

**DECLARATION OF CONDOMINIUM
FOR
THE LOT 5 LAND CONDOMINIUM**

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DECLARATION OF CONDOMINIUM

FOR

THE LOT 5 LAND CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM (this "Declaration") is made this ____ day of _____, 2006 by The Town of Chapel Hill, a municipal corporation organized and existing under the laws of the State of North Carolina ("Declarant"), pursuant to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes, as amended from time to time (the "Act").

Declarant is the owner of an approximately 1.73 acre tract of land located in the Town of Chapel Hill, County of Orange, North Carolina (the "Property"), more particularly described on Exhibit A attached hereto. The Property is sometimes referred to herein, and in certain documents executed by Declarant contemporaneously herewith, as "Lot 5."

Declarant desires to redevelop the Property in the manner set forth in that certain General Development Agreement (the "Development Agreement") entered into by and between Declarant and Ram Development Company, a Florida corporation (the "Developer") dated February ___, 2007. As is set forth in the Development Agreement, Declarant has agreed to ground lease certain portions of the Property to Developer, and Developer is to construct certain mixed use improvements on such portions of the Property. Additionally, Developer is to construct a subterranean parking garage, to be owned by Declarant, extending two floors below the surface grade of the Property. (For purposes of establishing, describing, and declaring such portions of the Property as separate Units, it is deemed for all purposes that the surface grade of the Property is the horizontal level plane located within the perimeter boundaries thereof located at ____ feet above sea level, USGS datum.)

In order to facilitate the ground leasing and development of the Property, and the financing thereof, Declarant desires to subject the Property to the condominium form of ownership and to the Act by executing and recording this Declaration and the Plat attached hereto.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, conveyed, encumbered, used, occupied, developed and improved subject to the following easements, restrictions, covenants, conditions, uses, limitations, and obligations, all of which are declared to be in furtherance of a plan for the ownership, leasing, and development of the Property under the condominium form of ownership, and which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, grantees, lessees, successors and assigns, and shall all inure to the benefit of each owner of any interest therein.

ARTICLE I

DEFINITIONS

As used herein, the following terms and phrases shall have the meanings set forth below, or, if a term used in this Declaration is not defined below, it shall have the meaning set forth in the Act.

Section 1. “Act” shall mean and refer to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.

Section 2. “Association” shall mean and refer to the Lot 5 Land Condominium Owners Association, Inc., its successors and assigns.

Section 3. “Articles” shall mean and refer to the articles of incorporation of the Association as filed with the Office of the Secretary of State of North Carolina.

Section 4. “Bylaws” shall mean and refer to the bylaws of the Association, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference.

Section 5. “Common Elements” shall mean and refer to all portions of the Condominium other than the Units, all of which are Limited Common Elements as described in Article III.

Section 6. “Common Expenses” shall mean and refer to all expenditures made by or financial liabilities of the Association and any allocations made by the Association to reserves.

Section 7. “Condominium” shall mean and refer to the Property, portions of which are designated for separate ownership and the remainder of which are designated for common ownership solely by the separate Owners.

Section 8. “Declarant” shall mean and refer to The Town of Chapel Hill, a municipal corporation organized and existing under the laws of the State of North Carolina. In addition, following transfer to another person or entity all or some of the Special Declarant Rights, pursuant to Article II, Section 6 of this Declaration, the term “Declarant” also shall mean and refer to that transferee.

Section 9. “Declaration” shall mean and refer to this Declaration of Condominium for the Lot 5 Land Condominium.

Section 10. “Developer” shall mean and refer to Ram Development Company, a Florida corporation, and its permitted assigns, in its capacity as the “Developer” under the Development Agreement, and any successor to Ram Development Company in such capacity.

Section 11. “Development Agreement” shall mean and refer to that certain General Development Agreement made and entered into by and between Declarant and Developer, dated February ___, 2007, as the same may be amended from time to time.

Section 12. “Executive Board” shall mean and refer to the body designated in this Declaration to act on behalf of the Association.

Section 13. “Ground Lease” shall mean and refer to that certain ground lease of the Building Unit and, if and when created, Private Parking Unit, to be initially entered into by Declarant, as lessor, and Developer, as lessee, pursuant to the Development Agreement.

Section 14. “Member” shall mean and refer to every person or entity who holds membership in the Association.

Section 15. “Owner” shall mean and refer to the record owner (whether one or more persons or entities) of fee simple title to any Unit, or any portion thereof, including contract sellers, but not including (i) any lessee of a Unit (including without limitation Developer or any of its successors or assigns as lessee of the Building Unit and/or Private Parking Unit under the Ground Lease, except to the extent the that any of the same should later acquire a fee interest in a Unit in addition to a leasehold interest), or (ii) those having such record interest merely as security for the performance of an obligation. By way of explanation, neither the Developer as ground lessee of the Building Unit and/or Private Parking Unit pursuant to the Ground Lease, nor any of the Developer’s sublessees or assignees that are leasehold owners of units in the leasehold condominium which Developer currently intends to create by subjecting its leasehold estate in the Building Unit and the improvements to be constructed thereon to the Act, are or shall be Owners under this Declaration; however, such parties and their tenants and invitees are granted certain rights and easements over, across, and with respect to certain portions of the Condominium, as more particularly set forth herein. Notwithstanding the foregoing, in the event that the Building Unit and/or the Private Parking Unit are ever conveyed by Declarant in fee to another owner, and in the event that said subsequent owner submits the Unit to the encumbrance of a Sub-Unit Declaration (defined in Article VII, Section 5) or takes title subject to an existing Sub-Unit Declaration encumbering the Unit, then, for purposes of this Declaration, the “Owner” of the Unit shall be deemed to be the condominium association established in accordance with said Sub-Unit Declaration.

