-private partnership with GDP for the purposes of securing: budgetary savings each year, private sector support, enhancement of City property, strategic enhancement of City infrastructure, operational expansion, and corresponding economic development impacts.

**WITNESSETH**

1. Term. This MOU shall be in effect for five (5) years, unless terminated in accordance with Paragraph 11, and may be renewed for additional terms as approved by the Greensboro City Council.
2. City's Contributions to Operations. Beginning July 1, 2016, in order to help defray the costs and expenses incurred by GDP in the operation of the Park for the enjoyment of the community, City shall continue to make accessible equal to or greater, annual funding of:
  - a. \$200,000 allocation from the General Fund for expenses normally associated with other parks within Greensboro. These funds are used for normal park maintenance and operations expenses such as horticulture, fertilization, landscaping and programming;
  - b. \$150,000 from the Business Improvement District Property Tax (BID). For extraordinary expenses such as those associated with the operation and maintenance of specialized amenities and water features. Funding shall be provided in quarterly installments in the following amounts, which shall be due on the 1<sup>st</sup> day of each February, May, August and November. The City may, in lieu of paying the installment contributions in cash, provide the City's contributions by providing in-kind contributions to the operation and maintenance of the Park which offset out-of-pocket expenses that would have otherwise been incurred by GDP in the operation and maintenance of the Park.
  - c. No Other Financial Obligation. Except for its obligation to provide the contributions provided for above, City will not have any other financial responsibility to GDP to contribute to the operation, maintenance, or care of the Park during the MOU Term.

3. Board of Directors (Board). GDP agrees to establish a 14 (fourteen) member Board of Directors. Each member of the Board shall possess one vote in making decisions of the Board required under this MOU. The initial members of the Board shall be appointed by the City of Greensboro Parks and Recreation Commission upon recommendations provided by the CFGG and the Department of Parks and Recreation. All subsequent community stakeholder members of the Board shall be appointed by the Board. The members of the Board shall be as follows:

- a. A member of the CFGG leadership team, or designee
- b. The City Manager, or designee (ex-officio)
- c. District 3 or At Large Councilperson (ex-officio)
- d. Parks and Recreation Director (ex-officio)
- e. Parks and Recreation Commission Chair (ex-officio)
- f. Parks and Recreation Commission Member (ex-officio)
- g. Community Stakeholder
- h. Community Stakeholder
- i. Community Stakeholder
- j. Community Stakeholder
- k. Community Stakeholder
- l. Community Stakeholder
- m. Community Stakeholder
- n. Community Stakeholder

All members shall serve for a term of three (3) years and shall continue to serve until their successors are appointed and qualified. Initial terms shall commence on                     , 2015. In order to allow for overlapping of terms, the initial appointees shall serve terms as follows: the CFGG member and two community stakeholder members shall serve for a term of one (1) year; three community stakeholder members shall serve for a term of two (2) years; and three (3) community stakeholder members shall serve for a term of three (3) years. The CFGG and community stakeholder members may serve two (2) full terms in accordance with Section 2-139 of the City Code of Ordinances. The ex-officio members may continue to serve for as long as they hold their City position.

4. Duties of the Board. The Board shall have the following duties:
- a. Meetings and voting. The Board shall meet at least monthly, or at intervals as otherwise agreed by the Board and shall adopt such rules and procedures as it deems appropriate to perform its duties under the MOU. In the event of a tie on a specific decision to be made by the Board, the City Manager or designee shall cast the deciding vote.

