
GENERAL DEVELOPMENT AGREEMENT

between

**The Town of Chapel Hill
and
RAM Development Company**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I Defined Terms	1
ARTICLE II Development of the Project.....	7
2.1 <u>General Description of the Project</u>	7
2.2 <u>Lease</u>	8
2.3 <u>Approval and Review Rights</u>	11
2.4 <u>Performance of Work</u>	15
2.5 <u>Insurance</u>	17
2.6 <u>Damage or Destruction Prior to Substantial Completion</u>	18
2.7 <u>Developer Project Coordinator</u>	19
2.8 <u>Town Project Coordinator</u>	19
2.9 <u>Designation: Replacement</u>	19
2.10 <u>Reports</u>	20
2.11 <u>Inspection Rights of the Town</u>	20
2.12 <u>Indemnification</u>	21
2.13 <u>Project Financing</u>	23
2.14 <u>Developer's Equity</u>	23
2.15 <u>Liquidated Damages</u>	24
2.16 <u>Alternative Parking</u>	24
2.17 <u>Warranties as to Town-Owned Improvements</u>	24
2.18 <u>Active Recreational Space Requirement</u>	25
2.19 <u>Obligation to Complete. Bonds</u>	25
ARTICLE III The Town's Investment	25
3.1 <u>Financial Investment by the Town</u>	25
3.2 <u>Manner of Payment</u>	25
3.3 <u>Disbursement of Documents from Title Insurance Company Escrow</u>	26
3.4 <u>Obligation to Complete</u>	27
3.5 <u>Town's Obligation to Remediate</u>	27
ARTICLE IV Representations and Warranties.....	28
4.1 <u>Developer's Representations, Warranties and Covenants</u>	28
4.2 <u>The Town's Representations and Warranties</u>	29
ARTICLE V Conditions Precedent	31
5.1 <u>Conditions Precedent to the Town's Performance</u>	31
5.2 <u>Conditions Precedent to Developer's Performance</u>	32

ARTICLE VI Parking	32
ARTICLE VII The Condominium Declarations.....	33
ARTICLE VIII Affordable Housing.....	34
ARTICLE IX Development of Public Improvements	35
9.1 <u>Public Space</u>	35
9.2 <u>Public Art</u>	36
ARTICLE X Infrastructure	36
ARTICLE XI LEED Certification	36
ARTICLE XII Developer’s Termination Right.....	37
ARTICLE XIII Default.....	37
13.1 <u>Default</u>	37
13.2 <u>Remedies Upon Default of Developer</u>	38
13.3 <u>Remedies Upon Default by Town</u>	38
13.4 <u>Attorneys’ Fees</u>	39
ARTICLE XIV Survival of Provisions.....	39
14.1 <u>Warranties</u>	39
14.2 <u>Assignment of Developer’s Interest</u>	39
ARTICLE XV Miscellaneous.....	40
15.1 <u>Miscellaneous</u>	40
15.2 <u>Notices</u>	43

EXHIBITS

Exhibit A	Land Condominium Declaration
Exhibit A-1	Legal Description of Lot 5
Exhibit B	Preliminary Site Plan, Schematic Drawings, Outline Specifications, etc. for the Project
Exhibit C	Deleted

Exhibit D	The Lease
Exhibit E	The Guaranty
Exhibit F	Ownership Interests in the Developer
Exhibit G	Designation of Project Coordinators
Exhibit H	Residential Unit Use Restrictions
Exhibit I	Architect’s Certification Form
Exhibit J	Description of “Shell Finish”
Exhibit K	Expedited Dispute Resolution

GENERAL DEVELOPMENT AGREEMENT

This General Development Agreement (the “Agreement”) is made and entered into as of the ____ 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; (iii) the elevations, from all sides, for all improvements comprising the Project; (iv) cross section drawings for all improvements comprising the Project; (v) 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 the Architect’s Certificate 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 terminate 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

(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

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 to hourly parkers and retail tenants 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

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").

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

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

Town Clerk

By _____
Name: _____
Title: Town Manager

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

Name: _____
Title: Finance Director

RAM DEVELOPMENT COMPANY

By _____[SEAL]
Name: _____
Title: _____

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

Drawn by and mail to:
Matthew G. St. Amand
Kennedy Covington Lobdell & Hickman, LLP
Hearst Tower, 47th Floor
214 North Tryon Street
Charlotte, North Carolina 28202

DECLARATION OF CONDOMINIUM

FOR

THE LOT 5 LAND CONDOMINIUM

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

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

GENERAL

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

COMMON ELEMENTS (LIMITED COMMON ELEMENTS)

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

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

ARTICLE IV

PROPERTY RIGHTS

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V

COVENANT FOR ASSESSMENTS

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

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

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

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

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

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

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

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

ARTICLE VI

MAINTENANCE

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

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

ARTICLE VII

USE RESTRICTIONS

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

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

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

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

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

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

ARTICLE VIII

EASEMENTS

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

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

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

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

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

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

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

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

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

ARTICLE IX

INSURANCE

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

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

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

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

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

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

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

ARTICLE X

CASUALTY DAMAGE

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

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

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

ARTICLE XI

TERMINATION

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

ARTICLE XII

AMENDMENT

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

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

ARTICLE XIII

GENERAL PROVISIONS

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, Declarant has executed this Declaration.

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

By: _____
Name: _____
Title: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

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

(name of principal(s))

Date: _____

Official Signature of Notary Public

Notary printed or typed name

[OFFICIAL SEAL]

My commission expires: _____

EXHIBIT A-1
Legal Description of Lot 5

BEGINNING at a point located at the intersection of the northerly margin of Church Street (currently a 40' right-of-way) and the southerly margin of Rosemary Street (currently a 45' right-of-way); thence with the southerly margin of Rosemary Street N. 64-45-56 E. 252.94 feet to a point located in the westerly boundary of the property known (now or formerly) **as** Walkers Funeral Home; thence with the westerly boundary of the Walkers Funeral Home property S. 25-20-12 E. 180.01 feet to a point located in the westerly boundary of the property known **as** the McFarland Exxon; thence with the westerly boundary of the McFarland Exxon property S. 25-20-12 E. 120.00 feet to a point located in the northerly margin of Franklin Street; thence with the northerly margin of Franklin Street S. 64-32-00 W. 254.16 feet to a point located in the northerly margin of said Church Street; thence with the northerly margin of Church Street N. 25-06-16 W. 301.04 feet to the POINT OR PLACE OF BEGINNING, all as shown on that certain map entitled "Final Plat Property of Town of Chapel Hill" as prepared by Dale D. Faulkner, dated February 11, 1985, reference to which this map is hereby made.