Section 16. “Percentage Ownership Interest” shall mean and refer to the undivided ownership interest of each Unit Owner in the Common Elements, based upon the surface area of the lowest boundary of each Unit (or the surface area of the uppermost boundary of the Parking Garage Unit in the case of that Unit) and calculated by dividing said surface area for each Unit by the sum total of all such surface areas for all Units, as described in Article IV, Section 2 herein and as set forth in Exhibit D attached hereto, and incorporated herein by this reference.

Section 17. “Plat” shall mean and refer to the condominium plat recorded in Unit Ownership File No. _____ in the Orange County Register of Deeds, which was attached to this Declaration as Exhibit C at the time of recordation hereof. (Since the Units are parcels of land and air, and include no building improvements to be constructed by Declarant, there are no Plans for the Condominium.)

Section 18. “Property” shall mean and refer to the parcel of real property described on Exhibit A attached hereto.

Section 19. “Lot 5 Land Condominium” shall mean and refer to the Condominium comprised of the Property.

Section 20. “Rules and Regulations” shall mean and refer to those rules and regulations adopted from time to time by the Executive Board, relating to the use of the Units and the Common Elements; provided, however, no rule or regulation promulgated by the Executive Board shall in any way abridge, curtail or otherwise unreasonably interfere with any of the rights herein reserved for the benefit of Declarant.

Section 21. “Special Declarant Rights” shall mean and refer to the rights as defined in Section 47C-1-103(23) of the Act and those rights of the Declarant as set forth in Article II, Section 6 of this Declaration.

Section 22. “Unit” shall mean and refer to each physical portion of the Condominium designated for separate ownership or occupancy; together with the Percentage Ownership Interest allocated to each; and together with any easement or use rights appurtenant thereto. The boundaries of each Unit are as shown on the Plat. Each of the Units as shown on the Plat is a land, air parcel, or subsurface parcel. There are currently no building improvements located upon or included as a part of any Unit. The Owners of the Units shall have the right to construct improvements upon and within their Units, which improvements, when completed, shall be and become part of those Units.

ARTICLE II

GENERAL

Section 1. Declarant hereby submits the Property to the provisions of the Act. The Property will be administered in accordance with the provisions of the Act, this Declaration and the Bylaws.

Section 2. The name of the Condominium shall be the “Lot 5 Land Condominium.”

Section 3. The real estate included in the Condominium is the Property.

Section 4. Declarant does hereby establish within the Property three (3) Units (the Parking Garage Unit, the Public Space Unit, and the Building Unit), and does hereby designate all such Units for separate ownership. Declarant may create an additional Unit by subdividing the Parking Garage Unit into the Public Parking Unit and the Private Parking Unit, pursuant to the exercise of its Special Declarant Right described in Section 6 of this Article II, and as more particularly provided for in Article IV, Section 2, below. Declarant may not create more than four (4) Units within the Property. (This limitation shall not preclude any Owner of a Unit or ground lessee of a Unit from subjecting such Unit or leasehold estate therein to the condominium form of ownership, or limit the number of units that may be created by so subjecting a Unit or leasehold estate therein to the condominium form of ownership; however, such “sub-units” shall not be Units in the Condominium.) So long as Declarant owns any Unit, no Unit may be subdivided or combined with any other Unit without the prior approval of Declarant, which may be granted or denied in Declarant’s sole discretion. (This limitation shall not preclude any Owner of a Unit or ground lessee of a Unit from subjecting such Unit or leasehold estate therein

to the condominium form or ownership, or limit the number of units that may be created by so subjecting a Unit or leasehold estate therein to the condominium form of ownership; however, such "sub-units" shall not be Units in the Condominium.) Reference is hereby made to the Plat for a separate description of the boundaries of each Unit, each identified by name/number, said Plat being by this reference incorporated herein. Each Unit is a parcel of land, an air parcel, or a subterranean parcel within the Property. The Parking Garage Unit is that portion of the Property below the surface grade thereof. The Building Unit is that portion of the Property at and above the surface grade of the Property bounded by the vertical planes extending up from a polygon conforming to the footprint of the building, such footprint being defined by the locations of the outermost exterior surfaces of the building. The Public Space Unit is comprised of all other portions of the Property at and above the surface grade of the Property as shown on the Plat, with the exception of Limited Common Elements. The Parking Garage Unit is comprised of all portions of the Property below the surface grade of the Property as shown on the Plat. If and when the Parking Garage Unit is subdivided, as herein contemplated, the lower boundary of the Public Parking Unit shall be the plane (extended to the Property boundary) of the lower facing surface of the ceiling above the lowest level (second level down) of the parking garage structure to be constructed within the Parking Garage Unit, and the upper boundary of the Public Parking Unit shall be the bottom face of the surface grade of the Property extended to the Property boundary; the Private Parking Unit shall be comprised of all other portions of the Parking Garage Unit, all as to be shown on the revised Plat to be recorded at the time of subdivision of the Parking Garage Unit.

