(94)

ATTACHMENT 15

GENERAL DEVELOPMENT AGREEMENT

between

The Town of Chapel Hill
and
RAM Development Company

---

(95)

TABLE OF CONTENTS

EXHIBITS – Not copied

(97)

GENERAL DEVELOPMENT AGREEMENT

This General Development Agreement (the "Agreement") is made and entered into as of the 12th day of February, 2007 (the "Effective Date") by and between The Town of Chapel Hill, a municipal corporation organized and existing under the laws of the State of North Carolina (the "Town"), and RAM Development Company, a Florida corporation and its permitted assigns (the "Developer").

STATEMENT OF PURPOSE

The Town owns an approximate 1.73 acre tract of land with frontage on West Franklin Street, Church Street and Rosemary Street that is presently maintained and operated by the Town as a public parking facility (referred to herein as "Lot 5"). The Town Council has concluded Lot 5 is currently under-developed and believes the redevelopment of such property to include a quality urban design mixed use project will promote the economic development, revitalization and long-term viability of the Town's downtown area and generally improve the quality of life in the Town. The Developer has submitted a proposal in response to the Town's Request for Proposal to develop an urban mixed-use project on Lot 5. The Town has agreed to lease certain interests in real estate to Developer in order to permit the Developer to construct the Project (as herein defined) on Lot 5 in accordance with the terms and provisions of this Agreement. Additionally, the Developer has agreed to construct certain parking facilities and public spaces to be owned by the Town as more fully described herein.

NOW, THEREFORE, in consideration of mutual covenants and agreements of the parties as set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
Defined Terms

In addition to the other terms defined in the body of this Agreement, for purposes of this Agreement each of the following terms when capitalized shall have the meaning set forth in this Article I:

"Affordable Housing" means and refers to housing affordable to households with incomes of less than 80% of the area median income by household size, as published periodically by the U.S. Department of Housing and Urban Development.

"Agreement" shall mean this General Development Agreement.

"Approved Architectural Drawings" shall mean and refer to the Architectural Drawings approved by the Town in accordance with Section 2.3 (b) hereof.

"Approved Town Plans" shall mean and refer to the schematic design drawings, design development documents, construction plans and specifications, Town Project Budget and Construction Contract for the Parking Garage and Public Space prepared by Developer and as

approved by the Town, as the same may, with the Town's consent, be amended from time to time.

"Architect" shall mean and refer to Cline Design Associates, the architect retained by Developer in connection with the Project.

"Architectural Drawings" refers to (i) scale drawings of all improvements proposed to be constructed as a part of the Project provided no smaller than a 1:40 or 1:50 scale including the number of residential units, the configuration and square footage of all retail/commercial space and identification of those residential units that constitute Affordable Housing; (ii) building plan view for all improvements comprising the Project; (ii) the elevations, from all sides, for all improvements comprising the Project; (iii) cross section drawings for all improvements comprising the Project; (iv) scale plans at 1:40 or 1:50 for all street level improvements; (vi) outline building specifications including all primary materials and finish specifications for the Project; and (vii) all exterior colors and signage.

"Building" shall have the meaning set forth on Section 2.1(b) hereof.

"Business Day" or "business day" shall mean a day of the year that is not a Saturday, Sunday, legal holiday or a day on which national banks are not required or authorized to close in Chapel Hill, North Carolina.

"Closing" shall mean and refer to the closing of the Project Financing for the Project.

"Conditions Precedent to Developer's Performance" shall mean and refer to those conditions set forth in Section 5.2.

"Conditions Precedent to Funding" shall mean and refer to the satisfaction of the conditions precedent to the deposit of funds into the Developer's Escrow Accounts as set forth in Section 3.2(b) hereof.

"Conditions Precedent to Town's Performance" shall mean the satisfaction of each of the conditions set forth in Section 5.1.

"Construction Contract" shall mean and refer to such general construction contract complying with the terms hereof to be entered into between the Developer and a qualified general contractor or construction manager licensed to do business in North Carolina, and otherwise reasonably acceptable to the Town, for the construction of the Project, or portions thereof, including the improvements to be owned by the Town.

"Construction Documents" shall mean collectively, when referring to the Project, or to the Parking Garage and Public Space, as the context requires (i) this Agreement; (ii) the applicable Construction Contract; (iii) an agreement for architectural services between Developer and the Architect; (iv) the Project Budget, as the same may be amended and modified from time to time; (v) the Approved Architectural Drawings and the Approved Town Plans, as amended from time to time; and (vi) any and all permits, licenses, consents and authorizations, including any environmental permits and approvals, obtained from the Municipality or the North Carolina

Department of Environment and Natural Resources ("NCDENR") in connection with the construction of the Project.

"Default" shall have the meaning set forth in Section 13.1 hereof.

"Developer" shall mean RAM Development Company, a Florida corporation, or its permitted assign as expressly set forth herein.

"Developer Project Coordinator" shall have the meaning set forth in Section 2.7 hereof.

"Developer's Equity" shall mean and refer to the amount of equity required to be contributed by the Developer in order to permit development of the Project in accordance with the Construction Documents for the Project as determined from time to time as provided in Sections 2.14 and 3.2(c) hereof, with such amount being agreed to be no less than $12,500,000.00.

"Developer's Equity Shortfall Amount" shall have the meaning set forth in Section 3.2(c) hereof.

"Developer's Escrow Account" shall mean the escrow account established with respect to the Project pursuant to Section 2.14.

"Developer's Lender" shall mean the financial institution or institutions providing the Developer financing for the construction and development of the Project.

"Effective Date" shall mean the date set forth in the first paragraph of page 1 of this Agreement.

"Environmental Law(s)" means any applicable requirement of law or any judicial or agency interpretation or other requirement of any governmental or regulatory authority relating to pollution or protection of the environment, health, safety or natural resources, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Substances.

"Event of Default" shall have the meaning set forth in Section 13.1 herein.

"Excess Spaces" shall have the meaning set forth in Section 2.2(a)(iii) herein.

"Force Majeure" shall mean and refer to strikes, lockouts, labor trouble, labor shortages, inability to procure materials, acts of God, acts of war or terrorism, or other causes without fault and beyond the control of Developer as applicable.

"Guaranty" shall mean and refer to the guaranty of completion of Developer's obligations to construct the improvements comprising the Project to be delivered by Keith L. "Casey" Cummings to and for the benefit of the Town.

"Hazardous Substance" shall mean (i) any chemical, material or substance at any time defined as or included in the definition of "hazardous substances", "hazardous waste",

"hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "biohazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substances", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including, without limitation, harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity", or "EP toxicity" or words of similar import under any applicable Environmental Laws) in amounts in excess of that permitted under Environmental Laws; (ii) any oil, petroleum, petroleum fraction or petroleum derived substance in amounts in excess of that permitted under Environmental Laws; (iii) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (iv) any flammable substances or explosives in amounts in excess of that permitted under Environmental Laws; (v) any radioactive materials; (vi) any asbestos-containing materials; (vii) any urea formaldehyde foam insulation; (viii) any electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; (ix) any pesticides in amounts in excess of that permitted under Environmental Laws; (x) any radon gas; and (xi) any other chemical, material or substance designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law in amounts in excess of that permitted under Environmental Laws.

"Indemnified Parties" shall have the meaning set forth in Section 2.12(c) hereof.

"Land Condominium Declaration" refers to the declaration of condominium to be prepared and recorded by the Town to establish the individual Land Condominium Units on Lot 5.

"Land Condominiums" or "Land Condominium Units" refers to the various land condominium units that will be established by the Town on Lot 5 pursuant to the Land Condominium Declaration as provided in Section 2.2(a) hereof in order to permit the leasing of certain Land Condominium Units created thereby from Town to Developer pursuant to the Lease and on which will be constructed the Building, the Parking Garage and the Public Space.

"Land Trust" shall mean and refer to the Orange Community Housing and Land Trust.

"Lease" shall mean and refer to the ground lease agreement to be entered into between the Developer, as lessee, and the Town, as lessor, in accordance with Section 2.2 hereof pursuant to which the Town will lease to the Developer certain Land Condominium Units on which Developer will construct the Building, and which will be more particularly described in the Lease, the form of which is attached hereto as Exhibit D and incorporated herein by this reference.

"Lease Amendment" shall have the meaning set forth in Section 2.2(a)(ii) herein.

"Leased Premises" shall mean and refer to those Land Condominium Unit(s) to be leased by the Town to Developer pursuant to the Lease and Lease Amendment.

"Leased Premises Systems" shall have the meaning set forth in Section 2.2(a)(v) herein.

"Lot 5" shall mean and refer to an approximately 1.73 acre tract of land located in the Town of Chapel Hill, Orange County, North Carolina as more particularly described on Exhibit A-1 attached hereto and incorporated herein by this reference.

"Lot 5 Condominium Declaration" shall mean and refer to the declaration(s) of condominium to be established by the Developer pursuant to which individual residential and retail condominium units will be created within the Building as the same may be amended, modified, or supplemented from time to time.

"Municipality" shall mean and refer to the Town of Chapel Hill, a municipal corporation organized under the laws of the State of North Carolina when acting in its capacity as the governing municipality for site plan approval, special use permits, building permits or other required approvals under the laws, rules and regulations adopted by the Town of Chapel Hill or other governmental authority.

"Notices" shall have the meaning set forth in Section 15.2 hereof.

"Parking Garage" shall have the meaning set forth in Section 2.1(i) hereof.

"Parking Garage Completion Date" shall have the meaning set forth in Section 2.2(a)(ii) hereof.

"Post Approval Changes" shall have the meaning as set forth in Section 3.1 hereof.

"Pre-Construction Work" shall mean and refer to pre-construction development, design, testing, engineering, preparation of plans (including the Architectural Drawings), construction documentation, permitting and site preparation activities respecting the Project.

"Private Parking Unit" shall have the meaning set forth in Section 2.2(a) (iii) hereof.

"Project" shall have the meaning set forth in Section 2.1 hereof.

"Project Budget" shall mean and refer to the development, construction and upfitting budget, as the same may be amended from time to time, for the Project. Town's Project Budget shall mean and refer to that portion of the Project Budget that relates to the Public Space and the Parking Garage.

"Project Financing" shall mean such financing secured by the Developer from Developer's Lender in an amount and upon terms which are consistent with prevailing market conditions reasonably satisfactory to Developer taking into account the cost reflected in the Project Budget, the Town's Parking Cost and a reasonable estimate of Developer's Equity.

"Public Parking Unit" shall have the meaning set forth in Section 2.2(a)(iii) hereof.

"Public Space" shall have the meaning set forth on Section 2.1(c) hereof.

"Scheduled Completion Date" shall mean that date that is twenty-four (24) months after the Closing.

"SPPRE" shall mean and refer to Stainback Public/Private Real Estate.

"Submission" refers to a delivery by the Developer or the Developer's representative of information (as for example the Architectural Drawings, a proposed Construction Contract, etc.) to the Town for its comment, review and/or approval as applicable.

"Substantially Complete" or "Substantial Completion" shall mean and refer to the condition occurring when (i) all Work required by the applicable Construction Documents for the Project or the Parking Garage and Public Space, as applicable, has been completed except for punch list items and minor items which can be fully completed within not to exceed ninety (90) days without material interference with the use of the Parking Garage, Excess Spaces and the Building, as applicable, and other items which, because of the season, weather or nature of the items are not practicable to perform at that time and (ii) a substantial completion certificate in the form of AIA G704, or comparable form, signed by the Project's architect has been delivered to the Developer and the Town and (iii) a temporary or permanent certificate of occupancy for such improvements has been issued. The Project may be deemed Substantially Complete notwithstanding that (i) some of the residential units are not fully completed with respect to specific customer finish selections or (ii) some or all of the retail components are finished to only the shell stage as specified on Exhibit J hereto, it being understood and agreed by all parties that it is a customary and prudent construction practice to wait until retail space is subject to a lease and the retail tenant has specified its required tenant improvements before performing such finish work.

"Support Rights" shall have the meaning set forth in Section 2.2(a)(v) herein.

"Town" shall mean and refer to the Town of Chapel Hill, a North Carolina municipal corporation or its successor, solely in its capacity as a landowner and not as the governing municipality.

"Town's Investment" shall have the meaning set forth in Section 3.1 herein.

"Town Parking Cost" shall have the meaning set forth in Section 2.2(a)(iv) herein.

"Town's Project Coordinator" shall have the meaning set forth in Section 2.8 hereof.

"Town's Remediation Cost" shall have the meaning set forth in Section 3.4 hereof.

"Transaction Documents" shall mean this Agreement, the Lease, the Guaranty and such other documents as may be entered into by and between the Town and Developer in connection with the Project and as shall be necessary in order to implement the intent of the parties hereto.

"Tri-Party Agreement" shall have the meaning set forth in Section 3.3 hereof.

"Work" shall mean and refer to and include all services, labor, materials, equipment, supplies and other items or matters necessary in order to complete the design, construction and completion of the Project or the Parking Garage and Public Space, as the context requires, in accordance with the applicable Construction Documents, and reasonably necessary to cause the Project to reach Substantial Completion and to be open to the public by the Scheduled

Completion Date subject to events of Force Majeure and such extensions as are expressly authorized pursuant to this Agreement.