EXHIBIT B

[Bylaws]

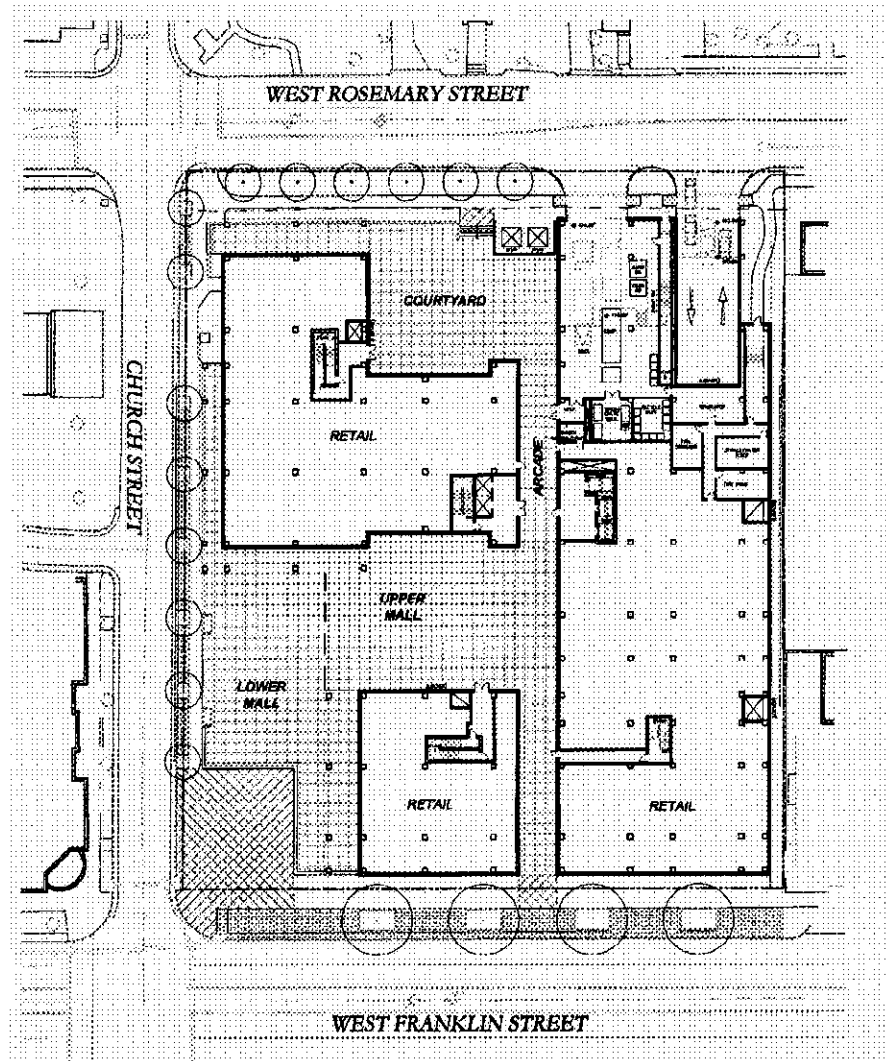
EXHIBIT C

[Condominium Plat of Lot 5]

EXHIBIT D

Percentage Ownership Interests

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



Lot Five

Chapel Hill, North Carolina

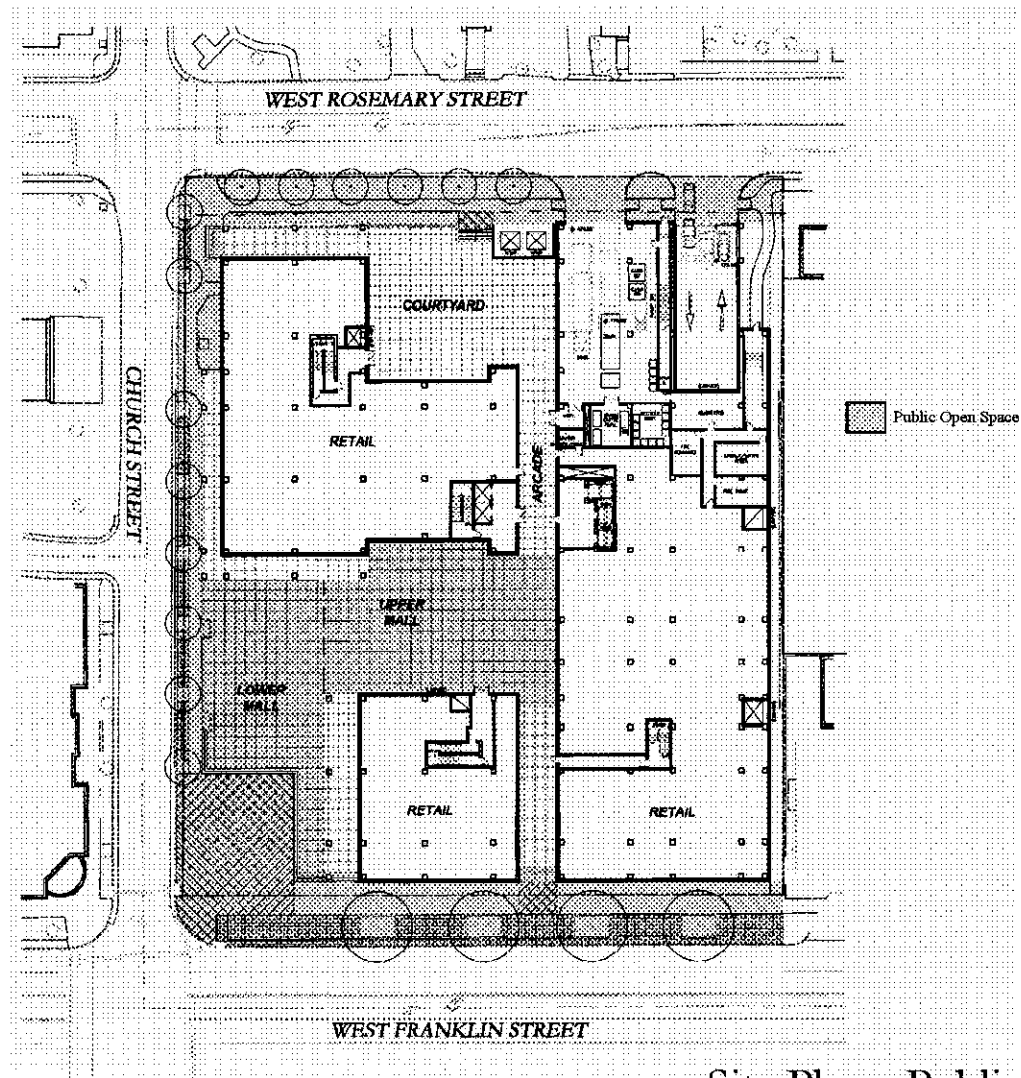


Site Plan



This plan and/or drawing is for illustrative purposes only and is subject to change.
Date 01/29/07