Section 5. Each Owner shall be a Member of the Association, and all Members shall vote on matters affecting the Association as a whole. With respect to such matters, the total number of votes shall be one hundred (100), with the Owner of each Unit having a percentage of the total number of votes equal to the Percentage Ownership Interest allocated to its Unit(s). Except in those circumstances where the Act or this Declaration or the Bylaws requires the vote of the Association, the rights and powers of the Association shall be exercised by and through the Executive Board. The initial members of the Executive Board are those named in the Articles, and their successors shall be elected as provided in the Bylaws.

Section 6. Declarant reserves the following Special Declarant Rights with respect to the Property:

- (a) To demolish, design, construct, complete and exercise control, over the course of site clearing and/or development, of any and all improvements, including in particular but without limitation, any landscape, infrastructure or building improvements which Declarant may elect to construct on the Common Elements or on the Units.
- (b) To post and maintain signs advertising the Condominium within the Common Elements or within Declarant-owned Units.
- (c) To use the easements set forth in Article VIII for any purposes set forth herein.

(d) To convert Units to Common Elements or Common Elements to Units, and/or to convert Common Elements to Limited Common Elements, and/or to convert Common Elements previously declared to be Limited Common Elements to general Common Elements, in any of which events Declarant shall file an amendment to this Declaration in the Orange County Register of Deeds together with revised Plats showing such resulting Common Elements or Units, all in accordance with Section 47C-2-109 of the Act.

(e) To subdivide the Parking Garage Unit into two Units, in which event Declarant shall file an amendment to this Declaration in the Orange County Register of Deeds together with revised Plats showing such the resulting Private Parking Unit and Public Parking Unit, all in accordance with Section 47C-2-109 of the Act.

The development rights reserved by Declarant described in subparagraphs (a), (b), (c), (d), and (e) above may be exercised with respect to different portions of the Property at different times, and they may be assigned (all at once or some rights and not others) by Declarant to another party, including the Developer, as provided in the Act. No assurances are made with respect to the order in which portions of the Property may be subjected to the exercise of such development rights. If a development right is exercised in a portion of the Property, such development right need not be exercised in any other portion of the Property. Notwithstanding the foregoing, the Special Declarant Rights reserved by Declarant hereunder must be exercised, if at all, within thirty (30) years following the date of recording of this Declaration in the Orange County, North Carolina, Public Registry. Further notwithstanding the foregoing, in the event that the exercise of the Special Declarant Rights described in subparagraphs (a), (b), (c) and (d) above will adversely affect the Developer (so long as the Development Agreement is in effect and enforceable by Developer) or the ground lessee under the Ground Lease (so long as the Ground Lease is in effect and enforceable by any such ground lessee), the exercise of such Special Declarant Right shall require the consent of the aforementioned adversely affected party; it being express that the exercise of the Special Declarant Rights described in subparagraph (e) above, in accordance herewith, does not adversely affect Developer or any ground lessee.

ARTICLE III

COMMON ELEMENTS (LIMITED COMMON ELEMENTS)

Section 1. All portions of the Condominium other than the Units shall be Common Elements. The only Common Elements in the Condominium are those courtyard or like areas immediately adjacent to the Building Unit, identified on the Plat as Limited Common Elements.

Section 2. Units may be converted into Common Elements and Common Elements may be converted into Units pursuant to exercise of the development rights set forth above in Article II, Section 6(d).

ARTICLE IV

PROPERTY RIGHTS

Section 1. Ownership of a Unit shall vest fee simple title to such Unit in the Owner.

Section 2. Every Owner shall own an undivided Percentage Ownership Interest in all of the Common Elements, including the Limited Common Elements. The Percentage Ownership Interest allocated to each Unit is set forth on Exhibit D. The Percentage Ownership Interests set forth on Exhibit D are calculated by dividing the surface area of the lowermost boundary of a Unit (or the surface area of the uppermost boundary of the Parking Garage Unit in the case of that Unit) by the sum total of all such surface areas for all Units. The area of the Property at surface grade is _____ square feet. The area of the plane formed by the lowest boundary of the Building Unit (i.e., the surface grade of the Property) extended to the vertical perimeter boundaries of the of the Building Unit is _____ square feet. The area of the plane formed by the lowest boundary of the Public Space Unit (i.e., the surface grade of the Property) extended to the vertical perimeter boundaries of the Public Space Unit is _____ square feet. The area of the plane formed by the uppermost boundary of the Parking Garage Unit extended to the vertical perimeter boundaries of the Parking Garage Unit is the same as the area of the Property at surface grade and is thus _____ square feet. Upon the subdivision of the Parking Garage Unit in to the Private Parking Unit and the Public Parking Unit as herein contemplated, the Percentage Ownership Interests shall be recalculated, with each of the Private Parking Unit and the Public Parking Unit having a Percentage Ownership Interest equal to one-half of the Percentage Ownership Interest allocated to the Parking Garage Unit as set forth above. If any Owner of a Unit or ground lessee of a Unit subjects such Unit or its leasehold interest therein to the condominium form or ownership, such “sub-units” shall not be Units in the Condominium, and there shall be no change in the Percentage Ownership Interest allocated to such Unit by reason of such submittal of the Unit or leasehold estate therein to the condominium form of ownership. The Percentage Ownership Interest allocated to such Unit and the corresponding ownership rights and payment obligations that are herein allocated to the Unit shall remain allocated to such Unit as a whole, and no such “sub-unit” shall have any separate interest in the Common Elements hereunder.