ARTICLE II
Development of the Project

2.1 General Description of the Project. The Project shall consist of the following components, as the same may be modified by the Developer and approved by the Town to the extent required herein and as may be further modified to accommodate final engineered plans, constraints created by the site and as required to obtain special use permits, zoning compliance permits and building permits from the Municipality (collectively, the "Project"):

(a) Parking, as follows:

(i) Subject to the changes as reflected in the Approved Town Plans, approximately 330 (more or less) parking spaces to be located in an underground parking garage to be constructed by, and fully upfitted for normal use by the Developer in accordance with plans and specifications approved by the Town (the "Parking Garage"); and

(ii) Subject to the changes as reflected in the Approved Town Plans, approximately 10-15 additional on-street public parking spaces (more or less) for which approval from the Municipality will be jointly sought by the Town and Developer (the "Requested Spaces"). If the Requested Spaces are approved, Developer will be responsible for constructing the curbing for the Requested Spaces and for paving and striping, while the Town will be responsible for providing parking meters, or other similar controls, in form satisfactory to the Municipality; and

(b) One building (the "Building") which will include, subject to the changes reflected in the Approved Architectural Drawings, approximately 28,540 net leasable square feet of retail/commercial space on the ground level (more or less) and approximately 137 "for sale" residential units (more or less) above the same and open space consisting of a "courtyard" and an "arcade" to facilitate access and to provide outdoor dining and shopping areas; and

(c) Subject to the changes reflected in the Approved Town Plans, approximately 27,215 square feet of public open space (more or less) to be constructed by the Developer generally as shown on the Developer's preliminary site plan dated January 29, 2007 including the "upper mall" and "lower mall," sidewalks and other public spaces (the "Public Space") but not the "courtyard" and "arcade" areas located on street level within the external boundaries of the Building;

(d) All necessary streetscape, landscape and hardscape on and adjoining Lot 5 consistent with the requirements imposed by the Municipality on other developers. No streetscape, landscape, or hardscape is presently planned to be constructed on or adjoining Lot 5 by the Town pursuant to bond funds the Town has or is expected to receive.

2.2 Lease.

(a) Leased Premises.

(i) The Town shall cause to be filed in the Orange County, North Carolina Public Registry a condominium declaration with respect to Lot 5 in order to create no fewer than three (3) Land Condominium Units as follows:

(A) One unit comprising the land on which the Building, all ancillary appurtenances to the Building, such as loading docks and dumpster pads, the "courtyard" and "arcade" are to be built and generally bounded by vertical planes that form a polygon conforming to the footprint of the Building, as though such footprint were created by the outermost exterior surface of the Building as shown in the Approved Architectural Drawings, and a preliminary representation of such polygon is attached hereto as Exhibit B (the "Building Unit"),

(B) One unit comprising the land on which the Public Space will be located (the "Public Space Unit"), and

(C) One unit comprising the land on and under which Parking Garage will be constructed (the "Parking Garage Unit").

The form of such Land Condominium Declaration is attached hereto as Exhibit A. The legal description of each of the Land Condominium Units will be completed by the Town after the Developer has prepared, and had approved by the Municipality, the required special use permit for the Project and the Municipality has issued a building permit for the improvements to be constructed on Lot 5.

(ii) The Town will retain fee simple ownership to the whole of Lot 5. Contemporaneously with Closing, the Building Unit, together with all appurtenant easements thereto, shall be leased to Developer and constitute a portion of the "Leased Premises" under the Lease. The Town shall grant to Developer such temporary construction easements as are necessary or reasonably requested for the Developer to construct the improvements within the Parking Garage Unit and Public Space Unit. Within thirty (30) days of Substantial Completion of the Parking Garage (the "Parking Garage Completion Date"), the Lease shall be amended to add the Private Parking Unit, and all appurtenant easements thereto, to the "Leased Premises" under the Lease (the "Lease Amendment").

(iii) Within 30 days of the Parking Garage Completion Date, the Town will subdivide the Parking Garage Unit into two separate Land Condominium Units and record such plats, declaration amendments and other documents to effect the subdivision. The Developer shall provide an as built ALTA survey of the Parking Garage Unit and appropriate plat(s) for recordation with sufficient information and data so as to permit the subdivision of the Parking Garage Unit into two separate Land Condominium Units and sufficient to meet the requirement of the North Carolina Condominium Act (the "Act"). The "Public Parking Unit" shall be that portion of the Parking Garage Unit that contains the first level of the Parking Garage, containing approximately 161 spaces, subject to the

Approved Town Plans (the "Public Parking Spaces"), and the "Private Parking Unit" shall be the portion of the Parking Garage Unit that contains the second level of the Parking Garage, containing approximately 169 spaces, subject to the Approved Town Plans (the "Private Parking Spaces") and any spaces on the second level of the Parking Garage in excess of 169 spaces (the "Excess Spaces"). The Private Parking Unit shall be added to the Leased Premises via the Lease Amendment.

(iv) Developer shall provide written notice to the Town ninety (90) days prior to the date the Parking Garage is expected to be Substantially Complete, as reasonably estimated by Developer, its Architect and contractors. Upon the delivery by the Architect to the Town of a certificate of substantial completion in the form of AIA G704, or comparable form (the "Architect's Certificate"), the Town shall have fifteen (15) days in which to deposit into escrow with a bank in Chapel Hill, NC designated by the Town (the "Parking Garage Escrow") the sum of $7,245,000.00 (as such amount may be adjusted per Section 2.11(b) below) (the "Town's Parking Cost"). On or before five (5) business days after delivery of a temporary or permanent certificate of occupancy for the Parking Garage to the holder of the Parking Garage Escrow, the Town's Parking Cost shall be immediately paid to Developer (the "Parking Garage Payment Date"), as reimbursement of Developer's costs and expenses incurred in connection with the development and construction of the Public Parking Spaces. The Town agrees that it shall cause its department of building inspections to diligently and promptly respond to the Developer's requests for inspections and/or re-inspections. Developer agrees that it will promptly undertake any corrective or additional work as may be required as a result of any inspection so that issuance of a certificate of occupancy will not be unduly delayed. Contemporaneously with Developer's receipt of the Town's Parking Cost, Developer shall deliver a bill of sale or such other documentation as may reasonably be required to convey to the Town all of Developer's right, title and interest, if any, in the Public Parking Spaces, Public Parking Unit and improvements constructed within the Public Space Unit.

(v) To the extent reasonably requested by Developer, the Lease Amendment will add to the Leased Premises such easements and/or other rights in addition to those set forth in the Land Condominium Declaration (the "Support Rights") as are necessary for the continued existence, operation and maintenance of any and all Building or other systems located within the Public Parking Unit and used in connection with any of the Leased Premises (the "Leased Premises Systems").

(vi) The Public Space Unit will be owned by the Town and, except as provided in Section 2.2(a)(iv), all improvements constructed on the Leased Premises will be owned by the Developer subject to the Lease.

(vii) The outline specifications and preliminary schematic drawings for the Project are attached hereto as Exhibit B. The Town acknowledges and agrees that Exhibit B is preliminary and that these shall not be considered a Submission to the Town for approval, but instead are attached only for illustrative purposes.

(viii) The Lease will restrict the development of the Leased Premises under the Lease to the development of the Building and associated parking spaces.

(b) Lease Terms. The Project shall be developed on the Lot 5 as provided in the Lease. Developer shall be obligated to enter into the Lease within thirty (30) days of Developer's notification to the Town that Developer has secured all permits required to initiate construction of the Project and Developer is prepared to commence construction of the same. The Lease shall be in substantially the form as attached hereto as Exhibit D. The Lease will contain the following basic terms:

(i) The term of the Lease will be 99 years (the "Initial Term");

(ii) Base Rent for the Initial Term of the Lease will be the sum of $1.00 per year, with additional consideration being acknowledged by the Town in the form of the public space to be developed by Developer, the construction of the Parking Garage, the public art component of the Project, affordable housing subsidized by Developer, LEED certification of the Project, the enhanced tax base resulting from the Project and other general economic developments;

(iii) On the 50th anniversary of the commencement date of the Lease, Developer shall have the right, which right may be assigned by Developer to the Lot 5 Condominium owners association, to terminate the Lease and acquire fee simple title to the Building Unit and Private Parking Unit, together with all appurtenant easements thereto, and any related air or subterranean rights, for the total sum of $2,000,000.00, which shall be payable in full in immediately available funds upon the closing of such purchase;

(iv) The Lease will require that the use of the Leased Premises and that the improvements constructed thereon either (1) comply with, (2) are granted a variance from, (3) are authorized under a special use permit or (4) are grandfathered from compliance with the Municipality zoning regulations at all times;

(v) The Lease will require the Town's prior written consent to all exterior or structural improvements or modifications (1) not necessitated by repairs, maintenance or laws applicable to the Developer owned improvements constructed on Lot 5; (2) not otherwise authorized by the Municipality in connection with retail tenant upfit improvements; or (3) not otherwise authorized by the Municipality in connection with the removal of a common wall between two residential condominium units to the extent allowed by the Act;

(vi) The Lease will not be subordinated to the Project Financing or any other financing of any type or kind as may be secured by the Developer or any other party, but the Lease will expressly permit the Developer to encumber its leasehold estate, will require the Town to provide to the Developer's Lender an appropriate non-disturbance agreement and estoppel agreement in a form reasonably satisfactory to such lender and the Town and will include such terms and provisions as are typically required by lenders providing financing for ground leasehold interests relative to the receipt of condemnation proceeds, casualty proceeds, and the right to receive notice and an opportunity to cure any default of the ground lessee;

(vii) The Lease will contain affirmative obligations to maintain all improvements developed on the Leased Premises;

(viii) The Lease will provide to the Developer, to the extent permitted by applicable law, the right of first refusal to meet any bona fide offer to purchase the Leased Premises, or any portion thereof, which the Town proposes to accept, on the same terms and conditions of such offer;

(ix) The Town and the Developer will sign the Lease and record the Lease in full contemporaneously with Closing;

(x) Deleted;

(xi) Deleted;

(xii) Deleted; and

(xiii) Deleted.

2.3 Approval and Review Rights.

(a) Submissions. The provisions of this Section 2.3(a) shall be applicable with respect to all instances in which it is provided in this Agreement that the Town has "approval" or "review rights" with respect to the Architectural Drawings, Parking Garage and Public Space, Construction Documents, Construction Contracts, Project Budget, Condominium Declaration, and other documents, persons or entities relating to construction of the Project. As used herein the term "approval rights" shall mean, without limiting the generality of such term, all instances in which the Developer is required to make a Submission to the Town of any specifications, document, notice or determination of the Developer, its Architect or any construction contractor and with respect to which the Town has the right hereunder to approve or disapprove such Submission. The term "review rights" as used herein shall mean, without limiting the generality of such term, all instances in which the Developer is required to make a Submission to the Town and the Town is entitled to review such information for the purpose of determining that the same comply with the Approved Architectural Drawings or determining whether such Submission has the effect of changing a previously approved Submission with respect to which the Town has approval rights. All Submissions to the Town for approval or review as contemplated by this Section 2.3(a) shall specify, in reasonable detail, those elements of the Submission that the Town is requested to approve or review. The Project Coordinators for the Developer and the Town shall develop time periods for the approval or review by the Town of all Submissions that are mutually acceptable to the Town and the Developer. Such time periods shall take into account the matter to be approved or reviewed, its complexity and any impact the time for approval or review may have on the Scheduled Completion Date, it being acknowledged by the Town and the Developer that review of some of the architectural work during the early stages of the design process will require substantial periods of time for review and that a delay in responding to a Submission will impact the Scheduled Completion Date. If the Town Project Coordinator and Developer Project Coordinator cannot mutually agree as to a specific approval period for a specific matter requiring the Town's approval or review, the Town shall have ten (10) business days to respond to the Submission involved. Failure of the Town to respond to a Submission in

writing setting forth with specificity the Town's objections thereto and within the time limits established as provided herein shall be deemed to be an approval on behalf of the Town, provided that such failure to respond continues for more than two (2) business days after notice of such failure from the Developer. To the extent that a Submission has been approved or deemed approved by the Town, such approval shall not be withdrawn. The Town shall not unreasonably withhold or delay its approval of any Submission hereunder. The Developer Project Coordinator and Town Project Coordinator shall develop an agreed upon form for Submissions consistent with this Section 2.3(a). Approval or consent by the Town of or to a Submission, unless specifically provided otherwise, shall neither (i) relieve the Developer of its duties, obligations or responsibilities under this Agreement (including any indemnification obligations to the extent herein provided) with respect to the matter so submitted, nor (ii) shift the duties, obligations or responsibilities of the Developer with respect to the submitted matter to the Town.

(b) Approval/Review Rights; Architectural Drawings. The Developer shall submit the Architectural Drawings for the Project to the Town's Project Coordinator for approval as to the exterior elevations, proposed building materials and exterior finish of those improvements to be owned by the Developer. In the event that the Town has objections to any part or portion of the exterior elevations, proposed building materials, or exterior finish of the improvements to be owned by the Developer as reflected in the Architectural Drawings, the Town's Project Coordinator shall advise the Developer of the same, in writing setting forth with specificity the Town's objections thereto. The Developer shall continue to resubmit the Architectural Drawings until the same have been approved by the Town. Once approved, such Architectural Drawings, as the same may be modified as required by the Municipality in connection with the issuance of the special use permit or in order to obtain the building permits, shall constitute the "Approved Architectural Drawings" for purposes of this Agreement. The Developer will not modify or change the Approved Architectural Drawings without the Town's approval. In the event that the Town shall subsequently require a modification of the Approved Architectural Drawings such that the same requires Developer to incur costs or expenses in excess of the costs associated with the previously Approved Architectural Drawings, then the Town shall have the option of either (i) paying to the Developer such additional costs to be incurred by Developer as a result of the requested change, or (ii) waiving the requested modifications to the Approved Architectural Drawings. Additionally, the Developer shall submit to the Town's Project Coordinator for the Town's review all schematic design drawings, design development documents, Construction Documents and the Project Budget for the Project and all modifications and amendments to the same for the limited purpose of determining that the same comply with the Approved Architectural Drawings. In the event that the Town, in reviewing a Submission pursuant to this Section 2.3(b), determines that the same materially and negatively impact the Approved Architectural Drawings for the Project, and the same no longer conforms to the Approved Architectural Drawings, the Town Project Coordinator shall notify the Developer of such objection, setting forth in writing with specificity the nature of the Town's objections to the same. The Developer shall continue to make appropriate revisions to such Submission(s), at the Developer's sole cost and expense, until the same are approved by the Town as conforming to the Approved Architectural Drawings. In connection with its approval and review of a Submission, the Town's Project Coordinator shall use reasonable best efforts to obtain confirmation from the Municipal planning board that the Submission is in compliance with the

Municipality's regulations and requirements, and advise the Developer of any aspects of the Submission that fail to satisfy such regulations and requirements.