ram



Lot Five

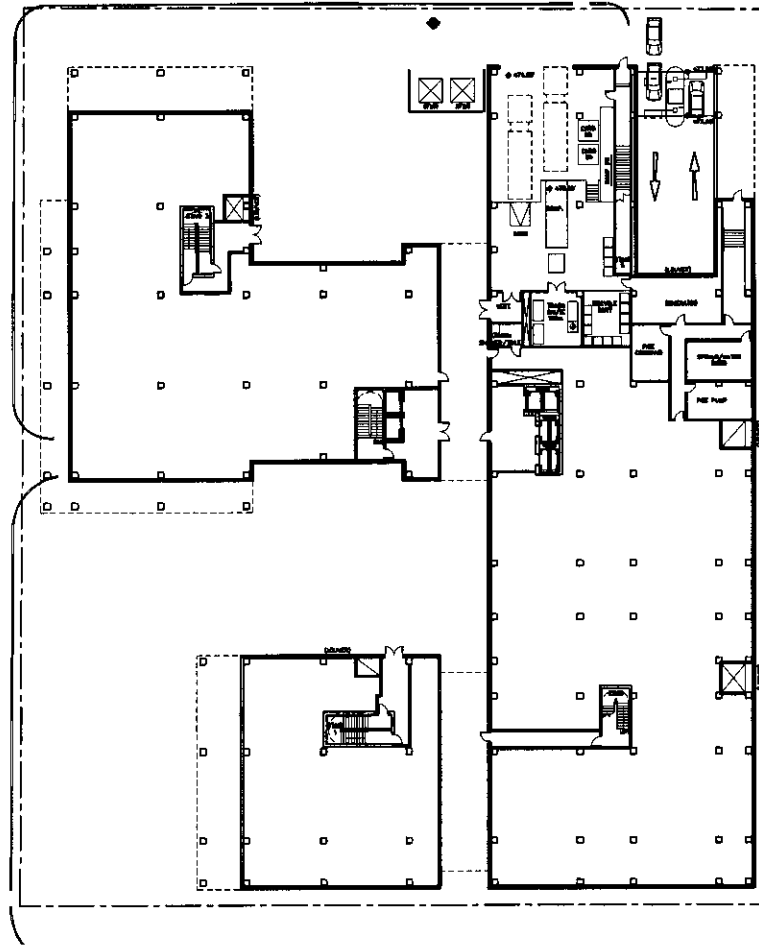
Chapel Hill, North Carolina

Site Plan - Public Open Space

This plan and/or drawing is for illustrative purposes only and is subject to change.
Date 01/29/07

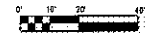


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Lot Five

Chapel Hill, North Carolina

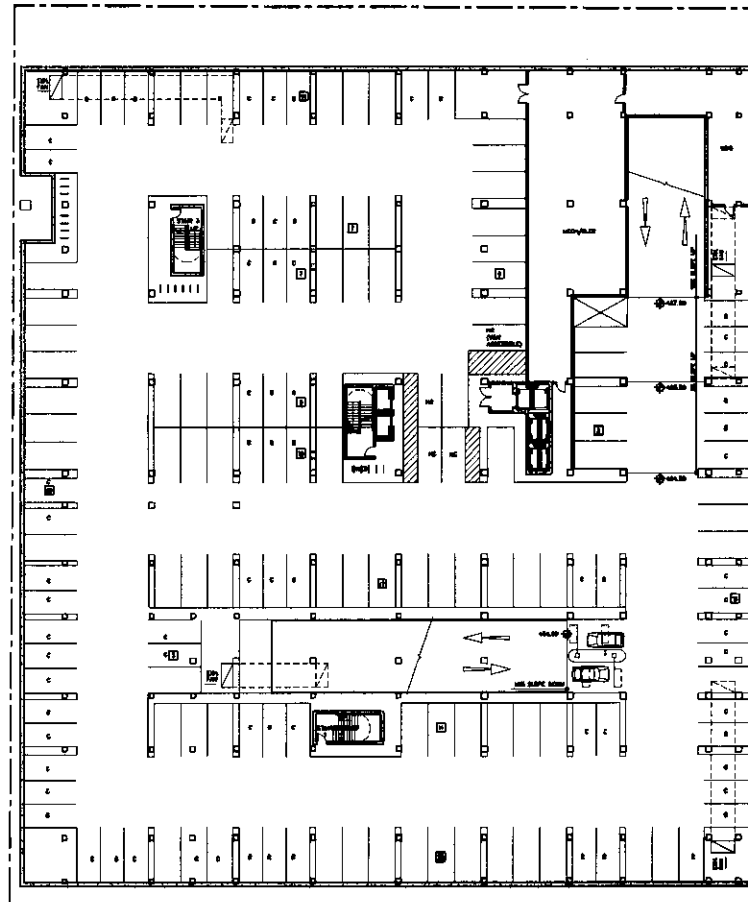


Ground Floor Plan

This plan and/or drawing is for illustrative purposes only and is subject to change.

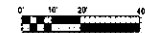
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Lot Five