It is currently contemplated that Developer, as the ground lessee of the Building Unit pursuant to the Ground Lease, will subject its leasehold estate in and to the Building Unit to the condominium form of ownership. No such action by Developer shall be deemed a subdivision of the affected Unit, which shall remain a single Unit hereunder owned by the Owner thereof as ground lessor under the Ground Lease. All rights of an Owner hereunder shall remain vested in and the obligations of the Owner of such Unit, and not the Developer as ground lessee thereof. However, the obligations of such Unit hereunder (including the obligations to pay assessments as provided herein) shall be the obligations of the leasehold condominium owners association for such Unit. Additionally, it is currently contemplated that Developer, pursuant to the Development Agreement, will construct for the account of the Declarant a Parking Garage (containing approximately 330 parking spaces) on and within the Parking Garage Unit and upon completion thereof in accordance with the terms and provisions of the Development Agreement, the Declarant will subdivide the Parking Garage Unit into two separate units, the “Public Parking Unit” and the “Private Parking Unit” and lease the Private Parking Unit to the Developer pursuant to the Ground Lease.

Notwithstanding that all Unit Owners shall own the Limited Common Elements in common with one another, the Limited Common Elements are allocated exclusively for the use and benefit of the Building Unit. The exclusive rights to use and enjoy the Limited Common

Elements shall be appurtenant to and shall pass with title to the Building Unit to which the Limited Common Elements is allocated.

The Percentage Ownership Interests in Common Elements and the exclusive rights to use and enjoy the same are subject to the following:

(a) the Executive Board shall have the right to adopt such Rules and Regulations as may be needed to regulate the use and enjoyment of the Common Elements;

(b) the Declarant shall have the right to exercise the Special Declarant Rights as set forth in Article II, Section 6;

(c) each Unit Owner may transfer or encumber its Percentage Ownership Interest in the Common Elements, and its right to use and enjoyment of a Limited Common Element, where such a right exists, as appurtenant to its Unit, in connection with the financing of such Unit, without obtaining the approval of other Unit Owners or their mortgagees;

(d) the Association shall have the right to dedicate, transfer or encumber all or any part of the Common Elements subject to approval by the Owners entitled to cast one hundred percent (100%) of the votes in the Association.

Section 3. Any Owner may delegate its right to use and enjoy a Limited Common Element to such Owner's tenants, invitees and licensees and the invitees and customers of such tenants, invitees and licensees. The right to use and enjoy each Limited Common Element shall inure to the benefit of and be exercisable by the ground lessee (including Developer) of the Unit to which such Limited Common Element is allocated, and shall also inure to the benefit of and be exercisable by the "owners" of leasehold condominium units created by the subjecting of the Building Unit to which such Limited Common Element is allocated to a declaration of leasehold condominium, subject to any limitations on such use set forth in the declaration of leasehold condominium for such Unit.

Section 4. Each Owner of a Unit, by acceptance of a deed therefor, hereby waives all rights of unit purchasers under Article 4 of the Act. Each Owner or tenant of a Unit acknowledges that, although it is anticipated that the improvements to be constructed within the Building Unit will contain retail space and residential dwellings, each such Unit for purposes of this Declaration is deemed to be restricted to nonresidential purposes, with the right to develop such Unit by constructing a building containing residential dwelling units therein being deemed to be a nonresidential use under this Declaration.

ARTICLE V

COVENANT FOR ASSESSMENTS

Section 1. Declarant, for each Unit owned, and each Owner by acceptance of a deed for any Property within the Condominium, whether or not it shall be so expressed in such deed, hereby covenants and agrees to pay the Association (1) annual assessments or charges levied by

the Association to be used as provided in Section 4 below; (2) special assessments for capital improvements levied by the Association, such assessments to be established and collected as hereinafter provided; and (3) additional assessments levied by the Association pursuant to the terms of this Declaration or the Act. With respect to those assessments which pertain exclusively to the use, maintenance, repair, replacement, insurance and capital improvement of the Limited Common Elements, the liability of the Owner of the Building Unit to which a Limited Common Element is allocated shall be one hundred percent (100%) on the grounds that the Owner of the Building Unit has the sole right to use and enjoy its allocated Limited Common Element. Should any assessment levied by the Association pertain to a portion of the Condominium other than the Limited Common Elements, the liability of each Owner for such assessment shall be in accordance with each owner's respective Percentage Ownership Interests, as set forth in Exhibit D, except that any Owner which is assessed a special assessment for damage to the Limited Common Element caused by such Owner shall pay one hundred percent (100%) of such special assessment, all in accordance with this Article V and Article VI, Section 2.

Section 2. Fees (including reasonable attorneys' fees), charges, late charges (as provided below), fines, and interest thereon are also enforceable as assessments. Each assessment shall be the personal obligation of the person who was the Owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by such successors.