(c) Special Approval Rights: The Parking Garage and Public Space. The Town in its capacity as the owner of the Parking Garage and Public Space shall have the right to approve in all respects the schematic design drawings, design development documents, Construction Documents and Town Project Budget for the Parking Garage, all aspects of the Public Space and all modifications or amendments thereto. In this regard the Town anticipates retaining a consultant, experienced in the design and operation of similar type parking facilities, to assist the Town in its review of the Parking Garage design. In the event the Town objects to any part or portion of the Developer's Submission under this Section 2.3(c) the Town shall advise the Developer of the same in writing setting forth with specificity the Town's objections thereto. The Developer shall continue to resubmit such plans and specifications and other documentation relating to the Parking Garage and Public Space until the same have been approved by the Town. Once such Submission(s) have been approved by the Town, the same, as may be modified as required by the Municipality in connection with the issuance of the special use permit or in order to obtain the building permits, shall constitute the Approved Town Plans for purposes hereof. No change or modification shall be made to the Approved Town Plans without the prior written approval by the Town following a Submission of the proposed modification or change to the Town unless required by the Municipality pursuant to applicable law or regulation. In the event that the Town shall subsequently require a modification of the Approved Town Plans such that the same requires Developer to incur costs or expenses in excess of the costs associated with the previously Approved Town Plans, then the Town shall have the option of either (i) paying to the Developer such additional costs to be incurred by the Developer as a result of the requested change or (ii) waiving the requested modifications to the Approved Town Plans.

(d) Review Rights: Commercial/Retail Space. The commercial/retail components of the Project are vital to the Town and its citizens. The tenant mix (e.g., the types of tenants, local, regional or national chains, etc., but not specific tenants), the configurations and square footage for the retail/commercial components and the property manager for the same shall be subject to the reasonable review of the Town with the opportunity to provide input into the same. Developer agrees to focus its leasing efforts toward obtaining tenants that will create a retail environment that is not substantially similar to the environment of traditional malls.

(e) Limited Review Rights: Project Budget. The financial stability of the Developer and its financial capacity to complete the Project consistent with the Approved Architectural Drawings is critical to the Town as the landowner. Accordingly, the Town shall have reasonable review rights over the Project Budget and all modifications thereof but only for the limited purpose of verifying compliance with the Approved Architectural Drawings and the Approved Town Plans and to ensure that Developer's Equity is sufficient to complete the Project. The Project Budget shall (i) be certified by the Developer as being complete in all material respects and (ii) be accompanied by a certification (subject to customary qualifications and exclusions) from a construction management firm unrelated to Developer and reasonably acceptable to the Town and the Developer (and if such is not readily available, then a certification from the Developer's Lender) certifying that to the best of its knowledge the Project Budget is reasonable in light of standards applicable to comparable projects. The Project Budget

may be modified and amended by Developer from time to time in order to reflect changes in the Approved Architectural Drawings or Approved Town Plans and other normal contingencies incurred in the course of developing and constructing a project of the scope and size of the Project. Developer shall keep the Town reasonably informed of all material changes to the Project Budget and shall provide the Town, on a monthly basis, a report as to the status of construction and a comparison of actual construction costs incurred as of such date to the Project Budget as provided by the Architect hired by the Developer to certify the amount of Work complete in connection with each monthly draw request from the Developer's Lender.

(f) Approval Rights: Developer's Team. The Town shall have the right to approve the key members of Developer's management team assigned to the Project including the job superintendent, which such approval shall not be unreasonably withheld, conditioned or delayed.

(g) Updating Schedule. During the design process the Developer shall establish and update as necessary the "Schedule" (as provided for in Section 2.4) setting forth the dates for delivery of the various design documents.

(h) Disputes. The Developer and the Town agree to attempt in good faith to resolve expeditiously any disputes concerning the approval of or consent to any Submission. Any disputes that arise between the Developer and the Town respecting the approval or consent process set forth in this Article II shall be resolved through an expedited dispute arbitration process as described on Exhibit K hereto. In the event a dispute arises as to any Submission that is submitted to an expedited arbitration process under this Section 2.3(h) then the number of days expended in resolving such dispute shall result in each deadline imposed on Developer as set forth herein being extended by an equal number of days.

(i) Pre-Construction Work. The Developer agrees to use commercially reasonable efforts to complete all Pre-Construction Work as follows:

(1) Submit to the Municipality an application for a special use permit for the Project on or before March 20, 2007, which application shall be based on the concept plan previously reviewed by the Town Council in connection with the approval of this Agreement. The application for the special use permit shall be in the name of the Town as the land owner;

(2) Complete and submit to the Town for its approval the Architectural Drawings for the Project and secure the Town's approval of the same on or before September 4, 2007; provided, however, the parties acknowledge and agree that the Architectural Plans, once approved by the Town, may require revision in order to satisfy the requirements of the Municipality in connection with securing a special use permit and any material change to the Approved Architectural Drawings or Approved Town Plans as a result thereof shall not be subject to the Town's approval;

(3) Secure a Special Use Permit from the Municipality on or before December 31, 2007, provided, however, in the event Developer must revise the

Approved Architectural Drawings as a condition to obtaining the special use permit, then the number of days expended by Developer in revising the Approved Architectural Drawings and/or expended to obtain the Town's approval to the revised Approved Architectural Drawings shall result in each deadline imposed on Developer as set forth in this Section 2.3(i) being extended by an equal number of days;

(ii) Secure a Zoning Compliance Permit from the Municipality on or before May 7, 2008.

(iii) Submit final design development documents and Construction Documents for the Project to the Town for review to determine compliance with the Approved Architectural Drawings on or before June 4, 2008;

(iv) Complete the initial Project Budget on or before July 9, 2008;

(v) Secure a firm commitment for the Project Financing within sixty (60) days after obtaining a Zoning Compliance Permit for the Project; and

(vi) Submit to the applicable governmental body an application for a building permit for the Project within thirty (30) days of receiving written confirmation from the Town that the design development documents and Construction Documents for the Project are in compliance with the Approved Architectural Drawings.

(j) Closing. The Closing shall occur within thirty (30) days after the building permit for the Project has been obtained. The Town and Developer agree, that each shall use commercially reasonable efforts to have the Closing occur on or before October 1, 2008.

2.4 Performance of Work.

(a) Scheduled Completion Date. Developer agrees to prosecute, or cause to be prosecuted, the Work diligently and without unnecessary interruption to completion in a good and workmanlike manner, free and clear of all liens, in accordance with the terms of this Agreement and the applicable Construction Documents so as to cause (i) construction of the Project to commence no later than ninety (90) days following the Closing, and (ii) the Project to be Substantially Complete and open to the public on or prior to the Scheduled Completion Date subject only to events of Force Majeure and extensions as are expressly set forth herein. The Developer shall require that all construction contractor(s) and other professionals and others performing the Work to obtain all permits and any bonds and insurance required by applicable law and this Agreement respecting the Work. If during construction, the Developer or the Architect reasonably determines or otherwise becomes aware that construction is not proceeding in accordance with the Construction Documents as they may be modified as permitted under this Agreement, the Developer shall cause any such nonconforming work to be re-executed by the party responsible therefor. If the Town reasonably believes that construction of the Parking Garage or Public Space is not proceeding in accordance with the Approved Town Plans, the Town shall notify the Developer in writing of the Town's concerns and desire to engage the services of a qualified independent testing agency or consultant to verify construction compliance with the Approved Town Plans and to monitor the Developer's and approved general

contractor's quality control program with respect to such Town-owned improvements, all at the Town's sole cost and expense. Such Town testing agency or consultant shall act through the Town Project Coordinator and follow the procedures set forth in Section 2.11 in connection with its review of the town owned improvements. As part of the Construction Contract, the Developer and its general contractor shall develop a schedule (the "Schedule") with appropriate milestones providing for Substantial Completion of the Project by the Scheduled Completion Date. The Schedule shall include time for adverse weather conditions to the extent normally encountered in the Chapel Hill, North Carolina area and the impact thereof, delineate all phases of the Pre-Construction Work and the Work and set forth a projected date for completion of each phase in sufficient detail to allow the Developer Project Coordinator and the Town Project Coordinator to monitor progress of the Work. The Schedule shall indicate the projected dates for the starting and completion of the various stages of design and construction and shall be revised as required by the progress and condition of the Work. The Developer shall notify the Town in writing ninety (90) days prior to that date when Substantial Completion of the Parking Garage is reasonably expected based on the Schedule.

(b) Relationship of the Town and Developer. In the development and construction of the Project and in the performance of all Work, the Developer, individually or through its authorized agents and its general contractor, shall have the exclusive right and duty to supervise, manage, control and direct the acts or omissions of the contractor or subcontractor in the performance of the Work pursuant to the Construction Documents or to cause the same to be done by its agents or employees. The Work must comply with all applicable laws, ordinances and regulations, in effect during the course of construction, and be done in a good and workmanlike manner. Additionally, in connection with the construction and development of the Project, except as expressly set forth in this Agreement to the contrary, the Developer shall have all responsibility, liability and risk with respect to the development of the Project and the prosecution of the Work. The relationship between Developer and Town is that of (i) lessor and lessee with respect to the improvements to be constructed on the Leased Premises, and no other, (ii) owner and developer with respect to the Public Space and, during construction, the Parking Garage, and no other, and (iii) lessor and lessee with respect to the Excess Spaces and no other. Nothing herein contained shall be construed as creating a partnership, joint venture or any other type of relationship between Developer and Town other than that as set forth in the preceding sentence. The Developer is not the agent or representative of the Town, and this Agreement shall not make the Town liable to any general contractor, materialmen, contractors, craftsmen, laborers or others for goods delivered to or services performed by them upon Lot 5, or for debts or claims accruing to such parties against the Developer, and there is no contractual relationship, either express or implied, between the Town and the general contractor or any materialmen, subcontractors, craftsmen, laborers, or any other person supplying any work, labor or materials to Lot 5. No person or entity other than the Developer (and its permitted assignee) and the Town shall, under any circumstances, be deemed to be a beneficiary of this Agreement, or any of the terms or conditions hereof.

(c) The Construction Contract. The Construction Contract(s) for the Project shall contain such terms and conditions as shall be mutually satisfactory to the Developer and the general contractor or construction manager but shall include the following: (i) where reasonably possible and cost effective under the circumstances, a lump sum or guaranteed maximum price for the development, construction, equipping and completion of the Project (or such portion

thereof governed by such Construction Contract) so as to minimize the Developer's risk of cost overruns; (ii) a guaranty of Substantial Completion not later than the Scheduled Completion Date absent Force Majeure; (iii) a provision for a payment and performance bond in the full amount of the price for the Work covered thereby in form reasonably acceptable to the Developer with the Developer, the Town and, if required, the Developer's Lender being named as primary insureds and beneficiaries on all such bonds; provided, however, such bond shall be bifurcated so as to provide a separate payment and performance bond with respect to the Parking Garage and Public Space with the Town as the sole beneficiary thereof; (iv) a provision for liquidated damages in the event of a delay in Substantial Completion of the Project beyond the Scheduled Completion Date, in an amount and on terms reasonably acceptable to the Developer and Town; (v) appropriate retention amounts; (vi) a provision for the receipt of lien waivers and releases from all construction contractors and their subcontractors; (vii) a requirement that, subject to industry standard, each construction contractor certify in writing that no materials used in the Work contain lead, asbestos materials or other Hazardous Materials in excess of amounts allowed by Applicable Law, including any Environmental Law; (viii) a requirement that each construction contractor comply with all applicable laws, including Environmental Law; (ix) a requirement that each construction contractor provide to the Developer and the Town on or before the date of Substantial Completion, or as soon thereafter as practicable, a complete assignment of, and reference manual showing, all the warranties and guaranties provided by the construction contractor and all subcontractors for the Work with such warranties and guaranties to have an effective date that begins no sooner than the date of Substantial Completion (to the extent allowed by the provider of the warranty or guaranty); and (x) a requirement that the construction contractor maintain the insurance required by Section 2.5 hereof, with the Town as a named insured as its interest may appear, all as more fully set forth in Section 2.5 hereof. Additionally, the Developer shall use good faith efforts to secure an agreement that each construction contractor indemnify and hold harmless the Developer and the Town, and their respective agents, consultants, representatives, and employees from and against all claims, damages, losses and expenses including but not limited to, attorneys' fees and costs arising out of or resulting from performance of the Work;

2.5 Insurance.

(a) Insurance Required. Developer shall obtain and maintain, or cause to be obtained and maintained, at all times one or more policies of insurance containing the following types of coverages, deductibles, limits and other terms as is customary in the industry and otherwise reasonably approved by the Town:

(i) Comprehensive builders risk, casualty and property insurance against any casualty to the Project on an all risk perils basis. Any policy providing such coverage shall include fire, extended coverage, vandalism, malicious mischief and the so-called "special coverage all risk" endorsement (with such endorsements for loss of use and other "soft costs" as the Developer provide and the Town shall review);

(ii) Commercial general liability insurance covering the defense and legal liability for claims of bodily injury, death and property damage which occurs on, in or about or relating to the Project whether such bodily injury, death or property damage is caused by the Developer, the Town, a construction contractor or any of such party,

agencies or employees or licensees or anyone directly or indirectly employed by any of the foregoing. The amount of such insurance shall not be less than $25 million bodily injury or death per each occurrence/aggregate and $25 million property damages combined single limits each occurrence/aggregate;

(iii) Workers Compensation and Occupational Disease insurance meeting the statutory requirements of the State of North Carolina including employers liability in an amount of not less than $1 million;

(iv) Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than $5 million bodily injury each person, each accident and $5 million property damage or $5 million combined single-limit, each occurrence/aggregate; and

(v) Contractor's Pollution Insurance covering release of Hazardous Materials for limits of not less than $25 million.

(b) Exclusions. Neither the Developer nor the Town shall be obligated to carry insurance for matters generally subject to exclusion by the insurance industry. These exclusions currently include, but are not limited to, flood, nuclear events, acts of war and terrorism.

(c) Policy Terms. All insurance required hereunder shall be effected under standard form policies issued by insurers of recognized responsibility authorized to do business in North Carolina which are rated at least Class A-/VIII, Best Rating Services. All such policies shall be non-assessable and shall contain language to the effect that (i) any loss shall be payable notwithstanding any act or negligence of the Developer, the Town or their agents, employees, subcontractors and licensees; (ii) the policies are primary and noncontributing with insurance that may be carried by any other party; and (iii) the policies cannot be cancelled, materially changed or not renewed except after thirty (30) days' written notice by the insurer to the Developer and the Town. Each such policy of insurance shall further include waivers of all rights of subrogation against the Developer, the Town and their respective officers, agents and employees. On all insurance procured pursuant to this Section 2.5, the Town and the Developer, and their respective agents, employees, subcontractors and licensees shall each be named as additional insured on the respective policies to the extent allowed by law and within the limitations in the forms of coverage available. Such policies of insurance shall contain such deductibles and/or retentions as are reasonable in light of the financial capacity of the Developer, industry practices and as are reasonably approved by the Town.