- b. Use and scheduling of the Park. The Board shall resolve all conflicts regarding the use and scheduling of the Park and such decisions shall be binding on the parties, subject to the following guidelines:
    - i. GDP will have control of scheduling fields, amenities, performance spaces, field space, and subsequently, the City will have first priority over a person or group who is not a party to this MOU.
    - ii. GDP may close the Park for maintenance, safety or weather-related reasons.
    - iii. GDP will provide a specified number of hours per day/week/month on a specified number of courts/fields to be available for free open play as directed by the Department of Parks and Recreation.
  - c. Operation and maintenance of the Park. The Board shall make recommendations when appropriate to the parties, including by not limited to, facility use policies, rules and regulations, user fees and scholarship opportunities, and capital improvements
  - d. Contracts with nonparties. The Board may direct GDP to enter into contracts with nonparties, such as health and wellness service providers, food and beverage providers, artisans or other service providers to enhance resident experiences to perform certain services for the facility and/or participants, subject to the written approval of the parties. All contracts shall be issued in accordance with City ordinances and policies, including but not limited to the Minority/Women Business Enterprise Program Plan.
- 5. Managing Agent. Notwithstanding any other provision of this MOU, the City agrees that GDP may from time to time contract with a third party management company acceptable to GDP to manage and operate the Park in the manner required by this MOU and the direction of the Board and to perform some or all of the duties of GDP hereunder (herein referred to as the “Manager”). GDP shall be entitled to assign to any Manager engaged by GDP such duties and responsibilities in connection with the maintenance and operation of the Park as GDP in its discretion deems appropriate provided such Manager shall have no greater rights with respect to the maintenance and operation of the Park than are granted to GDP in this MOU and provided that the Manager shall be required by GDP to adhere to the terms of this MOU with respect to the duties and responsibilities of the GDP being performed by the Manager. GDP shall be responsible for performance of the Manager and shall have the full right and authority to remove and replace the Manager and to monitor and direct the activities of the Manager. If GDP hires a Manager to manage and operate the Park, GDP shall, nonetheless, remain liable for the performance of all its obligations, duties and responsibilities under this MOU.
- 6. Construction or improvements and Capital Improvement Program.
  - a. Improvements required to be made by GDP. GDP shall make, at its own expense, all alterations of the Park as may be required by any lawful authority, agency or

governmental unit having jurisdiction over the Park located upon the Land in order to cause the Park to comply with any statute, law, regulation or ordinance applicable generally to the Park and comparable facilities.

- b. Capital Improvements Plans. GDP shall annually, no later than April 1 of each year, prepare and submit to the Board a capital improvements plan listing the improvements, additions, enhancements and alterations to the Park, that GDP intends to make to the Park during the next twelve (12) months (each an “Annual Capital Improvements Plan”). Each Annual Capital Improvements Plan shall describe each proposed improvement project, the estimated costs thereof, and then projected time frame for commencement and completion of each project. GDP shall not be obligated to make the improvements, additions, enhancements or alterations provided for in any Annual Capital Improvements Plan submitted hereunder. GDP, however, may make any improvement, addition, enhancement or alteration to the Park as is provided for any Annual Capital Improvements Plan unless the City Manager notifies GDP in writing no later than thirty (30) days after the submission of the Annual Capital Improvements Plan in which the proposed improvement, additional, enhancement or alteration is first proposed that the proposed improvement, addition, enhancement or alteration is disapproved. The City Manager shall not, however, unreasonably withhold approval of any proposed improvement, addition, enhancement or alteration. The City Manager’s failure to disapprove any improvement, addition, enhancement or alteration proposed in any Annual Capital Improvements plan submitted by GDP hereunder within thirty (30) days of the submission thereof shall constitute an approval thereof by the City Manager.
  - c. Permissive Alterations. GDP may from time to time construct additional improvements upon the Park and may alter, enhance, improve and replace elements of the Park amenities or portions thereof provided: (1) that all such additions, alterations, enhancements and replacements shall be consistent with the upscale first quality nature of the Park, and in keeping with the present quality and character thereof; and (2) that each such addition, alteration, enhancement, or replacement shall have been approved by the Board which approval shall not be unreasonably withheld.
7. Insurance.
- a. Indemnity and Insurance. The GDP will indemnify and save harmless the City, its employees, agents and officers from and against any and all losses, claims, suits, damages or expenses, including by not limited to reasonable attorneys’ fees, arising out of or in any many connected with GDP’s occupancy, use or operation of the Park and vehicles, excepting, however, losses, damages, suits, claims or expenses caused by the negligence of the City, its officers, agents or employees. The City shall approve all insurance carriers with whom the GDP does business.