Chapel Hill, North Carolina

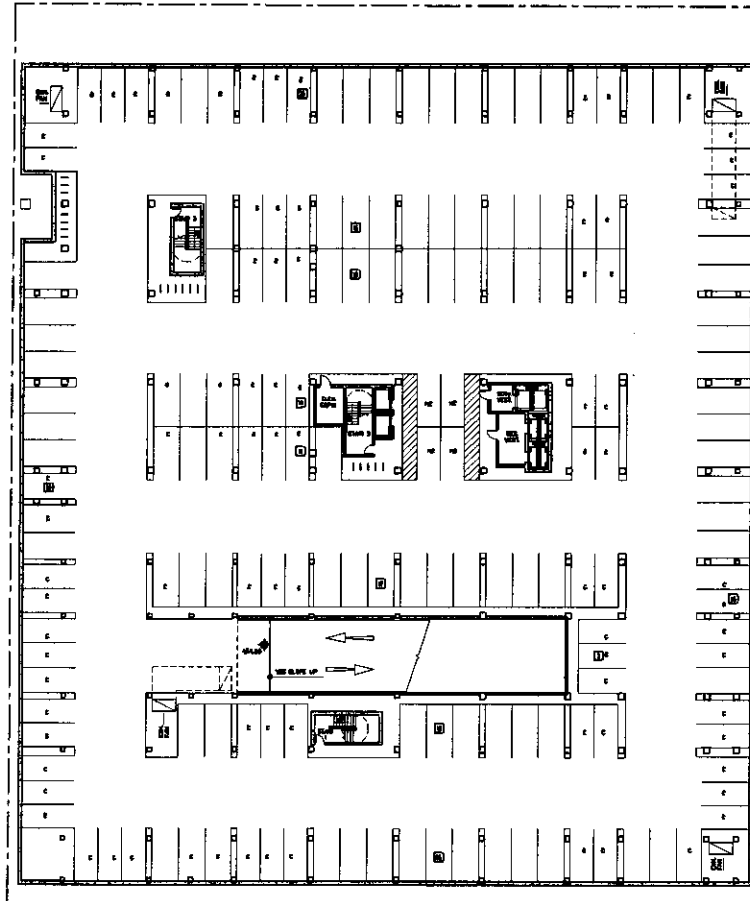


Level P1



This plan and/or drawing is for illustrative purposes only and is subject to change.

Date 01/29/07 *ram*



Lot Five

Chapel Hill, North Carolina

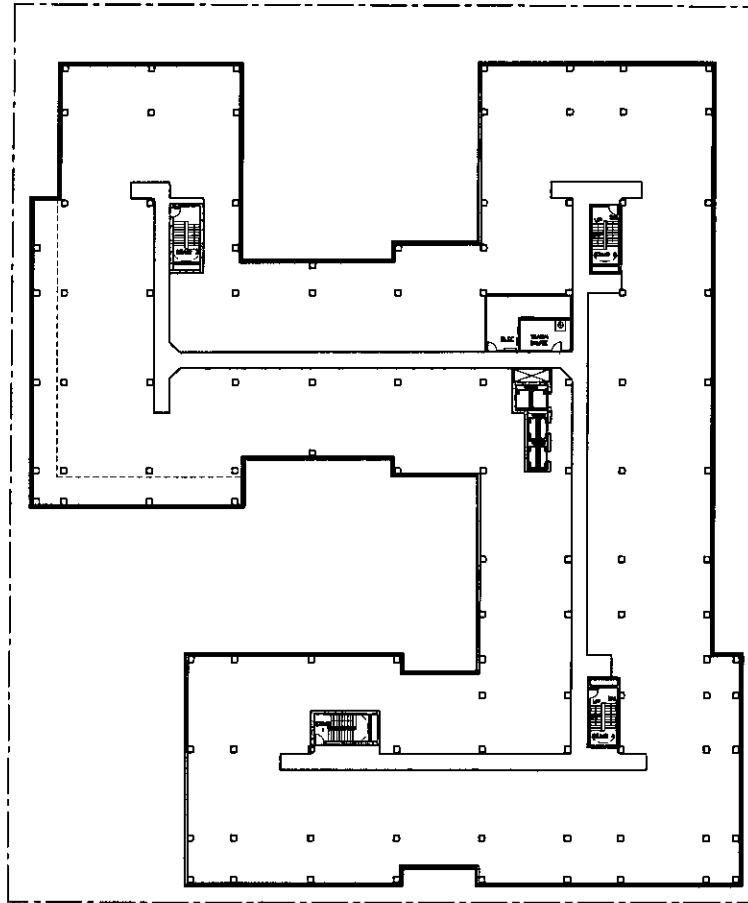


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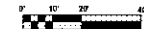
This plan and/or drawing is for illustrative purposes only and is subject to change.
Date 01/29/07

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Lot Five

Chapel Hill, North Carolina

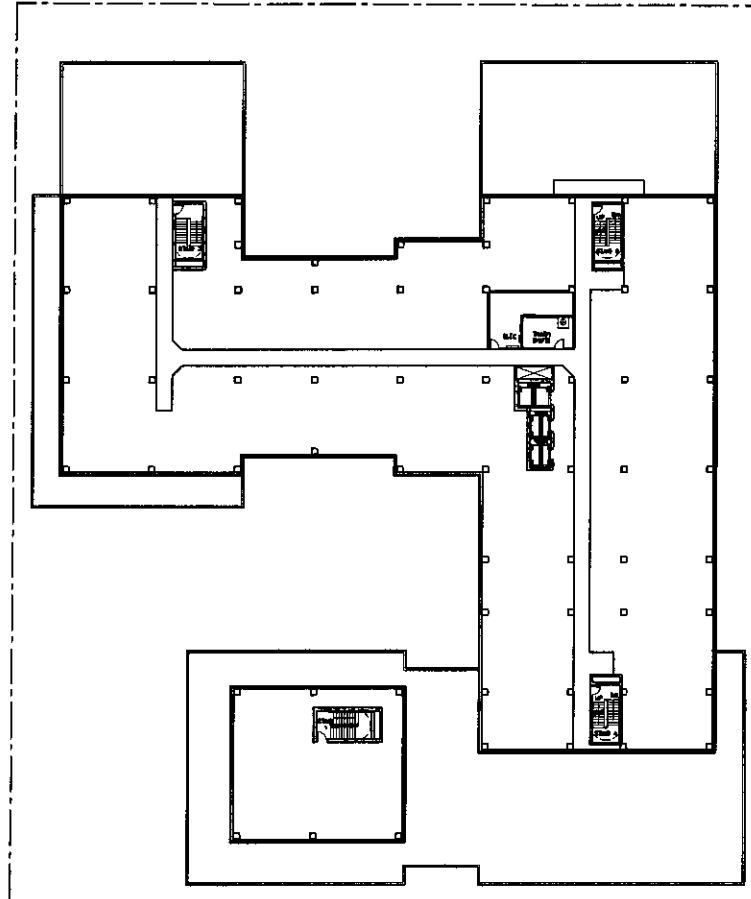


Levels 2-4



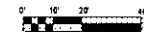
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Date 01/29/07