(d) Expense. The cost of all insurance required to be secured by the Developer under this Agreement shall be included within the Project Budget and treated as a cost of the Project.

2.6 Damage or Destruction Prior to Substantial Completion. If, at any time prior to Substantial Completion, the Project, or any part thereof, shall be damaged or destroyed by a casualty, the Developer shall commence, and thereafter proceed as promptly as possible, to repair and restore the Project so as to cause the same to achieve Substantial Completion in

accordance with the Approved Architectural Drawings (and Approved Town Plans, if applicable) as soon as practicable. Damage or destruction to the Project prior to Substantial Completion shall not give rise to any right to terminate this Agreement unless the Developer and Town shall mutually agree to the contrary.

2.7 Developer Project Coordinator. The Developer shall designate in writing to the Town the name of the individual who is to be the Developer's Project Coordinator (and an alternate) with full power and authority to execute on behalf of the Developer any and all instruments, consents and approvals contemplated by the terms of this Agreement. The Developer Project Coordinator shall represent the interests of the Developer, and be responsible for overseeing on behalf of the Developer, all aspects of the design, construction and development of the Project as contemplated by this Agreement and work closely with Town Project Coordinator in coordinating and implementing decisions contemplated by this Agreement. Any written consent, approval, decision or determination hereunder by the Developer Project Coordinator shall be binding on the Developer; provided, however, the Developer Project Coordinator shall not have any right, power or authority to modify, amend or terminate (i) this Agreement or (ii) the Approved Architectural Drawings (including the Approved Town Plans).

2.8 Town Project Coordinator. The Town shall designate in writing to the Developer the name of the individual who is to be the Town Project Coordinator (and an alternate) with full power and authority to execute on behalf of the Town any and all instruments, consents and approvals contemplated by the terms of this Agreement. The Town Project Coordinator (and an alternate) shall be subject to the reasonable approval of the Developer. The Town Project Coordinator shall further represent the interests of the Town and be responsible for reviewing on behalf of the Town, all aspects of the design, construction and development of the Project as contemplated by this Agreement and work closely with the Developer Project Coordinator in coordinating and implementing decisions contemplated by this Agreement. Any written consent, approval, decision or determination hereunder by the Town Project Coordinator shall be binding on the Town; provided, however, the Town Project Coordinator shall not have any right, power or authority to modify, amend or terminate (i) this Agreement, or (ii) the Approved Architectural Drawings (including the Approved Town Plans). All access of the Developer and their respective agents, employees and professionals to the Town, its consultants and advisors, shall be coordinated through the Town Project Coordinator. The Developer understands that in order to secure priority treatment Developer must apply for expedited review in accordance with existing requirements and procedures in place in the Municipality.

2.9 Designation: Replacement. The Developer and Town have designated those individuals (with all appropriate contact information) set forth on Exhibit G hereto as their respective Project Coordinators and alternates. The Developer and Town shall each have the right, from time to time, to change the person who is the Developer Project Coordinator or Town's Project Coordinator, as applicable, by giving the other such party five (5) days' written notice of the proposed change and designating the new project coordinator, and delivering such notice to such Party in the manner and at the address indicated in Section 15.2 hereof, provided, however, such replacement shall be subject to the other party's approval, which shall not be unreasonably withheld, and provided further, however, that the Developer and Town each agree to use its best efforts to maintain consistency in its Project Coordinator.

2.10 Reports. Developer shall provide to the Town Project Coordinator written and oral reports on a regular basis. Such written reports shall be in such form as designated by the Developer and shall describe the status of the design and construction of the Project, any proposed or necessary changes in the Approved Architectural Drawings, the Schedule, the estimated percentage of completion, and will include copies of (i) the reports Developer receives from the Architect or general contractor); (ii) the monthly certification from the Architect; and (iii) such other relevant information as the Developer shall determine or the Town shall reasonably request. The Developer customarily receives or prepares the following reports: monthly reports from the Architect; monthly construction loan draw requests; quarterly construction progress reports; and quarterly updated construction schedules. To the extent the Town Project Coordinator reasonably request a copy of any of these listed reports, the Developer shall provide a copy of the same to the Town Project Coordinator. The Town Project Coordinator shall further be furnished with any information that comes to the attention of the Developer relating to the occurrence of any casualty or other Force Majeure or other situation, occurrence or event that could have a materially adverse effect on the ability to achieve Substantial Completion by the Scheduled Completion Date. All written reports or materials delivered to the Town shall have any and all proprietary information redacted.

2.11 Inspection Rights of the Town.

(a) The Developer agrees that the Town Project Coordinator shall have the right at all times during normal business hours upon not less than three (3) Business Days' prior written notice, and not more frequently than twice every calendar month (i) review all Project records reasonably requested including, without limitation, all draw requests, cost records and evidence of payment with respect to the Project, and (ii) subject to compliance with applicable law, to inspect the progress of the construction of the Project, but in such a manner that such inspection will not interrupt or delay the construction of the Project. The Town Project Coordinator (or such other representative) shall, at the option of the Developer, be accompanied by the Developer Project Coordinator or its representative during such inspection. The Developer acknowledges that the Project shall be an open book development and the Town shall have full access to the books and records of the Developer solely with respect to the Project's costs, as limited in Section 2.3(e), and auditing the Town's Parking Cost in accordance with Section 2.11(b).

(b) Developer agrees to provide documentation as may reasonably be required by the Town and the Local Government Commission to assist with the financing of the Town Investment. At its option, to be exercised within 90 days of the Town's payment of the Town Parking Costs, the Town may elect to audit the cost of constructing the Public Parking Spaces and, in the event said costs are less than $7,245,000, (i.e. $45,000 per public parking space) the Developer shall refund any excess within thirty (30) days of demand thereof. In the event such audit indicates that a refund is due, the Developer shall also reimburse the Town for the cost of the audit, up to $20,000.

(c) Upon any review of Developer's records, the Town shall promptly return to Developer such materials supplied to the Town for copying.

2.12 Indemnification.

(a) Indemnification by Developer. Developer shall pay, protect, indemnify and hold harmless the Town and its officers, employees, contractors, agents and elected or appointed officials (for purposes of this subparagraph 2.12(a), collectively the "Indemnified Party") for, from and against, and shall defend all actions against the Indemnified Party with respect to, any and all liabilities, including, but not limited to tort (strict or otherwise), losses, damages, costs, expenses (including, but not limited to, reasonable attorneys' fees and expenses), causes of actions, suits, claims, demands or judgments of any nature whatsoever arising from (i) the Work, or (ii) any injury to or death of any person or damage to or loss of property or any other event or circumstances occurring on or resulting from activities of Developer, its agents, contractors or employees, on Lot 5 in connection with the Work (including, without limitation, the construction of the Project or resulting from or in connection with the condition of the Project or Lot 5), or (iii) any losses relating to or arising out of the presence of Hazardous Substances on Lot 5 or violation of any Environmental Laws (excluding, however, any Claim relating to Hazardous Substances or violation of any Environmental Laws existing as of the Closing or relating to the failure of the Town to perform all necessary remediation work to the reasonable satisfaction of Developer on Lot 5); and in each case, regardless of the acts, omissions or negligence of any Indemnified Party; provided, however, that Developer shall not be required to indemnify any Indemnified Party hereunder against any losses (i) occurring solely as a result of the fraud, negligence or willful misconduct of any Indemnified Party; (ii) related to any reduction in the proceeds that the Town receives in the operation of the surface parking lot on Lot 5, nor for any liability, loss or damage the Town or its patrons may incur that is not directly related to the Project; (iii) caused by a Force Majeure, a casualty or condemnation of all or any portion of the Project so long as Developer maintains the insurance required by Section 2.5 hereof; or (iv) related to the Town's failure to grant Developer the right to institute reasonable temporary safety measures and/or construct temporary safety structures on or otherwise close portions of adjacent public walkways and rights of ways to the extent and for so long as is reasonably recommended by Developer's safety engineer or consultant.

(b) Indemnification by Town. Town shall pay, protect, indemnify and hold harmless the Developer, Keith L. "Casey" Cummings, the Developer's permitted assigns, the officers, employees, contractors and agents of each (for purposes of this subparagraph 2.12(b) referred to collectively as the "Indemnified Party") to the extent permitted by applicable law for, from and against, and shall defend all actions against any Indemnified Party with respect to, any and all liabilities, including, but not limited to tort (strict or otherwise), losses, damages, costs, expenses (including, but not limited to, reasonable attorneys' fees and expenses), causes of actions, suits, claims, demands or judgments of any nature whatsoever arising from (i) any use or occupancy (other than by the Developer and its agents, contractors and employees) of Lot 5 by the Town or its employees, representatives or agents; or (ii) the negligence or willful acts of the Town or its employees, representatives and agents, relating to the Town's performance of any of its obligations under this Agreement or any of the Transaction Documents or (iii) any Claims relating to or arising out of the presence of Hazardous Substances on Lot 5 or violation of any Environmental Laws as of the Closing or arising out of the failure of the Town to remediate the same as herein provided. The Town's obligation to indemnify hereunder with respect to claims of or by third parties (which shall include agents and employees of the Town) shall be limited to the extent of insurance proceeds actually collected from policies of insurance maintained by or

on behalf of the Town. The Town currently maintains public liability insurance in the amount of $3,000,000 per occurrence with a $2,500 deductible and intends, subject to availability, to continue to maintain such until Substantial Completion of the Project. Nothing herein contained shall constitute or be construed as a waiver of the Town's governmental immunity. Notwithstanding the foregoing, the Town shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses) arising from or in connection with (i) any injury to or death to a person or any damage to property (including loss of use) to the extent caused by the negligence or willful act of the Developer or any of its respective affiliates, partners, stockholders, members, employees, representatives or agents; (ii) any Hazardous Substances that are introduced to Lot 5 by the Developer and its respective agents, employees, representatives or subcontractors or any violation of any applicable Environmental Law caused by said parties; (iii) any loss or liability due to a casualty or Force Majeure, or (iv) the Developer's violation of any of its obligations under this Agreement or any of the Transaction Documents.

(c) Indemnification Procedures. If any Person entitled to indemnification pursuant to this Section 2.12 (an "Indemnified Party") shall discover or have actual notice of facts that have given rise, or which may give rise, to a claim for indemnification under this Section 2.12, or shall receive notice of any action or proceeding of any matter for which indemnification may be claimed (each a "Claim"), the Indemnified Party shall, within twenty (20) days following service of process (or within such shorter time as may be necessary to give the Person obligated to indemnify the Indemnified Party (the "Indemnitor") opportunity to respond to such service of process) and within twenty (20) days after any other such notice, notify the Indemnitor in writing thereof together with a statement of such information respecting such matter as the Indemnified Party then has; provided, however, the failure to notify the Indemnitor shall not relieve the Indemnitor from any liability which it may have to the Indemnified Party except and solely to the extent that such failure or delay in notification shall have adversely affected the Indemnitor's ability to defend against, settle or satisfy any such Claim. The Indemnitor shall be entitled, at its cost and expense, to contest any such Claim by all appropriate legal proceedings provided the Indemnitor shall have first notified the Indemnified Party of the Indemnitor's intention to do so within twenty (20) days after the Indemnitor's receipt of such notice from the Indemnified Party. If the Indemnified Party elects to join in any defense of a Claim, the Indemnitor shall have full authority to determine all action to be taken with respect thereto. If, after such opportunity, the Indemnitor elects not to contest such Claim, the Indemnitor shall be bound by the resolution of such Claim obtained by the Indemnified Party. If required by the Indemnitor, the Indemnified Party shall cooperate fully with the Indemnitor and the Indemnitor's attorneys in contesting any such Claim or, if appropriate, in making any counterclaim or cross complaint against the Person asserting the Claim against the Indemnified Party, but the Indemnitor will reimburse the Indemnified Party for any expenses incurred by the Indemnified Party in so cooperating. The Indemnitor shall pay to the Indemnified Party in cash all amounts to which the Indemnified Party may become entitled by reason of the provisions of this Section 2.12, such payment to be made within thirty (30) days after such amounts are finally determined either by mutual agreement or by judgment of a court of competent jurisdiction. Notwithstanding that the Indemnitor is actively conducting a defense or contest of any Claim against an Indemnified Party, such Claim may be settled, compromised or paid by the Indemnified Party without the consent of the Indemnitor; provided, however that if such action is taken without the Indemnitor's consent, the Indemnitor's indemnification obligations with

respect thereto shall be terminated, and the Indemnitor shall have no obligation to the Indemnified Party. The Indemnitor shall have the right to settle, compromise or pay any Claim being defended by the Indemnitor without the Indemnified Party's consent so long as such settlement or compromise (i) does not cause the Indemnified Party to incur any present or future material cost, expense, obligation or liability of any kind or nature, (ii) does not require any admission or action or forbearance from action by the Indemnified Party, and (iii) the Indemnified Party is released from all liability, cost or expense respecting such Claim.

2.13 Project Financing.

(a) Commitment. Developer shall use commercially reasonable efforts to secure a commitment from a qualified financial institution for debt financing of the Project in an amount and upon terms which are consistent with prevailing market conditions reasonably satisfactory to Developer taking into account the cost reflected in the Project Budget, the Town's Parking Cost and a reasonable estimate of Developer's Equity. Developer shall keep the Town's Project Coordinator informed as to Developer's progress in securing a commitment for the Project Financing for each of the Project. Developer shall provide to Town for review a copy of the commitment for the Project Financing for the Project as soon as the same shall be available.