Section 3. Any assessment levied against a Unit remaining unpaid for a period of thirty (30) days or longer after the due date shall constitute a lien on that Unit when filed of record in the office of the Clerk of Superior Court of Orange County and shall accrue interest at sixteen percent (16%) per annum from the due date of the installment, unless a lesser rate is required under applicable law, in which event the lesser rate shall be applicable. In addition to any other remedies available to the Association by law for the collection of any past due assessments, the Association may enforce the lien by bringing an action at law or in equity against the Owner personally, or by foreclosing the lien against the Unit.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (including any first priority mortgage on the leasehold interest of any ground lessee of the Building Unit or the to be formed Private Parking Unit) and ad valorem taxes. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to a first mortgage or tax foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due after the recording of such first mortgage. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4. The Executive Board shall establish annual assessments in accordance with the Bylaws of the Association. The annual assessments levied by the Association shall be used to obtain such insurance as the Association is required to maintain or in its reasonable discretion maintains, and for doing such other things as are necessary or desirable, in the reasonable discretion of the Association, to keep the Common Elements in a clean and good order and to provide for the health, welfare and safety of the Owners and occupants of the Units and the Common Elements.

The Association also may levy a special assessment payable by the Unit Owner to whom a Limited Common Element is allocated for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the same, including fixtures and personal property related thereto.

Section 5. The annual assessments provided for herein shall commence at a date established by the Executive Board following the adoption of the budget. Once such assessments are established, written notice of the annual assessment shall be sent to every Owner subject thereto. The Executive Board may, in its sole discretion, bill such assessments in installments. The due dates shall be established by the Executive Board, and any annual or monthly installment shall be due not later than fifteen (15) days after written notice of the amount of said installment is provided to each Owner.

ARTICLE VI

MAINTENANCE

Section 1. Except as otherwise provided in Section 2 of this Article VI, each Unit Owner shall maintain, repair and replace its Unit(s) as well as the Limited Common Elements allocated to its Unit(s), including the landscaping and constructed improvements thereon, in good, clean and safe and attractive condition.

Section 2. In the event that the need for maintenance, repair, or replacement is caused through the willful or negligent act of an Owner, its tenants, assignees, invitees or licensees or the invitees or customers of such tenants, assignees, invitees or licensees, the cost of such maintenance, replacement, or repairs shall be added to and become a part of the assessment to which such Unit is subject. Each Owner shall repair, replace, and clean all portions of the Common Elements, any other Unit, and any improvements located on the Common Elements or other Unit, to the extent that such repair, replacement, or cleaning are necessitated by such Owner's activities in the construction of improvements upon its Unit. Each Owner shall conduct all such construction activities in accordance with Rules and Regulations promulgated by the Executive Board.

ARTICLE VII

USE RESTRICTIONS

Section 1. The Property may be used solely for the purposes allowed by applicable zoning and as provided herein below. Nothing in this Section shall prohibit Declarant from imposing further restrictions on the use of any Unit in the deed by which Declarant conveys such Unit to a third party, or in any ground lease of any Unit to a third party, except that Declarant shall not have the right to impose any such further restrictions on the Building Unit or on the Private Parking Unit, without the consent of the Developer (for so long as the Development Agreement remains in effect and enforceable by Developer), or in violation of any terms of the Ground Lease without the consent of any ground lessee thereunder (so long as the Ground Lease remains in effect and enforceable by any such ground lessee).

Section 2. Generally Prohibited Uses. In addition to any use prohibitions as may be set forth in any deed executed by Declarant initially conveying a Unit to a third party, or in any ground lease of a Unit to a third party, the following uses shall not be permitted on the Property: labor camps; commercial storage of building or construction materials (except temporarily in connection with the repair, maintenance or construction of Units or Common Elements by Owners, Declarant or the Association, or temporarily in connection with construction by Developer in accordance with the Development Agreement, provided, however, and all expressly without limiting Developer's construction rights under the Development Agreement, that i) such materials may be stored within the Common Elements only as permitted by the Executive Board of the Association and only in such areas as the Executive Board may designate; and ii) no such use of the Common Elements shall interfere with or obstruct the access or parking necessary for the operation of the other Units nor shall it otherwise unreasonably interfere with the use of such Units); community fairs, flea markets, open air stalls or carnivals; rodeos; horse shows; shooting or athletic events; fortune telling; sales lots for prefabricated structures; farm and heavy construction equipment and implement sales, leasing, service, storage, and similar activities; truck terminals; storage yards; taxidermy; cemeteries (public and private); animal kennels; abattoirs; junk yards; baling, storage or processing of scrap metal, glass, paper or rags, or storage or processing of wrecked or junked motor vehicles; truck stops; trailer or mobile home parks; any type of outdoor storage; nude or semi-nude dance clubs; massage parlors (excluding day spas, medical treatment and therapeutic facilities allowed by applicable zoning laws) or cinemas or bookstores selling or exhibiting material of a pornographic or adult nature. Except in accordance with all applicable laws and regulations thereunto appertaining, no Unit or other portion of the Property shall be used for any business the operation of which would result in the escape, disposal or release of any amount of biologically active, toxic or hazardous wastes, materials, or substances, or any other substance that is prohibited, limited or regulated by any governmental or quasi-governmental authority or that, even if not so regulated, could or does pose a hazard to health and safety of the occupants of the Unit or surrounding property (collectively "Hazardous Substances") in violation of any applicable Environmental Laws (as hereinafter defined). No Unit or other portion of the Property shall be used for the storage or use of said Hazardous Substances in any manner prohibited by law or otherwise inconsistent with commercially reasonable standards for the storage and use of such Hazardous Substances comparable to other first class buildings used for or containing laboratories using Hazardous Substances, nor shall any Owner allow to be brought into the Units or onto the Property any such Hazardous Substances except to use in the ordinary course of any Owner's business. All Units and other portions of the Property will, at all times, be kept and maintained so as to comply with all existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits, and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies, and bodies applicable to the Property, pertaining to environmental matters, or regulating, prohibiting or otherwise having to do with asbestos and all other toxic, radioactive, or hazardous wastes or materials including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended ("Environmental Laws").