Lot Five

Chapel Hill, North Carolina

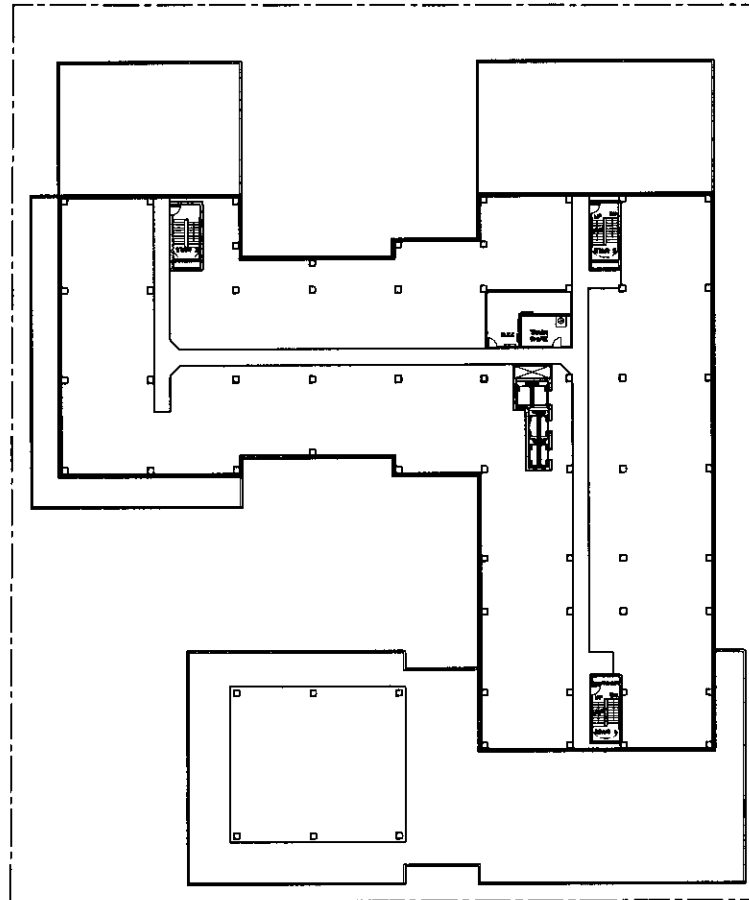


Level 5



This plan and/or drawing is for illustrative purposes only and is subject to change.

Date 01/29/07 *ram*



Lot Five

Chapel Hill, North Carolina

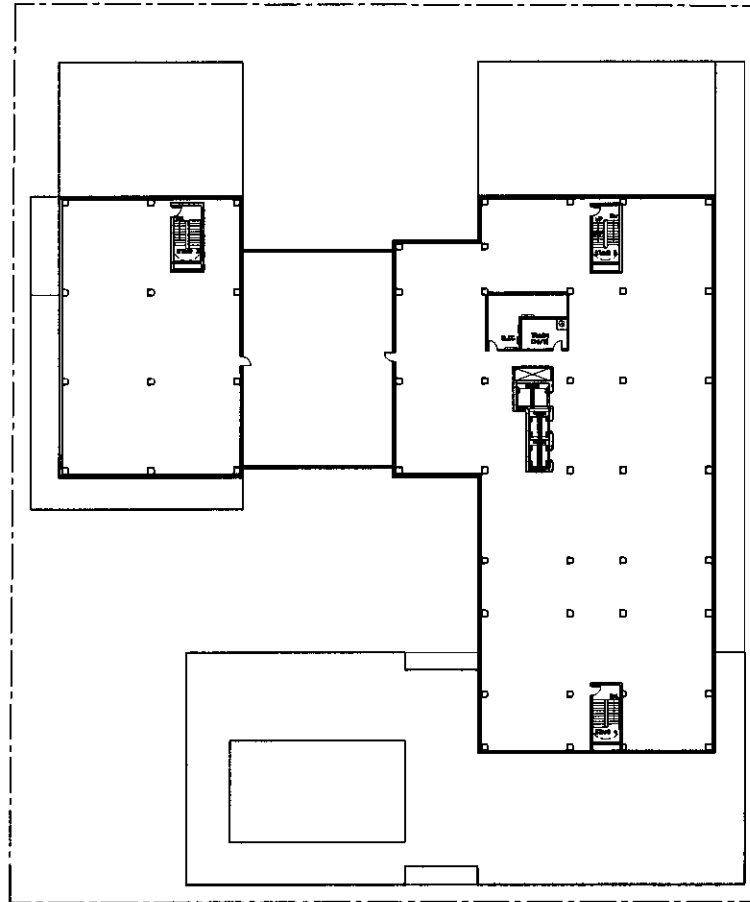


Levels 6-7



This plan and/or drawing is for illustrative purposes only and is subject to change.