(b) No Lien Provisions. Developer shall secure from Developer's Lender providing the Project Financing a binding agreement that (i) the Parking Garage Unit and the Public Space Unit shall not be encumbered in any manner by the lien of any deed of trust, mortgage, security agreement or other encumbrance securing the Project Financing that may be placed upon the Developer-owned improvements to be constructed on the Leased Premises, provided however, upon execution of the Lease Amendment, the Developer's leasehold estate in the Private Parking Unit and all appurtenant easements thereto may be so encumbered, (ii) the Project Financing shall, at all times, be subordinate to and junior to the Land Condominium Declaration and the Lease and all amendments thereto, and (iii) the Project Financing shall not encumber the Town's fee title to Lot 5. Nothing contained in this Agreement shall restrict the Developer from granting a lien on its interest, as tenant, under the Lease, including the easements and licenses to be granted thereunder, nor shall anything contained in this Agreement restrict the Developer from granting a collateral lien on the Developer's rights to receive the Town Parking Cost or on the Developer's rights under any of the Construction Documents or Transaction Documents, subject however to the terms thereof.

2.14 Developer's Equity. Except as otherwise provided herein, Developer shall be obligated to provide all funds necessary for the development, construction and opening of the Project in excess of the Project Financing. Developer agrees to contribute a minimum of $12,500,000.00 in equity toward the construction of the Project. The Developer's Equity shall be deposited into a separate escrow account established by the Developer with the Developer's Lender, in accordance with a deposit schedule satisfactory to Developer's Lender and Section 3.2(b) hereof. To the extent that the cost of the Project shall increase or decrease over the amount reflected in the Project Budget, and to the extent that the Project Financing shall be in an amount greater than or less than Developer's initial estimate thereof, then Developer's Equity for the Project shall increase or decrease accordingly and the amount on deposit in the Developer's Escrow Account, shall be adjusted upward or downward accordingly, provided, however, an adjustment in the Developer's Equity shall not be required if a change in the cost is attributable

to (i) a Post Approval Change for which the Town is obligated hereunder to pay, or (ii) any matter relating to the Town's remediation obligations. To the extent that the cost of the Project shall increase or decrease over the amount reflected in the Project Budget, then Developer's Equity shall increase or decrease accordingly. Notwithstanding anything herein to the contrary, in no event shall the amount of the deposit of Developer's Equity into Developer's Escrow Account be less than the equity required by Developer's Lender.

2.15 Liquidated Damages. If the Parking Garage does not achieve Substantial Completion on or before the Scheduled Completion Date (as the same may be adjusted as expressly set forth herein) and such delay is not attributable to any action or failure to act by the Town, and the Town is unable to operate the Parking Garage and generate revenues from the Public Parking Spaces therein, in addition to any other rights the Town may have under this Agreement, the Town shall be entitled to receive that portion of the liquidated damages, if any, as shall be due and owing under the applicable Construction Contract allocated to the anticipated lost parking revenues from the Public Parking Spaces. The Town shall have reasonable review rights of any liquidated damages provided for in the applicable Construction Contract and the procedures relating to the collection and payment of the same, which Construction Contract may excuse payment of liquidated damages only in the context of delays resulting from (i) Town approved changes in the Work, (ii) an act or neglect to act on the part of the Town, Architect or Developer, (iii) Force Majeure, (iv) casualty or (v) an event of condemnation. On or prior to thirty (30) days prior to entering into a Construction Contract relating to the Parking Garage, the Town and the Developer shall use their reasonable best efforts in order to arrive at a per diem liquidated damages for failure to complete the Parking Garage on or before the Scheduled Completion Date that takes into account the per diem rental value of the Public Parking Spaces, current market conditions and other relevant factors as the Town and the Developer shall mutually agree upon.

2.16 Alternative Parking. The Town shall be responsible for the development of, and implementation of, an appropriate plan for alternative parking during the construction of the Parking Garage at the Town's sole cost and expense.

2.17 Warranties as to Town-Owned Improvements. The Developer shall notify the Town when, in the opinion of the Architect, Substantial Completion of the Parking Garage and the Public Space has been achieved. The Town Project Coordinator or other representative of the Town shall promptly undertake to inspect the Parking Garage and Public Space in order to determine whether the same has been substantially completed consistent with the Approved Town Plans. The Developer shall cause the general contractor responsible for such improvements to rectify any defects in the construction of such improvements as reasonably determined by the Town. At such time as the Architect deems that Substantial Completion of the Parking Garage and the Public Space has been achieved, the Developer shall cause the general contractor to provide to the Town a warranty of construction of the Parking Garage and the Public Space for a period of one (1) year from the date of Substantial Completion of such improvements and in accordance with the construction contractor's then prevailing warranty standard. Such warranty shall include, but not be limited to, a warranty that the improvements are free from defective materials, constructed in a workmanlike manner in accordance with the Approved Town Plans, constructed according to sound engineering and construction standards and that such improvements may be used for the particular purpose for which they were

constructed. Additionally, the Developer shall cause to be delivered to the Town all manufacturer's warranties relating to all appliances, personal property, equipment and other systems associated with the Parking Garage and the Public Space.

2.18 Active Recreational Space Requirement. To the extent permitted by the Town's zoning ordinance the Developer may count public spaces incorporated into the Project in meeting the active recreational space requirement under the Municipality's zoning ordinance.

2.19 Obligation to Complete Bonds. A duplicate original of the payment and performance bonds required under Sections 2.4 (c) and 3.3(b) herein shall be supplied to the Town, and the Town shall be entitled to maintain a direct action against the bonding company (and all other parties that may be necessary parties to such an action). In the event of a default by the general contractor under the Construction Contract the Town shall coordinate with the Developer any action against the general contractor or the bonding company.

ARTICLE III
The Town's Investment

3.1 Financial Investment by the Town. In accordance with chapter 961, session laws of 1984, and in furtherance of the Town Council's decision to improve downtown development, and as partial consideration for Developer's investment in the Project, the Town will make a financial investment in the amount of the Town's Parking Cost and, as needed, in the amount of the Town's Remediation Cost. The Town shall not be required to invest additional sums for the Project, provided, however, the Town shall be required to invest additional sums for incremental increases in the Project's cost resulting solely from the Town specifically requiring the Developer to add additional improvements to, or alter, the Approved Architectural Drawings (herein called "Post Approval Changes"). Other than the Town's Parking Cost, the Town's Remediation Cost and costs incurred due to Post Approval Changes (herein referred to collectively as the "Town's Investment"), all risk of cost overruns, including increased construction costs, shall be borne by the Developer.

3.2 Manner of Payment.

(a) The Town's Investment. The Town shall pay the Town's Parking Cost to the Developer as set forth in Section 2.2 (a)(iv) herein. Contemporaneously with the payment of the Town's Parking Cost, the Town shall pay to the Developer the cost of the Post Approval Changes. The Town shall pay the Town's Remediation Cost as set forth in Section 3.5 herein.

(b) Developer's Escrow. The obligation of the Developer to deposit the previously unexpended portion of the Developer's Equity into the Developer's Lot 5 Escrow Account shall be subject to the satisfaction of each of the following:

(i) The Developer has secured and has been issued all permits required for the construction and development of the Project;

(ii) The Developer has received confirmation from the Town that the Town has secured such approvals, if any, as required by the North Carolina Local Government Commission;

(iii) The Town has placed into the escrow with Developer's title insurance company a signed counterpart of (A) the Lease Amendment; (B) amendment to the Land Condominium Declaration; and (C) such other documents as are necessary to complete the subdivision of the Parking Garage Unit, all as contemplated in Sections 2.2(a)(ii) and 2.2(a)(iii) herein; it being understood that the same shall be finalized and amended as is appropriate once the Developer has delivered to the Town the required as-built plans and specifications for the Public Parking Unit and Private Parking Unit, which delivery shall be on or before the Parking Garage Completion Date; and

(iv) The Town is not in default under any of the Transaction Documents beyond any applicable notice or cure.

Following satisfaction of the Conditions Precedent to Funding, Developer shall promptly establish its escrow account and deposit therein the previously unexpended portion of the Developer's Equity and Developer and the Town shall deliver to the escrow established with Developer's title insurance company the documents contemplated and required by subsection (iii) immediately above.

(c) Change in the Developer's Equity. Developer is responsible for all funding required for the development, construction and opening of the Project in excess of (i) the Town's Investment, and (ii) the Project Financing. In the event that the budgeted costs for the construction, development and opening of the Project shall increase, as reflected in an amended Project Budget, or in the event that the available Project Financing shall decrease, then Developer's Equity for the Project shall automatically be increased by the amount by which the cost of such Project, as reflected in the Project Budget, has been increased (without a corresponding increase in the amount of the Project Financing as a result of the refinancing of the Project Financing) and/or by the amount that the Project Financing has decreased as a result of the refinancing of the Project Financing (without a corresponding increase in the cost of the Project) (the "Developer's Equity Shortfall Amount") and such Developer's Equity Shortfall Amount shall be added to and shall be a part of Developer's Equity and shall be deposited into the Developer's Escrow Account in accordance with the Project Budget, provided, however, an adjustment in the Developer's Equity shall not be required if a change in the cost is attributable to (i) a Post Approval Change for which the Town is obligated hereunder to pay, or (ii) any matter relating to the Town's remediation obligations. Nothing herein contained shall restrict the right of the Developer to secure an increase in the amount of the Project Financing, via a modification of the existing financing or via a refinance loan.

(d) Control of Developer's Escrow. All funds on deposit in the Developer's Escrow Account shall at all times be the exclusive property of the Developer and no other person, firm or corporation, other than the Developer or Developer's Lender, shall have any rights therein until funds are actually disbursed therefrom. Funds on deposit in Developer's Escrow Account shall be disbursed in payment of actual costs incurred in connection with the development of the Project as directed by the Lender and in accordance with the terms of the Tri-Party Agreement.

3.3 Disbursement of Documents from Title Insurance Company Escrow. Provided that Developer is not in Default hereunder or under any of the other Transaction Documents,

beyond any applicable notice or cure period, the Lease Amendment, amendment to the Land Condominium Declaration and such other documents that are being held in escrow by Developer's title insurance company and necessary to complete the subdivision of the Parking Garage Unit and amendment to the Lease shall be delivered to the Developer within thirty (30) days of the Parking Garage Completion Date or otherwise in accordance with a tri-party agreement among the Developer, the Town and the Developer's Lender that is approved by the Town (the "Tri-Party Agreement").

3.4 Obligation to Complete.

(a) Developer Owned Improvements. The Construction Contract(s) shall provide for a payment and performance bond assuring completion of the Project (but excluding the improvements covered by the bond required by Section 3.4(b)) in accordance with the Construction Documents (subject to industry standard exceptions) with the Town, the Developer and Developer's Lender being named beneficiaries thereof as their interests may appear. In the event of a default by the general contractor under the Construction Contract the Town shall coordinate with the Developer any action against the general contractor or the bonding company.

(b) Town Owned Improvements. In order to provide additional collateral security to the Town, the Construction Contract shall provide for a separate payment and performance bond assuring completion of the Parking Garage and the Public Space in accordance with the Construction Documents (subject to industry standard exceptions) with the Town being named as the primary beneficiary thereof. Such payment and performance bond shall, in all respects, be reasonably satisfactory to the Town. The Town shall be entitled to maintain a direct action against the bonding company (and all other parties that may be necessary parties to such an action).

(c) Guaranty. As further security for Developer's completion of the Project, Keith L. Cummings, individually, shall provide to the Town the Guaranty in the form attached hereto as Exhibit E. Such Guaranty shall terminate and be cancelled and returned to Keith L. Cummings in the event that Developer elects to terminates this Agreement(i) pursuant to Article XII hereof or (ii) by reason of a Default by the Town as set forth in Section 13.1 (b) beyond any applicable cure period.

3.5 Town's Obligation to Remediate. In the event that any Hazardous Substance is found on Lot 5, the Town shall be responsible for adopting a remediation plan reasonably acceptable to Developer and the Town's environmental engineer to remediate such Hazardous Substances in accordance with Environmental Laws. The parties agree that any remediation required will be undertaken by the Developer on behalf of the Town and the Town will reimburse the Developer for the actual cost thereof or, at Developer's option, the Town will pay such cost on a direct basis, it being agreed that the Developer has no obligation to fund on an advanced basis the Town's Remediation Cost. For purposes hereof the actual cost of the remediation shall be the incremental increase in construction costs directly relating to any required remediation (the "Town's Remediation Cost.") For example, in the event that the soil on Lot 5 is contaminated by a Hazardous Substance and must be removed, the cost of any excavation to remove the same shall not be treated as a remediation cost allocable to the Town if such excavation was otherwise required in connection with the construction of the Project.

However, if the soil excavated and removed must be treated under the remediation plan, then the cost of such treatment (but not the excavation) shall be borne by the Town. The Developer shall submit to the Town on a monthly basis the cost associated with any required remediation and the Town shall reimburse the Developer therefore, or pay such costs on a direct basis, within thirty (30) days of the receipt of an invoice.