GDP shall procure and maintain in full force and effect during the term of this MOU a policy of automobile bodily injury and property damage liability insurance covering owned, non-owned and hired vehicles for an amount not less than \$1,000,000 combined single limits; a policy of commercial general liability insurance for bodily injury and property damage for an amount not less than \$1,000,000 per occurrence with \$2,000,000 annual aggregate; and a policy of worker's compensation insurance, coverage A-statutory and coverage B-employee's liability, in an amount of not less than \$100,000. GDP shall file with the City Manager's Office certification of insurance evidencing that the required insurance policies are in effect. In the event any of the policies of insurance required herein are canceled or not renewed, GDP shall, prior to the effective date of such cancellation or non-renewal, procure other insurance in the amounts and in accordance with the conditions set forth herein. The procuring of the required policies of insurance shall not be construed to be a limitation of GDP's liability or as full performance on its part of the indemnification provisions of the MOU, the GDP's obligation being, notwithstanding such policies of insurance, the full and total amount of any damage, injury, expense or loss caused by or attributable to GDP's activities conducted under this MOU.

- b. Property Insurance Coverage. GDP shall carry at its own expense, during the entire term hereof, insurance to cover equipment, art, amenities and exhibits, in the full replacement value thereof and shall name the City as an additional insured for the City's interest, if any, in such contents and exhibits. Upon demand the GDP should provide a copy of certification of insurance to the City's Manager's Office.
  - c. Liability Insurance. GDP shall, during the entire term hereof, keep in full force and effect, a policy of commercial general liability insurance with respect to the Park and the business operated by GDP in the Park in which the combined single limit of coverage shall be not less than \$2,000,000. Such insurance shall name the City, its agents, officers, and employees as an additional insured, which shall be primary and not contributory to any other insurance that may be available to the City.
8. Utilities. GDP shall be responsible for providing any utilities (gas, water, sewer, electric, internet and telephone) to the Park. GDP shall, from time-to-time, upon request from the City, join in the granting of such utility easements as may be reasonably necessary to service all improvements on the Park. Any such systems installed must be constructed in full compliance with all extent permitted under ordinances governing water usage, shall make available to GDP, at rates and terms available to comparable users, water, in such amounts as may be required to operate the Park in the manner required by this MOU and sanitary sewer and storm sewer service in a manner consistent with the existing service to the Park.

9. Park Operations.

- a. General Provisions. GDP shall provide full organization, administration and supervision of all the Park operations, including, but not limited to opening/closing the Park at the appropriate times; collection of admission, sales of merchandise, food, beverage and apparel, programming and meeting facility rental, etc. GDP desires to operate the Park in the manner contemplated by this MOU which includes but is not limited to: Professional Park standards as they relate to the National Recreation and Parks Association and the Commission for Accreditation of Park and Recreation Agencies (CAPRA) for accreditation standards, USDA license certification, approved bylaws and code of ethics per GDP.
- b. Facility and Equipment Maintenance. GDP shall, at its expense, keep and maintain buildings, restrooms structures, improvements, fixtures, trade fixtures, play features, fountains, art, signage, kiosks, equipment, free standing appliances, in good, operable, useable and sanitary order and repair, and in a good operating condition, normal water and tear, casualty damage, and repairs and replacements for which the City is responsible excepted, throughout the MOU Term.
- c. Compliance. GDP shall conform to and abide by all municipal and county ordinances, and all state and federal laws and regulations, insofar as the same or any of them are applicable; and where permits and/or license are required for the Park operations and/or any construction required or authorized, the same must be first obtained from the regulatory agency having present jurisdiction. In addition, GDP shall conform to and abide by all rules, regulations, procedures and policies of the City Council and the City Manager insofar as the same or any of them are applicable.
- d. Ownership of improvements. All permanent improvements constructed on the Park by GDP as permitted by this MOU shall be owned by City.