Date 01/29/07 *ram*



Lot Five

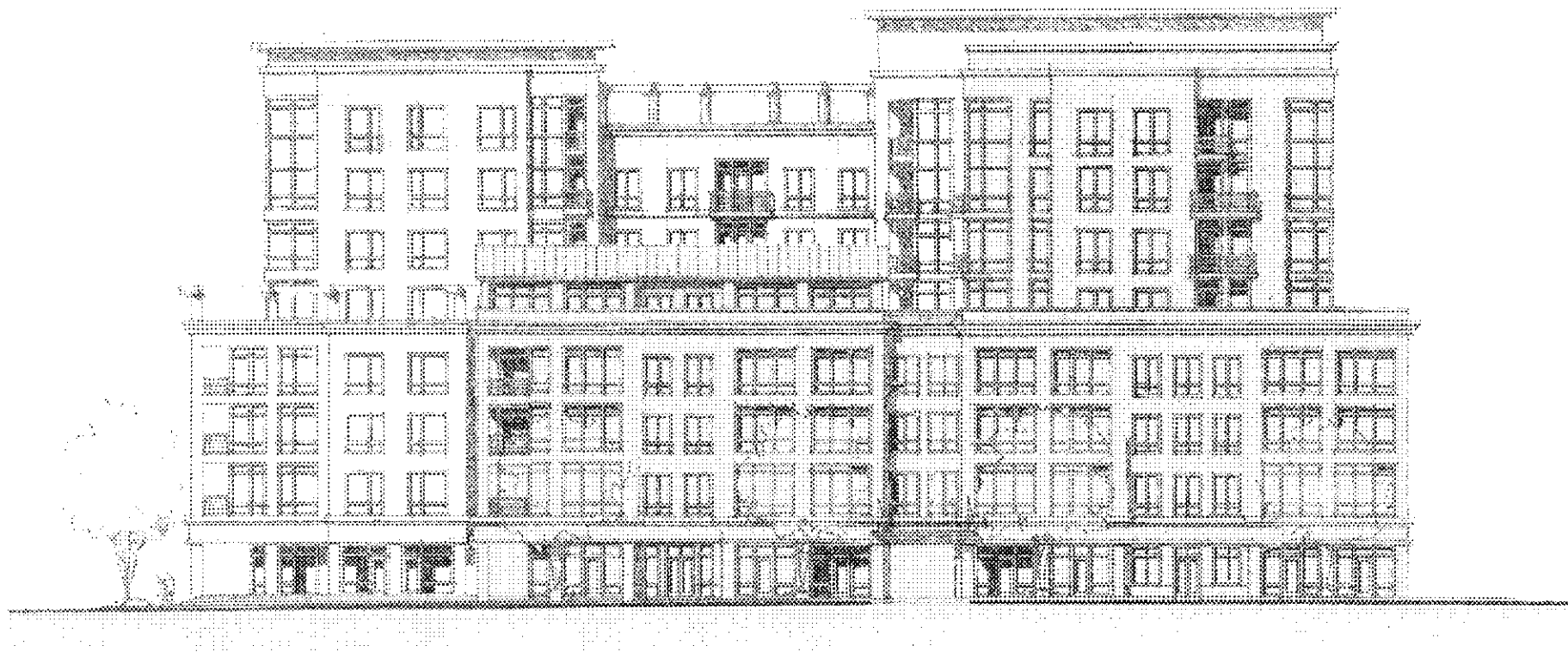
Chapel Hill, North Carolina



Level 8



This plan and/or drawing is for illustrative purposes only and is subject to change.
Date 01/29/07



Lot Five

Chapel Hill, North Carolina

Franklin Street Elevation

This plan and/or drawing is for illustrative purposes only and is subject to change.
Date 01/29/07



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Lot Five

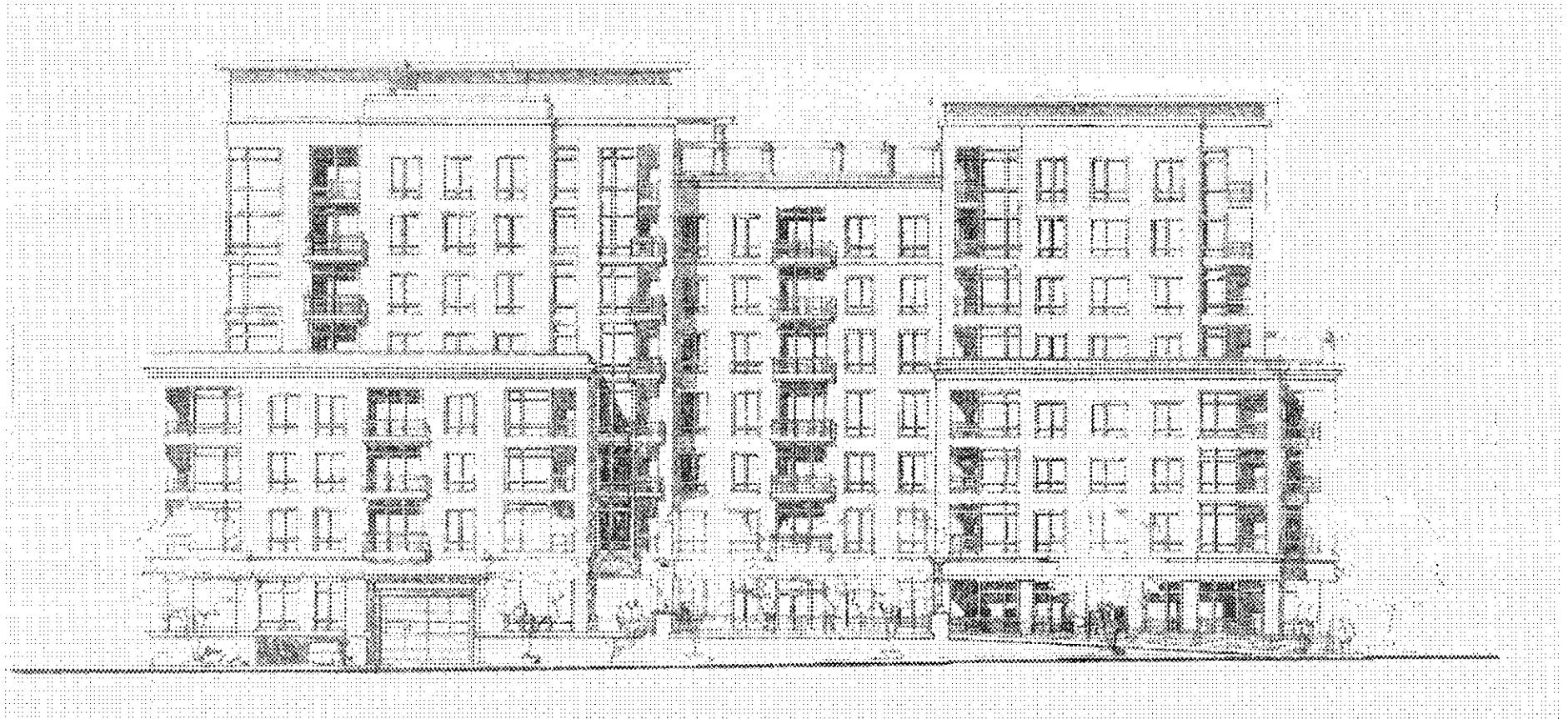
Chapel Hill, North Carolina

Church Street Elevation

This plan and/or drawing is for illustrative purposes only and is subject to change.
Date 01/29/07