ARTICLE IV
Representations and Warranties

4.1 Developer's Representations, Warranties and Covenants. The Developer represents and warrants to the Town that:

(a) It is a limited liability company, duly created and validly existing pursuant to the law of the jurisdiction of its organization and is duly qualified to do business in North Carolina and all other jurisdictions where the nature of its business or ownership of property makes such qualification necessary and where failure to so qualify would have a material adverse effect on its business or properties, and has all requisite corporate power and authority to execute and deliver this Agreement;

(b) The person signing this Agreement on behalf of the Developer has been duly authorized to sign and deliver this Agreement on behalf of the Developer;

(c) This Agreement and each of the Transaction Documents to which the Developer is a party have been duly authorized, executed and delivered by the Developer and constitute the legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with their respective terms, except to the extent enforceability is limited by bankruptcy, reorganization and other similar laws affecting the Developer and rights of creditors generally and by general principles of equity;

(d) It is not in default beyond any applicable notice or cure period of any obligation of Developer;

(e) At completion of the Project all labor and services performed and materials furnished to the Project at the Developer's direction will be paid for in full;

(f) The entry into this Agreement, the execution and delivery of all of the Transaction Documents and other instruments and documents required to be executed and delivered under the terms hereof, and the performance of all acts necessary and appropriate for the full consummation of the transaction contemplated hereunder are consistent with, and not in violation of, and to the best of its knowledge will not create any adverse condition under, any contract, agreement, or instrument to which Developer is a party, or any judicial order or judgment of any nature under which Developer is bound;

(g) Developer is not a "foreign person" and none of the owners of Developer are foreign persons such that in certain transactions the Town would be required to comply with withholding tax provisions of Section 1445 of the Internal Revenue Code of 1986 as amended. Attached hereto as Exhibit F is a list of all persons having an ownership interest in the Developer as of the Effective Date. To the extent that any such ownership interest is held by a corporation,

partnership, or limited liability company, such entity is duly organized and validly existing under the laws of the state of its organization, and has all requisite power and authority to own its business and properties and conduct the same;

(h) From and after the Effective Date, except in connection with any remediation plan undertaken by the Town, no Hazardous Substances shall be located, released (within the meaning of 42 U.S.C. § 9601(22)), stored, treated, generated, transported to or from, disposed of (within the meaning of 42 U.S.C. § 6903(3)) in quantities which exceed those allowed under applicable Environmental Laws, or allowed to escape on the Project, including, without limitation, the surface and subsurface waters of the Project in violation of any Environmental Laws. The Project and Developer's operations thereon shall be in compliance with all applicable Environmental Laws. No notice has been served on or delivered to Developer from any entity, governmental body or individual claiming any violation of any Environmental Laws, demanding payment or contribution for environmental cleanup costs, environmental damage or injury to natural resources, or asserting liability with respect to same. Copies of any such notices received on or after the Effective Date shall be forwarded to the Town within five (5) days of their receipt; and

(i) There is no litigation, governmental proceeding or investigation pending or threatened in writing against the Developer or any of its affiliates which would have a material adverse effect on the business or financial condition of the Developer or which could have a material adverse effect upon the Developer's ability to fulfill its obligations under this Agreement and the Transaction Documents.

All representations and warranties of Developer contained in this Agreement, or any document required to be executed by Developer pursuant hereto, shall be true at the time of execution of each of the Transaction Documents and the Closing as though such representations and warranties were made at such time, and Developer shall, upon the Town's request, execute and deliver an instrument upon execution of the Lease reaffirming all of said representations and warranties as of the date thereof. If any such representation or warranty is not true when made and at all times thereafter until and including Substantial Completion of the Project, unless Developer shall perform such acts as shall make the representation or warranty true, the same shall constitute an Event of Default hereunder and the Town may pursue such rights and remedies as are set forth in Article XIII herein. Further, if Developer acquires knowledge of any fact(s) rendering any of the foregoing representations and warranties false at any time prior to Substantial Completion of the Project, Developer shall immediately notify the Town in writing of such fact(s).

4.2 The Town's Representations and Warranties. The Town represents and warrants to Developer that:

(a) The Town is a municipal corporation, duly organized and validly existing under the laws of the State of North Carolina;

(b) The Town is authorized and empowered to enter into this Agreement and perform all of its obligations under this Agreement;

(c) No consent or approval of any third party is or was required (or, if required, the same has been secured) to execute and deliver this Agreement or consummate this transaction;

(d) Upon the signing and delivery of this Agreement, it will be legally binding upon the Town in accordance with all of its provisions;

(e) The person signing this Agreement and each of the Transaction Documents on behalf of the Town has been duly authorized to sign and deliver the same on behalf of the Town;

(f) Neither the execution and delivery of this Agreement or the performance by the Town of its obligations hereunder shall (i) violate any statute, rule, judgment, order, decree, stipulation, injunction, charge or other restriction of any governmental authority, or any provision of any governmental document of the Town, or (ii) conflict with, result in a breach of, or constitute a default under, any contract, indenture, mortgage, instrument of indebtedness or other agreement to which the Town is a party or by which it or its assets are bound, which conflict, breach, or default could reasonably be expected to have a material adverse effect on the Town's ability to perform its obligations hereunder;

(g) This Agreement and each of the Transaction Documents to which the Town is a party has been duly authorized, executed and delivered by the Town and constitute the legal, valid and binding obligation of the Town, enforceable against the Town in accordance with their respective terms except to the extent enforceability is limited by bankruptcy, reorganization and other similar laws affecting the Town and rights of creditors generally and by general principles of equity;

(h) There is no litigation, governmental proceeding or investigation pending, or to the knowledge of the Town, except as otherwise disclosed in writing to the Developer, threatened against the Town which would have a material adverse effect on the ability of the Town to fulfill its obligations under this Agreement and the other Transaction Documents;

(i) To the best of its knowledge without independent investigation Lot 5 is free of storage tanks and all Hazardous Materials and no Hazardous Materials have been stored, disposed, treated, transported or located on or under Lot 5 except as set forth in that certain Phase I Environmental Site Assessment Parking Lot #5, Intersection of Rosemary and Church Streets, Chapel Hill, Orange County, NC, dated August 18, 2004 prepared by Engineering Consulting Services Ltd; ECS Project #12494, the Town is not aware of the use, storage or handling of Hazardous Materials on land adjacent to Lot 5 or of any pending, threatened or contingent proceedings concerning waste disposal on Lot 5; and Lot 5 is to the best of the Town's knowledge without independent investigation in compliance with all environmental, health and safety laws, and the Town has received no correspondence from any regulatory agency regarding possible violations concerning Lot 5. The Town will promptly notify Developer of any such correspondence or change in environmental condition or status of Lot 5 that becomes known to the Town during the term of this Agreement; and

(j) The Town is the owner of an indefeasible fee simple title in Lot 5, subject only to routine utility easements and rights-of-way that do not prevent or interfere with the reasonable use of the Lot 5 for the construction and use of the Project. There are no recorded and enforceable restrictions that would prevent Developer from developing and constructing the Project. The Town agrees that it will not enter into any covenant, restriction, encumbrance, right of lien, easement, lease or other contract that cannot be terminated with thirty (30) days notice pertaining to Lot 5 without the express written consent of Developer. Within thirty (30) days of Developer's written request, based on requirements to secure the Special Use Permit or the Zoning Compliance Permit for the Project, the Town, at its sole cost and expense, shall prepare, execute and record a duly authorized recombination plat of the parcels comprising Lot 5 so that Lot 5 is thereafter comprised of only one parcel. No other person or entity other than the Town owns or has any legal or equitable interest in the Leased Premises.

ARTICLE V
Conditions Precedent

5.1 Conditions Precedent to the Town's Performance. The obligations and liabilities of the Town hereunder are in all respects to be conditioned upon satisfaction of each of the Conditions Precedent to Town's Performance as of the effective date of the Lease (any of which may be waived by written notice from the Town to Developer):

(a) Except as expressly provided in the Transaction Documents, Developer shall have entered into no agreement, oral or written, not referred to herein with reference to the Project that would be binding on the Town or its assigns, and neither Developer nor the Project shall be subject to any judgment or decree of a court of competent jurisdiction or to any litigation or administrative proceeding which would in any way affect the same or which would in any way be binding upon the Town or the Town's assigns, or affect or limit the Town or the Town's assigns, full use and enjoyment of the Public Parking Unit or the Public Space or which would limit or restrict in any way Developer's right or ability to enter this Agreement and consummate the transactions contemplated hereby. In addition, no further action shall be required as a prerequisite to the enforceability of this Agreement against Developer in accordance with its terms;

(b) Developer shall have presented evidence satisfactory to the Town with respect to the right, power and authority of designated representatives of Developer to execute the Transaction Documents as herein provided;

(c) Developer shall not be in default beyond any applicable notice and cure period under any of the Transaction Documents;

(d) The Land Condominium Declaration described in Section 2.2 hereof shall have been recorded in the Orange County, NC, Public Registry so as to create the condominium form of ownership with respect to various real estate interests in Lot 5, which such declaration shall, in all respects, be superior to the Lease, the Project Financing, and any and all other filings by Developer or any other persons that affect Lot 5, the Project or any part or portion thereof; and

(130)

(e) The representations and warranties of Developer as contained in this Agreement are true and shall be true upon execution and delivery of the Lease and the Closing.

5.2 Conditions Precedent to Developer's Performance. The obligations and liabilities of Developer are in all respects conditioned upon satisfaction of the Conditions Precedent to Developer's Performance as of the effective date of the Lease (any of which may be waived by written notice from Developer to the Town).

(a) Developer has been issued all permits required for the Project;

(b) The Town has executed all applicable Transaction Documents;

(c) The Developer has received confirmation that the Town has secured such approvals, if any, as required by the North Carolina Local Government Commission;

(d) The Developer has received a leasehold title insurance policy with respect to the Leased Premises that discloses no title encumbrances contrary to the Town's representation with respect thereto in Section 4.2(j) hereof;

(e) The Town shall have deposited in escrow with Developer's title insurance company, the Lease Amendment, amendment to the Land Condominium Declaration and such other documents necessary to complete the subdivision of the Parking Garage Unit, in such form as is satisfactory to the Town, Developer and Developer's Lender in all reasonable respects, as contemplated herein and subject to the terms and provisions of this Agreement;

(f) The Town shall have provided the Developer with evidence, satisfactory to Developer and Developer's Lender in all reasonable respects, that the Town has the ability to pay and will continue to be able to pay the Town's Investment as required herein;

(g) The Town shall not be in default beyond any applicable notice and cure period for any for the Transaction Documents; and

(h) The representations and warranties of the Town as contained in this Agreement are true and shall be true upon execution and delivery of the Lease and the Closing.

ARTICLE VI

Change made when Loan Signed contract out

Parking

The parking spaces located in the Parking Garage will be allocated as provided in Section 2.2(a)(iii). The Public Parking Spaces ~~that~~ will be available ONLY* to hourly parkers and retail tenants and will be located within the Public Parking Unit on the first and uppermost floor and the Private Parking Spaces reserved for owners of Residential Units will be located within the Private Parking Unit on the second and lowest floor. The Private Parking Spaces shall be separated from the remainder of the Parking Garage by a gated access or similar mechanism as shown in the Approved Town Plans.

Pursuant to the Lease Amendment and/or amendment to the Land Condominium Declaration that is executed and recorded in connection with the subdivision of the Parking

* except for Affordable Housing in the Project

Garage Unit, the Developer will be required to pay its pro rata share of the cost and expense associated with operating, insuring and maintaining the Parking Garage. The allocation of expenses shall be based upon the number of parking spaces in the Public Parking Unit and Private Parking Unit as compared to the total number of parking spaces located in the Parking Garage. The Parking Garage shall be operated by the Town, or at the Town's option, by a third party manager, having experience in the operation of similar-type facilities, as shall be mutually agreed to by the Town and the Developer. The form of the management agreement for the Parking Garage shall be subject to the reasonable approval of the Developer.

Notwithstanding anything to the contrary herein, the Town acknowledges and agrees that Developer shall have the right to sell, sublease, license and/or assign its leasehold rights in the Private Parking Spaces without the further approval from the Town and without the Town receiving any proceeds attributable therefrom; provided, however, such action by the Developer (i) will not cause any of the improvements constructed on Lot 5 to cease to meet any parking or other zoning requirements of the Municipality applicable to the same, and (ii) such sale, sublease, license or other assignment shall not release the Developer from its obligation to pay a pro rata portion of the operating and maintenance costs and expenses of the Parking Garage.

ARTICLE VII
The Condominium Declarations

(a) The Land Condominium Declaration. The Land Condominium Declaration shall be substantially in the form attached hereto as Exhibit A and when recorded in the Orange County, NC, Public Registry, shall be, and at all times thereafter shall be, superior to the Lease, the Project Financing, and any replacement, alternative or secondary financing secured in connection with the Project or any part or portion thereof and shall constitute and remain a first priority encumbrance against the fee simple interest of the Town in Lot 5.

(b) Developer's Condominium Declarations. The Leased Premises will be subjected to the condominium regime(s) established by the Developer pursuant to the Lot 5 Condominium Declaration. Such declaration shall be prepared by Developer and shall be subject to review by the Town. The Lot 5 Condominium Declaration shall contain (i) provisions respecting the sale and occupancy of residential units substantially in the form attached hereto and made a part hereof as Exhibit H; (ii) provisions prohibiting sales of residential units or retail space to entities exempt from paying ad valorem taxes or entitled to reduced ad valorem taxes unless such entities agree to pay the equivalence thereof; (iii) provisions requiring that not less than the number of residential condominium units as finally determined under Article VIII hereof of the total residential condominium units covered by such declaration will remain throughout the term of the Lease as Affordable Housing; and (iv) use restrictions and maintenance requirements substantially similar to those set forth in the Lease. The Lot 5 Condominium Declaration when recorded in the Orange County, NC, Public Registry, shall be, and at all times thereafter shall be, junior to the Lease, and the Land Condominium Declaration.