Section 3. To the extent such improvements may be restricted, no outside radio or television antennas, including satellite dishes or receivers, shall be erected on any Unit or any

Common Element unless and until permission for the same has been granted by the Executive Board.

Section 4. No signs shall be permitted on or about the Units or Common Elements except as approved by the Executive Board, except that Declarant shall have the right to display signs on its Units and/or the Limited Common Elements without need for approval of the Executive Board.

Section 5. No Owner of a Unit, and no ground lessee of a Unit (including without limitation Developer and its assigns as lessees under the Ground Lease) shall subject its Unit or leasehold interest therein to the condominium form of ownership pursuant to a declaration of condominium or to any other declaration of covenants, conditions, or restrictions (such documents being referred to herein collectively as the "Sub-Unit Declaration") without providing Declarant with copies of the same for Declarant's review and comment.

ARTICLE VIII

EASEMENTS

Section 1. General Declaration and Grant of Easements for the Building Unit. Subject to the terms and provisions set forth herein, Declarant, as sole owner of fee simple title to the Parking Garage Unit and the Public Space Unit, does hereby declare in the Parking Garage Unit and the Public Space Unit, in favor of and as an appurtenance to the Building Unit and does hereby grant to the Owner or Owners of Building Unit and their tenants, employees, invitees, contractors, successors, assigns, and grantees, perpetual, non-exclusive rights and easements over, under, across, upon, and through those portions of the Parking Deck Unit and the Public Space Unit reasonably necessary for (i) the construction, installation, operation, use, maintenance, repair, replacement, and reconstruction of structural components, caissons, columns, piers, conduits, chutes, stairwells, elevators, pipes, chases, wires, building components, utility facilities, and all other facilities serving or intended to serve the benefited party's Unit as constructed on or within the Parking Garage Unit and/or Public Space Unit in accordance with the Development Agreement; (ii) ingress, egress, and regress for pedestrian and vehicular traffic over the Parking Garage Unit and the Public Space Unit, to, from and between such Units and the Building Unit over driveways, ramps, walkways and stairways as constructed on or within the Parking Garage Unit and/or the Public Space Unit in accordance with the Development Agreement, and (iii) vertical, horizontal, subterranean, lateral and subjacent subsistence and support for the use, maintenance, repair and replacement of, and for the attachment of the Building Unit to all columns, piers, footings, caissons, girders, beams, foundations, slabs and other supports, supporting structures and appurtenances thereto located or to be located on or within the Parking Garage Deck Unit and/or the Public Space Unit as are necessary or appropriate in connection with the maintenance, repair and replacement and operation of the Building Unit and the improvements to be constructed thereon and therein as provided in the Development Agreement.

Section 2. Prior to the construction of improvements on the Property, Declarant, and its contractors, agents, tenants, and designees, shall have a reasonable construction easement and easement of ingress and egress over and across all portions of the Property for all purposes in connection with the development of the Property. After improvements on the Property have been constructed, Declarant shall have a reasonable construction easement and easement of ingress and egress over and across all portions of the Property located outside of any building improvement located thereon for all purposes in connection with the operation, use, and development of the Property. Declarant also shall have such easements through the Common Elements as may be reasonably necessary for the purpose of exercising Special Declarant Rights as provided herein or discharging Declarant's obligations under this Declaration. Any damage to the Common Elements as a result of the Declarant's exercise of such construction easements shall be remedied at the sole cost of the Declarant. Declarant shall additionally have easements as necessary through all Units in order to discharge its obligations hereunder. Declarant shall have the right to assign its easement rights hereunder in its sole discretion.

Section 3. The Association and its representatives shall have such easements through the Common Elements as may be necessary for the purpose of discharging the Association's obligations under this Declaration, and such access through the Units as may be necessary for the Association to discharge its obligations of maintenance of the Common Elements.

Section 4. There shall be an appurtenant easement for encroachment, and for maintenance and use of any permitted encroachment, for the benefit of all Units, over the Public Space Unit and over the Common Elements adjacent to the Building Unit in order to account for the unintentional placement, settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration and the Development Agreement) to a distance of not more than five feet, as measured from any point on the common boundary along a line perpendicular to such boundary.