ram



Lot Five

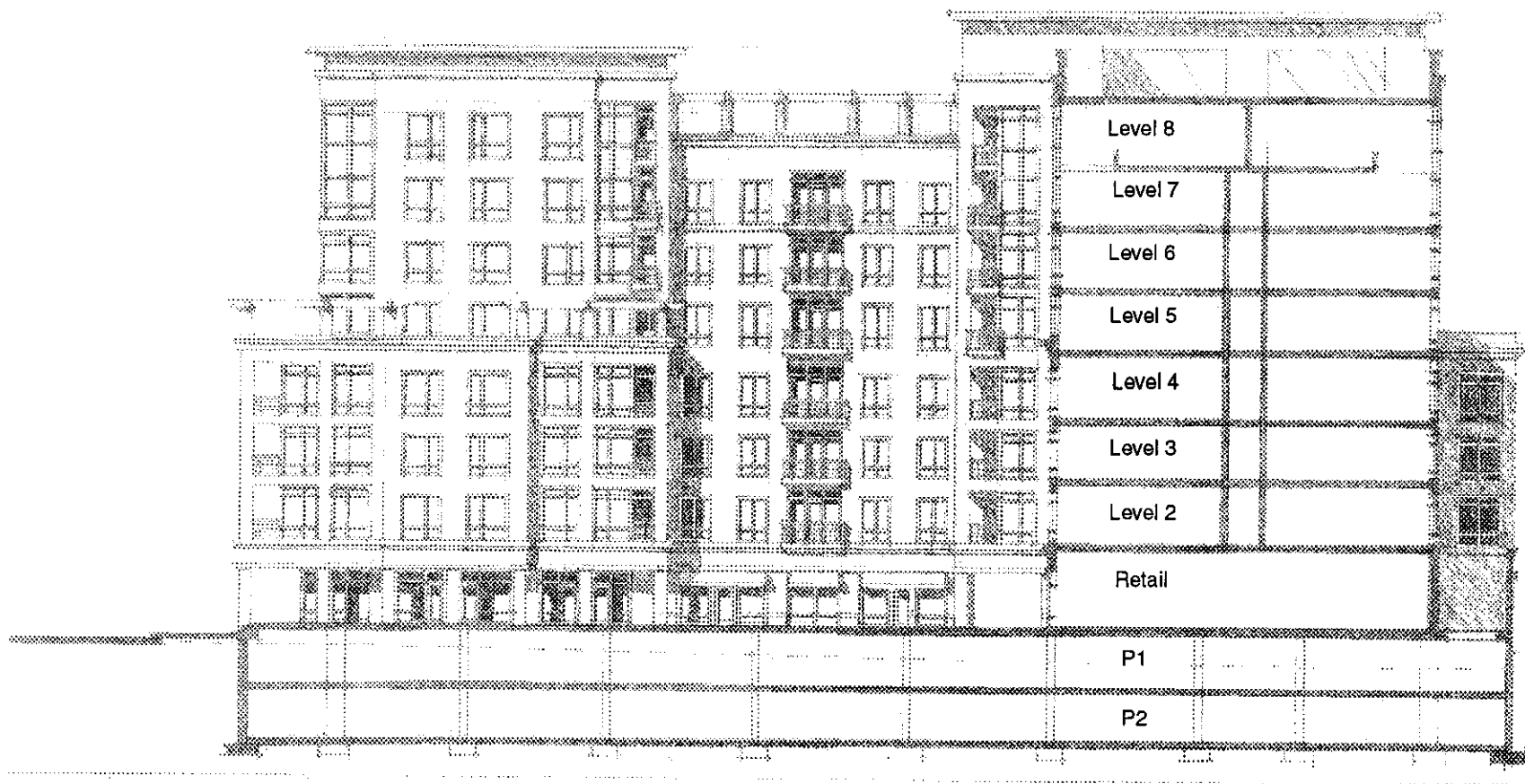
Chapel Hill, North Carolina

Rosemary Street Elevation

This plan and/or drawing is for illustrative purposes only and is subject to change.

Date 01/29/07 *ram*





Lot Five

Chapel Hill, North Carolina

Courtyard Elevation/ Section

This plan and/or drawing is for illustrative purposes only and is subject to change.

Date 01/29/07



GROUND LEASE

This **GROUND LEASE** ("Lease") is made and entered into as of _____, 2007 (the "Effective Date"), by and between **THE TOWN OF CHAPEL HILL**, a North Carolina municipal corporation ("Landlord"), and **RAM DEVELOPMENT COMPANY**, a Florida corporation (together with its permitted successors and assigns, "Tenant"), with respect to the following facts, and is as follows:

RECITALS

A. Landlord is the owner of that certain land condominium unit defined as the Building Unit in the Development Agreement (as hereinafter defined) and established pursuant to that certain Declaration of Condominium for the Lot 5 Land Condominium recorded in Book ___, Page ___ of the Orange County Register of Deeds Office (the "Land Condominium Declaration"), which Building Unit is located in The Town of Chapel Hill, Orange County, North Carolina, and is more particularly described in Exhibit A attached hereto and incorporated herein (together with all appurtenant easements thereto, collectively referred to as the "Leased Premises").

B. Landlord has entered into that certain General Development Agreement with Tenant dated February ___, 2007, governing the development of the Leased Premises and adjoining land condominium units owned by Landlord (the "Development Agreement").

C. Landlord desires to lease the Leased Premises to Tenant and, subject to the terms hereof, transfer the "Special Declarant Rights" (as hereinafter defined) with respect to the Leased Premises for the limited purpose of permitting Tenant to construct on the Leased Premises the Building (as such term is hereinafter defined) and other improvements as may be permitted under the terms of this Lease and thereafter create one or more additional condominium regimes (referred to in the Development Agreement as the "Lot 5 Condominium") within the Leased Premises (together with the Leased Premises, the "Property").

D. All terms with initial capitalization not otherwise defined herein shall have the same meanings ascribed to such terms in the Development Agreement.

1. BASIC TERMS; DEFINITIONS.

1.1 This **Section 1.1** contains the Basic Terms used in this Lease between Landlord and Tenant. Other Sections of the Lease referred to in this **Section 1.1** explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

1.1.1 Address of Tenant: 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

1.1.2 Address of Landlord:

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.
4350 Lassiter at North Hills Avenue
Suite 300
Raleigh, NC 27609
Attn: Michael R. Thornton
Fax: (919) 516-2005

And to: Kennedy Covington Lobdell & Hickman, L.L.P.
The Hearst Tower
214 N. Tryon Street, 47th Floor
Charlotte, NC 28202
Attn: Real Estate Department

1.1.3 Lease Term: ninety-nine (99) years beginning on the Commencement Date (See **Section 2.2**) or such other date as is specified in this Lease, and ending on the Expiration Date (See **Section 2.2**) ("Lease Term").

1.1.4 Permitted Uses: See **Section 5**

1.1.5 Rent and Other Charges Payable by Tenant: One Dollar (\$1.00) per year (“Base Rent”).

1.2 This **Section 1.2** contains the Definitions used in this Lease between Landlord and Tenant not otherwise defined in the Development Agreement named below.

1.2.1 “Additional Rent” shall have the meaning set forth in **Section 4.1** of this Lease.

1.2.2 “Application or Filings” shall have the meaning set forth in **Section 5.11** of this Lease.

1.2.3 “Base Rent” shall have the meaning set forth in **Section 1.1.5** of this Lease.

1.2.4 “Building” refers to the 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, together with ancillary appurtenances to the Building such as loading docks and dumpster pads, and open space consisting of a “courtyard” and an “arcade” to facilitate access and to provide outdoor dining and shopping areas to be developed by the Tenant on the Leased Premises pursuant to the Development Agreement.

1.2.5 “Casualty” shall have the meaning set forth in **Section 7.1** of this Lease.

1.2.6 “Commencement Date” shall have the meaning set forth in **Section 2.2** of this Lease.

1.2.7 “Condemnation” shall have the meaning set forth in **Section 8** of this Lease.