ARTICLE VIII
Affordable Housing

The Developer will provide a minimum of 15% of the aggregate residential units in the Project (rounded upward for any fraction) that will qualify as Affordable Housing through the Land Trust (i.e., if 137 total residential units are constructed, 21 of such units shall be affordable housing units). It is contemplated that the Land Trust (or in the Town's discretion such other entity as the Town shall from time to time designate) will take title to one-third of the Affordable Housing units within 60 days after Substantial Completion of the Project, an additional one-third of the units 12 months later, and the remainder of the units within 24 months after Substantial Completion of the Project. Pending delivery of Affordable Housing units to the Land Trust, the Developer may lease such units at fair market rates until such units are delivered to and accepted by the Land Trust. In the event the Land Trust or such other entity as designated from time to time by the Town has not purchased all of the Affordable Housing units from the Developer on or before the date that is thirty (30) months after Substantial Completion of the Project, Developer shall be entitled to sell such remaining unit(s) at market rates and the Town agrees to cooperate with Developer to amend the Lease, the Lot 5 Condominium Declaration and such other agreements to which the Town is a party (or has approval rights regarding amendments) so that said unit(s) is no longer restricted for use as an Affordable Housing unit. The Lot 5 Condominium Declaration shall contain restrictions requiring compliance with the provisions of this Article VIII. Developer understands that it is the Town's Policy that as a condition to approving the rezoning of property to permit higher density residential development, including condominiums, such condominium or other residential project must have not less than fifteen (15) percent of the units as Affordable Housing units. Such policy further contemplates that the developer of the residential project will provide assurances that the common expense assessment for each Affordable Housing unit will remain affordable so long as such units are treated as Affordable Housing units. At the time of this Agreement, the Town has not established a specific required methodology as to how common expense assessments are to be determined in order to meet the affordability policy. Developer recognizes the need to create a methodology in order to ensure that common expense assessments applicable to Affordable Housing units will be affordable and supports the Town's objective in this regard. Accordingly, to this end Developer agrees, at its option, to either (i) to incorporate into the Lot 5 Condominium Declaration such specific methodology for ensuring the affordability of common expense assessments as may be adopted by the Town Council as a formal policy uniformly applicable to all new residential developments that require rezoning to permit higher density, including condominium projects, or (ii) include in the Lot 5 Condominium Declaration a formula for allocating common expenses of the association that will result in the common expense assessments for each Affordable Housing unit for the twelve (12) month period after the date of the first conveyance of a leasehold condominium being in an amount not to exceed 1.5% of the selling price of the applicable Affordable Housing unit and that any subsequent increases in such common expense assessments as to the Affordable Housing units shall not increase in any one year by more than the greater of (a) the increase in the Consumer Price Index for the prior year, or (b) the percentage increase in the median household income for the standard metropolitan statistical area in which Chapel Hill is located as determined from time-to-time by the Department of Housing & Urban Development; provided further, however, an equitable adjustment shall be made under this option (ii) to the amounts of the common expense assessments for Affordable Housing units to reflect any utility charges (water, sewer, heating, air-conditioning and electrical) that are master

metered and are to be included in the common expense assessment without regard to the 1 1/2% limitation initially or the limitations on subsequent increases. Additionally, the Developer agrees to provide a fund of up to $25,000 to be used by the Town to commission a study as to the most appropriate, effective and fair means of ensuring the on-going affordability of Affordable Housing including the affordability of common expense assessments. The Town will provide reasonable assistance to the Developer, upon the Developer's request, in identifying and securing below rate financing and economic grants in an effort to reduce the cross-subsidation of the affordable housing components of the Project so long as the same do not impact the Town's credit rating or require significant investment of Town funds or other resources. The parties agree that any grants secured in connection with the Project will be allocated to the party who, during the term of the Lease, ultimately controls the improvements for which the grant is made.

To the extent required or desired by the Town, parking spaces for the Affordable Housing units shall be obtained or constructed (as applicable) and paid for by the Town (the "Affordable Housing Spaces"). The Developer shall have no obligation to provide or to construct the Affordable Housing Spaces nor shall Developer be obligated to locate any of the Affordable Housing Spaces in the Private Parking Unit.

ARTICLE IX
Development of Public Improvements

9.1 Public Space. The Public Space will consist of the "lower mall" (the open southwest corner area along West Franklin Street and Church Street) and the "upper mall" (the open south-central area located in the middle of the Building). The Public Space will be subject to substantially similar restrictions and managed in a manner as the existing public space at the Old Post Office in downtown Chapel Hill located in the northwestern quadrant of the intersection of Henderson Street and East Franklin Street. The Town reserves the right, however, to prohibit in the Public Space specific acts that could be injurious to the public, such as the carrying or displaying of weapons. That portion of the Public Space identified as the "upper mall," because of its proximity on three sides to retail establishments and residences, shall be subject to such regulations as may be agreed upon by the Town and the Developer and as enacted by the Town Council; provided that the Town reserves the right to exercise its statutory police power in all parts of the Public Space. All regulations applicable to the Public Space shall be enforced in the same manner as other regulations enacted under the Town's police powers. The Town shall be responsible for all of the maintenance of the Public Space in keeping with the level of maintenance of other Town owned high quality public space.

The Town and the Developer shall jointly create a funding and programming strategy for the Public Space in order to ensure that such programming enhances the overall quality of life within the Town and meets the needs of the Town and its citizens. At least 3 months prior to the date Developer estimates that the Project will be Substantially Completed, but not more than 9 months prior to said date, the Town shall be responsible for hiring (at the Town's sole expense) a qualified "event coordinator" who will be subject to the Developer's reasonable approval and who will assist in the programming of events in the Public Space. During the first 24 months following the date after the Project has been Substantially Completed, the programming of the Public Space shall be managed jointly by the Town and the Developer with such event

programming being designed and implemented in a manner consistent with Developer's marketing efforts for the Project. Thereafter the Town shall have primary responsibility for the programming of such Public Space events, but with input from the Developer and/or the owner of the commercial/retail condominium unit(s) located within the Lot 5 Building as to the type, nature, frequency, dates and times of all proposed events. At such time as the Town hires a qualified event coordinator as hereinabove provided, the Developer shall make a one-time contribution of $200,000 to be used for the hiring of the event coordinator and programming of the Public Space by depositing such funds in escrow with the Town. The Town hereby agrees that these funds shall be held in a separately maintained and segregated account and disbursed by the Town solely to pay the costs and expenses incurred to fund programs for the Public Space and/or to hire and retain the event coordinator for programmed events occurring in the Public Space.

9.2 Public Art. The Developer shall expend one percent (1%) of the total development budget (with carve outs to the extent consistent with the Town's Percent for Public Art Program) of the Project in order to fund the purchase and incorporation of public art that will be sited on or incorporated into the Project. Developer's payment of such amount and the administration of the same, shall be in accordance with agreements entered into among the artists providing the art, the Town, the Developer's Lender (if required) and the body administering the Town's Percent for Public Art Program.

ARTICLE X
Infrastructure

The Town will use its reasonable best efforts, subject to applicable law, and at no additional cost to Developer to (i) interface with the State of North Carolina Department of Transportation and other state, federal and local agencies as to issues that may arise relating to the State's right-of-way adjoining Lot 5 and in order to permit development of the Project; (ii) identify all underground utilities at the facilities and act as a liaison with the appropriate entities in implementing any relocations as may be necessary; and (iii) provide technical assistance and advice to the Developer in connection with other infrastructure necessary and desirable in connection with the Project.

ARTICLE XI
LEED Certification

The Project shall be designed and constructed to be consistent with the requirements for LEED certification and shall upon completion be LEED Certified; and, if feasible within the Project Budget, the Project shall comply with and achieve LEED Silver Certification, including a twenty percent (20%) improvement in energy efficiency as measured against the standard for energy efficiency established by the American Society of Heating, Refrigeration and Air Conditioning Engineers ("ASHRAE").

(135)

ARTICLE XII
Developer's Termination Right

Notwithstanding anything to the contrary herein, in the event Developer has not obtained the required Zoning Compliance Permit and Special Use Permit from the Municipality on or before December 31, 2007 (despite Developer's commercially reasonable efforts to do so), then Developer shall have a special termination right that Developer may, at Developer's sole option, exercise to terminate this Agreement (the "Developer's Termination Right"). The Developer's Termination Right, if any, shall expire if the same is not exercised prior to Closing.

ARTICLE XIII
Default

13.1 Default. A "Default" under the terms of this Agreement shall occur if any party hereto shall default in the performance or observance of any of the terms, conditions or covenants contained in this Agreement or in any of the Transaction Documents, and such party does not remedy such Default within thirty (30) days after the receipt of written notice thereof specifying with reasonable particularity the nature of the Default. Upon the occurrence of a Default hereunder no legal action shall be taken or remedy pursued until the expiration of any cure period provided in this Section 13 after which such Default becomes an "Event of Default" under this Agreement.

(a) Developer Default. In addition to any Default described above, an Event of Default on the part of Developer shall occur if Developer (i) shall be in default under any Project Financing beyond any applicable notice and cure period, or (ii) shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors, or any proceeding shall be instituted by or against the Developer seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or compensation of it or its debts under any law relating to bankruptcy, insolvency, or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property (and in the case of an involuntary proceeding, is not dismissed within 60 days of filing), or (iii) shall fail to bond or otherwise remove within 30 days of entry any lien against the Project, or any interest of Developer therein, arising from any judgment or order for payment of money, or (iv) shall cease prosecuting the Work on the Project for a period of sixty (60) consecutive days absent a Force Majeure, or (v) an event of default shall occur under the Lease and the same is not cured within any applicable cure periods.

Upon the occurrence of an Event of Default by Developer hereunder and provided that the Project Financing has been closed, Town agrees to give to Developer's Lender under the Project Financing notice of such Event of Default at such address and in such manner as the Developer's Lender shall reasonably communicate to Town; and said Lender will have right and opportunity but not the obligation, to cure such Event of Default (other than an Event of Default under Section 13.1(a)(ii) hereof), within ten (10) days after receipt of such notice in the case of a monetary default, and within thirty (30) days after receipt of such notice in the case of a non-monetary default; provided, however, if such non-monetary Event of Default is of such character

as to require more than 30 days to remedy, and if Developer's Lender proceeds within a reasonable period of time and with due diligence to cure and correct such Event of Default and prosecute such corrective action diligently, properly, without interruption and in a manner that is reasonably contemplated to cure the same, then Developer's Lender may have a reasonable additional period to remedy such Event of Default. Any Event of Default that is in fact so cured by the Developer's Lender shall, upon such cure, cease to be an "Event of Default".

(b) Town Default. In addition to any Default described above, an Event of Default on the part of the Town shall occur if the Town (i) shall fail to pay the cost of any Post Approval Changes, or (ii) shall fail to pay the Town's Parking Cost, or (iii) shall fail to execute, deliver and record the documents necessary to subdivide the Parking Garage Unit, or (iv) shall fail to execute, deliver and record the Lease Amendment, or (v) shall fail to pay in a timely manner any undisputed invoices submitted for (or to reimburse the Developer for) the Town's Remediation Cost, or (vi) shall breach any representation or warranty contained in Section 4.2(j).

13.2 Remedies Upon Default of Developer. If an Event of Default shall have occurred because of a breach of any of the terms, provisions and conditions of this Agreement or any Transaction Document by Developer, then the Town shall have the right at any time after the occurrence of said Event of Default, to (i) initiate and thereafter prosecute a remedy at law for monetary damages, or (ii) initiate and thereafter prosecute an action in equity for the specific performance of any covenant or obligation to be performed by Developer hereunder or under any of the Transaction Documents, or (iii) declare a default under the Lease and thereafter proceed to such rights and remedies as shall be available thereunder, or (iv) exercise any of the rights or remedies available at law or in equity (other than any right to consequential damages or lost profits).

13.3 Remedies Upon Default by Town. If an Event of Default shall have occurred because of a breach of any provision hereof or any other Transaction Document by the Town, Developer shall have the right at any time after the occurrence of said Event of Default and the lapse of any cure periods as provided in this Agreement to (i) obtain a return of any and all remaining funds then on deposit in Developer's escrow accounts and/or initiate and thereafter prosecute a remedy at law for actual damages (but not consequential damages, or (ii) initiate and thereafter prosecute an action in equity for the specific performance of any covenant or obligation to be performed by the Town hereunder or under any of the Transaction Documents, or (iii) exercise any other rights or remedies available at law or in equity (other than any right to consequential damages or lost profits); provided, however, that the Developer hereby expressly waives any right it may have to terminate this Agreement upon a Town Default unless such Town Default is one of the Events of Default described in Section 13.1(b) hereof and such Event of Default is not cured within thirty (30) days of notice thereof delivered by the Developer to the Town in the manner provided herein. In the event of any default by the Town under this Agreement or any other Transaction Document, Developer shall have the right to suspend any and all Work under this Agreement and any Transaction Document until the lapse of any cure period for such default or until such default is cured by the Town. In such event, any deadline imposed on Developer hereunder or under any other Transaction Document shall be extended by the number of days elapsing from Developer's receipt of notice of such default until such default is cured and the Town expressly agrees that any damages incurred by Developer in connection with the Project Financing due to a Town Default (including but not limited to additional interest

expenses but specifically excluding any claim for lost profits), shall be deemed actual damages and not consequential damages.

13.4 Attorneys' Fees. In the event suit is brought to enforce and interpret all or any portion of this Agreement or any of the Transaction Documents, or if suit is brought for monetary damages, specific performance or any other relief permitted hereunder, the party, if any, awarded costs in such suit shall be entitled to recover as an element of such costs and not as damages, reasonable attorneys' fees incurred in connection with such suit. Without limiting the generality of the foregoing, attorneys' fees shall be determined at the normal hourly rates charged by the person doing the work, regardless of whether said fee bears a reasonable relationship to the relief obtained. A party that is not entitled to recover costs in any such suit shall not be entitled to recover its attorneys' fees.

ARTICLE XIV
Survival of Provisions

14.1 Warranties. The covenants, representations, warranties, obligations and agreements set forth in this Agreement shall survive the execution of the Lease for a period of one (1) year following Substantial Completion of the Project provided, however, (i) nothing in this Section 14.1 shall diminish or change the obligations of the parties in the other Transaction Documents, and (ii) all indemnification obligations of the parties hereto shall survive until barred by the applicable statute of limitation.

14.2 Assignment of Developer's Interest. Developer and the Town understand, acknowledge and agree that this Agreement is personal to Developer and that Developer may not, without the Town's prior written consent (which such consent the Town may withhold or deny in the Town's sole discretion) assign Developer's right, title and interest in and to this Agreement or any of the Transaction Documents at any time prior to Substantial Completion to any other person, firm or corporation. Provided, however, Developer, or any partner, member or manager thereof, shall be permitted to assign its rights and obligations under this Agreement to an affiliate of Developer to meet the Developer's Lender's requirements for the Project Financing (subject to the provisions of this Section 14.2), but such assignment shall not release Developer of any liability hereunder. Developer shall preserve and maintain its organizational existence and all of its material rights, privileges and franchises. For purposes of this Section 14.2, a change of ownership of more than twenty-five (25%) of the partnership interests or other beneficial interests in Developer or a material change in the structure of Developer shall be deemed an assignment of Developer's right, title and interest to this Agreement. Notwithstanding the general prohibition contained herein, Developer shall be entitled, but only upon notice to the Town, (i) to assign all of Developer's right, title and interest in and to this Agreement and any of the Transaction Documents to any other entity that is either controlled by Developer or is under the control of the same entity that controls Developer provided that such assignment shall not relieve Developer of its liability and obligations hereunder, and (ii) admit one or more additional persons or entities providing equity capital to Developer as a partner or member thereof so long as Keith L. Cummings or affiliates thereof serve as the controlling managers or general partner of Developer and retain at least a 25% equity interest in Developer and continue to exercise architectural and developmental control over the Project. Furthermore, Developer may, subject to the terms of this Agreement, collaterally assign its rights under the

Construction Documents, the Transaction Documents, and the Lease and Developer may, subject to the terms of this Agreement, sell, convey, lease or assign all or a portion of its leasehold ownership rights to buyers and tenants of (i) the residential condominium units and/or (ii) the retail space. Any such buyer or tenant may pledge its interest in its leasehold interest to a lender without the prior approval or consent of the Town.