Section 5. All easements granted herein are appurtenant to and shall run with the Property and the individual Units, and shall inure to the benefit of and be binding upon the Declarant, the Association, Owners, occupants, assignees, lessees and mortgage holders, and any other person or entity having an interest in the Condominium.

Section 6. For so long as the Town of Chapel Hill owns the Parking Garage Unit (and the Public Space Unit), the public at large, including but not limited to Owners and occupants of all Units and their invitees or licensees shall have a perpetual and non-exclusive easement over the Parking Garage Unit (or the Public Space Unit after the division of the Parking Garage Unit as provided in Section 9 hereof) for purposes of ingress, egress and parking. For so long as the Town of Chapel Hill owns the Public Space Unit, the public at large, including but not limited to Owners and occupants of all Units and their invitees or licensees shall have a perpetual and non-exclusive easement over the Public Space Unit for purposes of ingress, egress and parking, and for the use and enjoyment of the public space located on the Public Space Unit.

Section 7. Any damage occurring to any easement area described herein as a result of an Owner's exercise of such easements for construction purposes, or otherwise, shall be remedied at the sole cost of such Owner.

Section 8. There shall be appurtenant support and encroachment easements, for the benefit of the Building Unit, over and upon those portions of the Parking Garage Unit and the Public Space Unit that in any way contribute to the support of structural improvements constructed upon the Building Unit or upon the Limited Common Elements allocated thereto.

Section 9. The Declarant shall own the Parking Garage Unit and, following substantial completion thereof in accordance with the Development Agreement, Declarant shall divide the Parking Garage Unit into two separate units: the "Public Parking Unit" containing approximately 161 parking spaces and the "Private Parking Unit" containing approximately 169 spaces. The Declarant shall continue to own and operate the Public Space Unit and shall lease the Private Parking Unit, and any parking spaces in excess of 330 parking spaces within the Parking Garage Unit (the excess spaces) to the Developer under the terms of the Ground Lease. Developer, in its sole discretion, may grant parking licenses or easements to the owners or occupants of individual leasehold condominium dwellings contained within the improvements to be constructed by Developer on the Building Unit in accordance with the terms of the Development Agreement.

ARTICLE IX

INSURANCE

Section 1. Each Owner shall maintain or cause to be maintained, to the extent available, casualty insurance upon any insurable improvements constructed upon such Owner's Unit or upon any Limited Common Element allocated to said Unit, in the name of and with the proceeds thereof payable to each Owner and/or such Owner's mortgagee(s). Such insurance shall be in an amount equal to not less than one hundred percent (100%) full insurable value of the improvements constructed upon such Unit on a replacement cost basis exclusive of land, excavations, foundations and other items normally excluded from property policies, and shall insure against such risks and contain such provisions as the Executive Board from time to time shall determine.

Section 2. Each Owner shall maintain or cause to be maintained public liability insurance for its own benefit, and for the benefit of the Association and the Executive Board, and their respective officers, directors, agents and employees, insuring such benefited parties against liability arising out of or in connection with the use, ownership and/or maintenance of the Owner's Unit(s) and the Limited Common Elements allocated thereto, and insuring against liability otherwise arising on said Unit or Limited Common Elements, all in such amounts and with such coverage and endorsements as shall be determined by the Executive Board; provided that the amount of public liability insurance shall be at least Two Million Dollars (\$2,000,000.00) per occurrence for death, bodily injury and property damage. Said insurance shall comply in all respects to the requirements of the Act, and shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured.

Section 3. Each Owner may obtain insurance, at its own expense, affording personal property, condominium assessment, personal liability, and any other coverage obtainable, to the extent and in the amounts such Owner deems necessary to protect its own interests; provided that any such insurance shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on any insurance purchased by the Association due to the proration of insurance purchased by an Owner under this Section, such Owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction to the Association upon demand, and assign the proceeds of its insurance, to the extent of such reduction, to the Association.

Section 4. If the insurance described in Sections 1 and 2 of this Article IX is not reasonably available, the Unit Owner shall promptly cause notice of such fact to be hand-delivered or sent prepaid by United States mail to the Association which shall then notify other Owners, as necessary, and their mortgagees, provided that such mortgagees have submitted a written request to the Association pursuant to Article XIII, Section 1(e) herein. Each Owner shall otherwise have the obligation to provide such evidence as the Executive Board shall require, showing that the Owner has obtained and is maintaining insurance under this Article IX.

Section 5. In the event it is required to do so under the Act, and/or in the event that any Owner fails to comply with the requirements in Sections 1 and 2 of this Article IX, the Association shall obtain the insurance required under Sections 1 and 2 herein on behalf of said Owners, and notwithstanding any other provisions herein, the Association shall assess the Owners for the costs to obtain the same, either in accordance with their respective Percentage Ownership Interests (in the event the insurance is obtained for all Owners); in accordance with the actual cost of an individual policy (in the event that the Association purchases insurance for a single Owner); or in proportion to the benefits received from insurance (in the event that the Association purchases insurance for more than one, but fewer than all Owners). The Association may also obtain such insurance, including worker's compensation insurance, as it may from time to time deem appropriate to protect the Association or the Owners.

Section 6. Should the need arise, the Executive Board may engage, and pay as a Common Expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds upon such terms as the Executive Board shall determine, consistent with the provisions of the Act and this Declaration.