10. Default. The following events shall be deemed to be Events of Default by GDP under this MOU:

- a. If GDP shall fail to pay any scheduled utility costs reserved herein within ten (10) days of the date when due, and shall not cure such failure within ten (10) days after receipt by GDP of written notice of such failure;
- b. If GDP shall fail to comply with any term, provision or covenant of this MOU, other than the payment of utilities, and shall not cure such failure within two (2) months after receipt by GDP of written notice of such failure, provided that where fulfillment of such obligation requires activity over a period of time in excess of two (2) months and GDP shall have promptly, following receipt of such notice, commenced to perform whatever may be required to cure the particular default and continues such performance diligently, said time limit shall be extended for so long as may be required to cure the default;

- c. If GDP shall become insolvent, or shall make a transfer in fraud of its creditors, or shall make an assignment for the benefit of its creditors; or
  - d. Transfer of the majority controlling interest of GDP to persons other than those who are in control at the time of the execution of this MOU without approval by the City, which shall not be withheld unreasonably.
11. City's Remedies. Upon the happening of any Event of Default, and expiration of any applicable period for curing the same, City may, by written notice given to GDP, at any time after such Event of Default, terminate the MOU Term effective as of the date of such Event of Default, or may institute an action against GDP to recover any actual loss sustained by City as a result of such Event of Default.
- a. Surrender of Premises. Upon any termination of the MOU Term, whether by lapse of time or otherwise, GDP shall promptly surrender possession and vacate the Park premises.
  - b. Damages. If City shall elect to terminate the MOU Term because an Event of default has occurred, City shall be entitled to recover of GDP all sums due from GDP up to the date of such termination and such damages as may accrue by reason of GDP's default hereunder.
  - c. Not Exclusive. No remedy herein or otherwise conferred upon or reserved to City or GDP shall be considered exclusive of any other remedy, but the same shall be in addition to every other remedy given hereunder, or now, or hereafter existing at law or in equity or by statute. No delay or omission of City or GDP to exercise any right or power conferred or created under the terms of this MOU, or shall be construed to be a waiver of any such right or power or acquiescence thereto.
  - d. Attorneys' Fees. If City incurs any expenses, including court costs and reasonable attorney's fees, as a result of a default by GDP under this MOU, then such expenses shall be reimbursed by GDP as additional rent, whether or not such default is subsequently cured.
  - e. Waiver. A waiver by City of any default by GDP of any covenant, condition, agreement or Event of Default under this MOU shall not be construed to be a waiver of any subsequent default, and no delay or omission by City to exercise any right or power, shall be construed to be a waiver of any such default or acquiescence thereto.
12. Assignment and Subletting. GDP may not assign or otherwise transfer its overall obligation or duties under this MOU without prior written consent of the City. However, City understands that GDP may provide the services required to be provided by GDP under this MOU through a contract with a third-party vendor or through an agreement with a management company as provided for in Paragraph 5 above.
13. Notices. GDP give all notices or other communication to City at the following address:

City of Greensboro  
Attn: Property Manager  
PO Box 3136



Greensboro, NC 27402

Copy To:  
City of Greensboro  
Attn: Parks and Recreation Department Director  
1001 Fourth St.  
Greensboro, NC 27405

Notices from City to GDP shall be sent to GDP at the address shown on Page 1 of this MOU.

Every notice or other communication required by this MOU, shall be effective if given in writing and sent by United States Registered or Certified Mail return receipt requested, with postage prepaid and addressed directly to the respective party at the stated addresses; or at such other addresses as either party may designate by written notice to the other, from time to time.

14. Governing Law. This MOU shall be construed and enforced pursuant to the laws of the State of North Carolina. Venue for any dispute shall lie in Guilford County, North Carolina. In the event that any provision of this MOU, by final Court order, shall be held invalid, such shall not serve to affect the remaining portions of this MOU.
15. E-verify. GDP certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this MOU, it will continue to comply with these requirements. GDP also certifies that it will require that all of its subcontractors that perform any work pursuant to this MOU to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. The terms "Contractor", "Sub-Contractor" and "comply" shall have the same meanings intended by Chapter 160A Section 20.1(b) of the North Carolina General Statutes. Violation of this section shall be deemed a material breach of this MOU.
16. Non-Discrimination Requirements. GDP shall not discriminate against any worker, employee or applicant or any other member of the public on the basis of sex, race, gender, color, ethnicity, national origin, age, familial status, marital status, military status, political affiliation, religion, physical or mental disability, genetic information, sexual orientation, gender expression, or gender identity nor otherwise commit any other unfair employment process.

**Signatures appear on the next page.**