ARTICLE XV
Miscellaneous

15.1 Miscellaneous.

(a) Effective Date. The term "Effective Date," as used in this Agreement, shall be deemed to refer to the date a fully executed original of this Agreement is delivered to each party hereto, and the Effective Date shall be inserted as the date of this Agreement in the introductory paragraph of this Agreement.

(b) Entire Agreement. This Agreement along with the Transaction Documents constitutes the entire agreement between the parties hereto with respect to the transaction contemplated herein; and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements and agreements heretofore had between these parties are merged herein. This Agreement may not be changed orally, but only by an agreement in writing signed by both the Town and Developer; and no waiver of any of the provisions in this Agreement shall be valid unless in writing and signed by the party against whom such waiver is sought to be enforced. In the case of any inconsistency between the terms of this Agreement and the terms of any one of the Transaction Documents the provisions of the applicable Transaction Document shall control with respect to the terms in question.

(c) Successors. The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective heirs and permitted successors and assigns, as may be applicable.

(d) Time of the Essence. TIME IS OF THE ESSENCE in this Agreement with respect to all dates and other undertakings set forth herein. In addition, if the final day of any period of time set out in any provision of this Agreement falls on a Saturday, Sunday or holiday recognized by national banks in Chapel Hill, North Carolina, then in such case, such period shall be deemed extended to the next day which is not a Saturday, Sunday or holiday recognized by national banks in Chapel Hill, North Carolina. Any day which is not a Saturday, Sunday or holiday recognized by national banks in Chapel Hill, North Carolina shall be referred to herein as a "business day."

(e) Presumption. No presumption shall be created in favor of or against any party with respect to the interpretation of any term or provision of this Agreement due to the fact that this Agreement was prepared by or on behalf of one of said parties.

(f) Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise.

(g) Captions. The captions used in connection with the paragraphs of this Agreement are for reference and convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement or be used in interpreting the terms and provisions of this Agreement.

(h) Counterparts. This Agreement may be executed in two or more counterparts and shall be deemed to have become effective when and only when one or more of such counterparts shall have been signed by or on behalf of each of the parties hereto (although it shall not be necessary that any single counterpart be signed by or on behalf of each of the parties hereto, and all such counterparts shall be deemed to constitute but one and the same instrument), and shall have been delivered by each of the parties to the other.

(i) Construction. When anything is described or referred to in this Agreement in general terms and one or more examples or components of what has been described or referred to generally is associated with that description (whether or not following the word "including"), the examples or components shall be deemed illustrative only and shall not be construed as limiting the generality of the description or reference in any way.

(j) Enforceability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

(k) Governance. This Agreement is intended to be performed in the State of North Carolina and shall be construed and enforced in accordance with the laws of the State of North Carolina.

(l) Further Assurances. Each party hereto represents and warrants to the other party that the execution of this Agreement and any other documents required or necessary to be executed pursuant to the provisions hereof are valid, binding obligations and are enforceable in accordance with their terms.

(m) Town's Representative. The Town may designate a professional to serve as the Town's representative during construction of the Project and the Town shall be responsible for any and all costs, fees or other expenses for such representative. Additionally, the Town shall be responsible for any and all costs, fees, or other expenses owed or owing to SPPRE or any other individual or entity succeeding SPPRE as the Town's Representative.

(n) Force Majeure. Except as otherwise herein expressly provided, if the Developer shall be hindered or delayed in, or prevented from, the performance of any covenant or obligation hereunder as a result of any Force Majeure, and provided that the Developer notifies the Town in writing of the commencement of and the expiration of such delay, hindrance

or prevention (each notice being required within ten (10) business days of the respective event) then the performance of such covenant or obligation shall be excused for the period of such delay, hindrance or prevention and the period for the performance of such covenant or obligation shall be extended by the number of days equivalent to the number of days of the impact of such delay, hindrance or prevention. Unless caused by Force Majeure, failure to so provide the foregoing notice will result in waiver of both excuse in performance and extension of time to perform under this Section 15.1(n) with respect to any such delay, hindrance or prevention.

(o) Submission to Jurisdiction Venue Waiver. Developer and Keith L. "Casey" Cummings hereby irrevocably and unconditionally:

(i) Submits for itself and its property in any legal action or proceeding relating to this Agreement and the Transaction Documents to which it is a party or for recognition and enforcement of any judgment in respect thereof, to the personal jurisdiction of the state courts located in Hillsborough, North Carolina and federal courts located in Greensboro, North Carolina;

(ii) Agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail) postage prepaid, to such party at its address set forth in Section 15.2 hereof or at such other address to which such party shall have been notified pursuant thereto;

(iii) Agree that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction;

(iv) Waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding any special, exemplary or punitive damages; and

(v) Agrees that all legal proceedings or litigation, mediation or other proceedings relating to this Agreement or any of the Transaction Documents shall be brought in a state court sitting in Hillsborough, North Carolina or in a federal court sitting in Greensboro, North Carolina and agrees not to assert any objection that it may ever have to the laying of venue of any suit, action, or proceeding in any federal or state court located in Hillsborough or Greensboro, North Carolina or any claim that any such suit, proceeding, or action brought in any such court has been brought in an inconvenient form.

(p) Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and their successors and assigns permitted under this Agreement. No provision of this Agreement shall be deemed to confer upon any other party any remedy, claim, liability, reimbursement, cause of action, or right.

(q) No Indirect Damages. In no event shall any party be liable under any provision of this Agreement for any special, indirect, incidental, consequential, exemplary, treble or punitive damages, in contract, tort, or otherwise, whether or not caused or resulting from the

sole or concurrent negligence of such party or any of its affiliates or related parties. Notwithstanding the foregoing, except as otherwise provided herein, this limitation of liability shall not apply to third party claims.

(r) No Waiver of Indemnity. Nothing contained in this Agreement or any of the Transaction Documents shall be construed as a waiver of rights of sovereign immunity possessed by the Town provided that the Town shall not be entitled to assert sovereign immunity as a bar to enforcement of any of its obligations to the Developer under any of the Transaction Documents.

(s) Expenses. Except as otherwise may be agreed to by the parties hereto, or otherwise provided in this Agreement, each party shall bear its own expenses in connection with the negotiation and preparation of this Agreement, the Transaction Documents and the performance of all of its obligations under this Agreement and the other Transaction Documents.

(t) Anti-Discrimination. In accordance with applicable law, the parties shall not discriminate on the basis of race, color, sex, religion, age, national origin, sexual orientation, gender identity, gender expression or handicapped status.

(u) Regulatory Process. Nothing herein contained shall be construed as a modification of the Town's regulatory process in connection with the construction, development and operation of the improvements of the type described herein and comprising the Project and Developer acknowledges that it must follow and comply with all laws, rules, and regulations of the Town and other governing bodies in connection with the development of the Project described herein.

(v) Approval Process. Whenever in this Agreement any party to this Agreement is given "approval rights" such approval shall not be unreasonably withheld or delayed. Additionally, whenever an approval is withheld the same shall be communicated to the other party in writing with a statement as to the specific basis or grounds for such non-approval.

15.2 Notices. All notices, demands, requests, consents, approvals or other communications (collectively called "Notices") required or permitted to be given hereunder to Developer, or the Town or which are given to Developer, or the Town with respect to this Agreement shall be in writing and shall be sent (i) by United States registered or certified mail, return receipt requested, postage prepaid, or by reputable overnight courier, or be personally delivered with receipt acknowledged, addressed as set forth below, or to such other address(es) as the party in question shall have specified most recently by like Notice, or (ii) by facsimile transmission to the fax number set forth below (or such other fax number as the party in question shall have specified most recently by like Notice).

Developer: RAM Development Company
3399 PGA Boulevard, Suite 450,
Palm Beach Gardens, FL 33410
Attn: Keith L. "Casey" Cummings, President
Fax: (561) 630-6717

With a copy to: RAM Development Company
3399 PGA Boulevard, Suite 450,
Palm Beach Gardens, FL 33410
Attn: Karen Geller, General Counsel
Fax: (461) 630-6717

And to: RAM Development Company
516 West Peace Street
Raleigh, NC 27603
Attn: John Florian, Senior Vice President of Development
Fax: (919) 834-1509

And to: Schell Bray Aycock Abel & Livingston PLLC
100 Europa Drive, Suite 360
Chapel Hill, NC 27517
Attn: Holly H. Alderman, Esq.
Fax: (919) 882-9495

Town: The Town of Chapel Hill
405 Martin Luther King Jr., Blvd.
Chapel Hill, NC 27514
Attn: Ralph D. Karpinos, Esq.
Fax: (919) 969-2063

With a copy to: Kennedy Covington Lobdell & Hickman, L.L.P.
The Hearst Tower
214 N. Tryon Street, 47th Floor
Charlotte, NC 28202
Attn: Glen B. Hardymon, Esq.
Fax: (704) 353-3146

(143)

IN WITNESS WHEREOF, the parties have hereto set their hand and seals to this Agreement all as of the date and year first above written.

TOWN OF CHAPEL HILL

[TOWN SEAL]

ATTEST

Name: ROGER L. STANCIL

Title: Town Manager

Town Clerk

This instrument has been pre-audited in the manner required by the "Local Government Budget and Fiscal Control Act."

Name: Kay Johnson

Title: Finance Director

RAM DEVELOPMENT COMPANY

By _____ [SEAL]

Name: KEITH L. CUMMINGS

Title: PRESIDENT

(141)

FIRST AMENDMENT TO GENERAL DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO GENERAL DEVELOPMENT AGREEMENT (this "First Amendment") is entered into this the 3RD day of APRIL, 2007, by and between The Town of Chapel Hill, a municipal corporation organized and existing under the laws of North Carolina (hereinafter referred to as "Town") and Ram Development Company, a Florida corporation and its permitted assigns (hereinafter referred to as the "Developer").

WITNESSETH:

WHEREAS, the Town and the Developer entered into that certain General Development Agreement dated February 12, 2007 (the "Development Agreement") regarding the proposed development of a parking garage, public space and mixed-use retail and residential building on property owned by the Town, commonly known as Town Public Parking Lot 5;

WHEREAS, capitalized terms used in this First Amendment not expressly defined herein shall have the meaning ascribed to such terms in the Development Agreement;

WHEREAS, the Town and the Developer desire to amend the terms and provisions of the Development Agreement as more particularly set forth herein.

NOW, THEREFORE, in consideration of their mutual promises, covenants and agreements contained in this First Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A. Article XI of the Development Agreement, entitled "LEED Certification" is hereby deleted in its entirety and the following shall be substituted in lieu thereof:

Article XI LEED Design and Energy Efficiency

The Project shall be designed and constructed to be consistent with the requirements for LEED certification; provided, however, the Developer shall not be required to actually have the Project commissioned or certified. In order to accomplish this objective, the Developer shall provide to the Town documentation from the Developer's design professional (the "Design Professional") and LEED-certified professional that itemizes and scores the systems and improvements to be utilized in the Project, which, in aggregate result in at least 26 LEED points (i.e. the minimum number of points for basic certification).

By way of example, such systems and improvements may include: erosion and sedimentation control, access to alternative transportation, stormwater management, reduction of the heat island effect, water efficient landscaping, innovate wastewater technologies, potable water use reduction systems, zero use of CFC-based refrigerants in

the HVAC and refrigeration systems, optimized energy performance systems, a construction waste management program, use of recycled content in building materials, use of regional building materials, use of rapidly renewable materials, use of certified wood, indoor air quality systems that meet or exceed the minimum voluntary standard established by the American Society of Heating, Refrigeration, and Air Conditioning Engineers ("ASHRAE"), carbon dioxide monitoring systems, use of low-emitting materials for adhesives and sealants, use of low-emitting materials for paints and coatings, use of low-emitting materials for floor coverings, use of controllable systems for perimeter spaces, use of thermal comfort systems for temperature and humidity control, daylight and vision glazing, and use of energy modeling in conjunction with the MEP engineering design of the Project.

In addition, the Developer shall provide to the Town documentation from the Design Professional that the Project Heating Ventilation and Air Conditioning System is designed to achieve a twenty percent (20%) improvement in energy efficiency as measured against the standard for energy efficiency currently established by ASHRAE.

The Design Professional shall submit the required documentation during the plan review process as a condition precedent to the issuance of zoning compliance and building permits. In addition, the Design Professional and the Developer's LEED certified professional shall submit documentation within a reasonable amount of time after Substantial Completion of the Project indicating the LEED referenced systems and the systems to achieve a 20% improvement in energy efficiency have been incorporated into the Project.

B. Section 2.2(iii) of the Development Agreement is hereby amended to add the following sentence at the end of said section:

> "The Developer and Town may agree to have up to five (5) of the Public Parking Spaces located within the Private Parking Unit rather than the Public Parking Unit, in which case the Developer will grant to the Town an irrevocable perpetual license for owners of the Affordable Housing Units to use five (5) of the parking spaces located in the Private Parking Unit, at no additional charge."

The parties agree that the Town's Parking Cost shall remain as is set forth in the Development Agreement.

C. Except as amended hereby all the terms and provisions of the Development Agreement are hereby reaffirmed and remain in full force and effect. In the event that there is a conflict between the terms and provisions of the Development Agreement and the terms and provisions of this First Amendment the terms and provisions of this First Amendment shall control.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date and year first set forth above.

TOWN OF CHAPEL HILL

[TOWN SEAL]

By: _____ RDK
Name: ROGER L. STANCIL
Title: Town Manager

ATTEST

_____
Town Clerk

This instrument has been pre-audited in the manner required by the "Local Government Budget and Fiscal Control Act."

_____
Name: Kay Johnson
Title: Finance Director

RAM DEVELOPMENT COMPANY

By _____ [SEAL]
Name: _____
PRESIDENT

Title: _____