Section 7. Insurance proceeds shall belong to and shall be paid directly to the Owner who obtains the policy pursuant to which such proceeds are paid, or for whom the policy has been obtained as provided herein. Furthermore, to the extent that the terms of this Article are in conflict with those in the Development Agreement or in the Ground Lease, then, the terms of the Development Agreement or the Ground Lease, as the case may be, shall control over the inconsistent terms in this Article, so long as the Development Agreement or the Ground Lease, as applicable, remains in full force and effect, and so long as the terms thereof do not violate the Act.

ARTICLE X

CASUALTY DAMAGE

If all or any part of the Common Elements shall be damaged or destroyed the same shall be repaired or replaced unless: (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State of North Carolina or local health or safety statute or ordinance, or (3) the Owners elect not to rebuild or replace by a one hundred percent (100%) vote of all eligible votes (and all first mortgagees).

If all or any part of any improvements hereafter constructed upon any Unit shall be damaged or destroyed, the same shall be repaired or replaced unless (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State of North Carolina or local health or safety statute or ordinance or (3) the Owner of such Unit elects not to rebuild such improvements located on such Unit, in which case the building improvements located upon such Unit shall be razed and the Unit restored to a slightly condition. Notwithstanding the foregoing, the Owner of the Parking Garage Unit and the Owner of the Public Space Unit shall rebuild the improvements located upon such Units if at the time of damage or destruction there are improvements located upon the Building Unit. Should an Owner elect not to rebuild the improvements constructed on its Unit, such Unit shall not be converted into Common Elements, and such Owner shall maintain responsibility for the maintenance of such Unit. Should an Owner elect to rebuild the improvements formerly located upon its Unit, neither the boundaries nor the square footage of such Unit shall be enlarged without the consent of all Owners.

Notwithstanding the foregoing, to the extent that the terms of this Article are in conflict with those in the Development Agreement or in the Ground Lease, then, the terms of the Development Agreement or the Ground Lease, as the case may be, shall control over the inconsistent terms in this Article, so long as the Development Agreement or the Ground Lease, as applicable, remains in full force and effect, and so long as the terms thereof do not violate the Act.

ARTICLE XI

TERMINATION

The Condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act; provided, however, notwithstanding the foregoing, the Condominium may be terminated only by a unanimous vote of all Owners.

ARTICLE XII

AMENDMENT

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Sections 47C-2-105, 47C-2-109, 47C-2-110 and 47C-2-117 of the Act, except that (1) no amendment altering or impairing Special Declarant Rights or any other Declarant right hereunder or under the Act may be made without the written consent of Declarant and any successor Declarant to which those Special Declarant Rights have been assigned; and (2) no

amendment during such time as Declarant owns any Unit in the Condominium shall be effective unless the Declarant consents to such amendment. All amendments to this Declaration shall be filed with the Orange County Register of Deeds.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. All powers granted to the Association by this Declaration or the Bylaws shall be exercisable exclusively by the Executive Board, except as otherwise expressly provided in this Declaration, the Bylaws, or the Act.

Section 2. The Association and Declarant may adopt and enforce reasonable Rules and Regulations not in conflict with this Declaration and supplementary thereto, as more fully provided in the Bylaws.

Section 3. The Association and Declarant shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws and articles of incorporation of the Association. Failure to enforce any covenant or restrictions therein shall in no event be deemed a waiver of the right to do so thereafter.

Upon notice to the Association of a violation hereunder (including but not limited to failure to properly maintain a Unit or a Limited Common Element), which violation shall not have been cured within fifteen (15) days after written notice of said violation to the violating Owner (or longer if reasonably necessary given the violation), the Association, any Owner, the Declarant or any other holder of an interest in the Condominium, may undertake the enforcement of the provisions of this Declaration at his, her or its own expense, and the Association shall thereafter assess the violating Unit Owner for the cost of any work done to cure the violation, in order that the party incurring the cost may be reimbursed for its expenses. The Executive Board may furthermore set a fee to be charged in addition to such assessments against the violating Owner.

Section 4. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. The covenants and restrictions of this Declaration shall run with and bind the land perpetually.

Section 6. The fiscal year of the Association shall begin on the first (1st) day of January and end on the thirty-first (31st) day of December of each calendar year, except that the first fiscal year shall begin on the date of incorporation.

Section 7. So long as Declarant complies with any and all requirements in the Act, Declarant may transfer and/or assign any and all or its rights under this Declaration, without the consent of any Owner or the Association.

IN WITNESS WHEREOF, Declarant has executed this Declaration.

THE TOWN OF CHAPEL HILL, a municipal
corporation organized and existing under the laws
of the State of North Carolina

By: _____
Name: _____
Title: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____.

(name of principal(s))

Date: _____

Official Signature of Notary Public

Notary printed or typed name

[OFFICIAL SEAL]

My commission expires: _____

EXHIBIT A

[Insert Legal Description Lot 5]

EXHIBIT B

[Bylaws]

EXHIBIT C

[Condominium Plat of Lot 5]

EXHIBIT D

Percentage Ownership Interests

<u>Unit Number</u>	<u>Percentage Of Ownership</u>
Parking Garage Unit	_____ %
Public Space Unit	_____ %
Building Unit	_____ %