1.2.8 “Default” shall have the meaning set forth in **Section 10.1** of this Lease.

1.2.9 “Development Agreement” See Recital B.

1.2.10 “Effective Date” shall mean the date of this Lease as set forth in the initial paragraph of this Lease.

1.2.11 “Expiration Date” shall mean the date that is ninety-nine (99) years after the Commencement Date, provided that the option to purchase provided in **Section 13.9** of this Lease is not exercised or this Lease is not otherwise canceled, extended, or terminated earlier in accordance with its provisions.

1.2.12 “FF&E” shall have the meaning set forth in **Section 13.16** of this Lease.

1.2.13 “Hazardous Material” shall have the meaning set forth in **Section 5.7** of this Lease.

1.2.14 “Improvements” shall mean the Building and any other related structures and improvements expressly permitted to be located on the Leased Premises pursuant to the terms of this Lease.

1.2.15 “Landlord” shall mean The Town of Chapel Hill, North Carolina, a North Carolina municipal corporation.

1.2.16 “Lease-Related Documents” shall have the meaning set forth in **Section 15.1.1** of this Lease.

1.2.17 “Leasehold Estate” shall have the meaning set forth in **Section 11.2** of this Lease.

1.2.18 “Lender’s Security Instrument” shall have the meaning set forth in **Section 11.2** of this Lease.

1.2.19 “Leases and Rents” shall have the meaning set forth in **Section 11.3** of this Lease.

1.2.20 “Legal Requirements” shall have the meaning set forth in **Section 6.1.2** of this Lease.

1.2.21 “Lender” shall have the meaning set forth in **Section 11.2** of this Lease.

1.2.22 **Intentionally deleted.**

1.2.23 “Property” shall mean the Leased Premises and the Improvements located thereon.

1.2.24 “Real Property Taxes” shall have the meaning set forth in **Section 4.2.1** of this Lease.

1.2.25 “Rent” shall have the meaning set forth in **Section 5.8** of this Lease.

1.2.26 “Required Covenants” shall have the meaning set forth in **Section 11.4.3** of this Lease.

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

1.2.28 “Tenant” shall mean Ram Development Company, a Florida corporation or its permitted successors and/or assigns.

1.2.29 “Unrelated Entity” shall have the meaning set forth in **Section 9.2** of this Lease.

1.3 Exhibits: The following Exhibits are attached to and made a part of this Lease:

<u>Exhibit A</u>	Legal Description
<u>Exhibit B-1</u>	Lender’s Non-Disturbance and Estoppel Agreement
<u>Exhibit B-2</u>	Leasehold Condominium Unit Owners Non-Disturbance Agreement
<u>Exhibit C</u>	Form of Lease Amendment (provided in Section 5.9)

2. LEASE TERM

2.1 Lease of Leased Premises For Lease Term. Subject to the terms, provisions and conditions hereof, Landlord leases the Leased Premises to Tenant and Tenant leases and rents the Leased Premises from Landlord for the Lease Term. The Lease Term is for the period stated in **Section 1.1.4** above and shall begin and end on the dates specified in **Section 2.2**, unless the beginning or end of the Lease Term is changed under any provision of this Lease. The Commencement Date (as hereinafter defined) shall be the date specified in **Section 2.2** unless advanced or delayed under any other provision of this Lease.

2.2 Lease Term. This Lease shall commence on _____ (the “Commencement Date”). This Lease shall expire, if not canceled, extended, or terminated earlier in accordance with its provisions, ninety-nine (99) years after the Commencement Date (the “Expiration Date”).

2.3 Holding Over. This Lease shall terminate at the end of the Lease Term hereof without the necessity of any notice from either Landlord or Tenant. Tenant hereby waives notice to vacate the Property and agrees that Landlord shall be entitled to the summary recovery of possession of the Property should Tenant hold over to the same extent as if statutory notice had been given.

3. BASE RENT

Time and Manner of Payment. Subject to the provisions of this Lease, Tenant shall pay Landlord Base Rent in the amount of One Dollar (\$1.00) per year, in advance beginning on the Commencement Date and continuing each year thereafter on the anniversary of the Commencement Date during the Lease Term. The Base Rent shall be

payable at Landlord's address or at such other place as Landlord may designate in writing. At the election of Tenant, the aggregate amount or any lesser portion of the Base Rent due for the Lease Term may be prepaid at any time during the Lease Term. Landlord acknowledges that it has received Ninety-Nine Dollars (\$99.00) contemporaneously with the execution of this Lease as advance payment of all Base Rent due under this Lease.

4. OTHER CHARGES PAYABLE BY LESSEE

4.1 Additional Rent. All charges payable by Tenant other than Rent are called "Additional Rent." Unless this Lease provides otherwise, Tenant shall pay or cause the Lot 5 Condominium Association(s) to pay all Additional Rent annually prior to delinquency.

4.2 Property Taxes.

4.2.1 Real Property Taxes. Tenant shall pay directly to the tax collector, prior to delinquency, all ad valorem taxes and assessments on the Property which are due and payable during the Lease Term as levied by the applicable taxing authorities in accordance with applicable law (the "Real Property Taxes"). If the Real Property Taxes are not paid when due, Landlord shall have the right, but not the obligation, to pay the taxes, and Tenant shall reimburse Landlord for the amount of such tax payment as Additional Rent. The Real Property Taxes for the year in which the Commencement Date occurs shall be prorated between the parties, with Tenant paying the Real Property Taxes attributed to the portion of the first year of the Lease Term from the Commencement Date through December 31st of said calendar year, but only to the extent any such Real Estate Taxes are due and payable. Taxes for the year in which the Lease ends shall be prorated between Landlord and Tenant as of the ending date.

4.2.2 Personal Property Taxes.

4.2.2.1 Tenant shall pay all taxes levied or assessed against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant or anyone claiming by or through Tenant.

4.2.2.2 If any personal property is taxed with the Leased Premises, Tenant shall pay all such taxes prior to their delinquency.

4.2.3 Tenant's Right to Contest Taxes. Tenant may attempt to have the assessed valuation of the Leased Premises reduced or may initiate proceedings to contest the Real Property Taxes. If required by law, Landlord shall join in the proceedings brought by Tenant and shall not enter an objection to such contest. However, Tenant shall pay all costs of the proceedings, including any out of pocket costs or fees incurred by Landlord upon Landlord's demand.

4.2.4 Tenant Entitled to any Refund. Tenant shall be entitled to any refund of any Real Property Taxes (and penalties and interest paid by Tenant), to the extent attributable to periods within the Lease Term, whether such refund is made during or after the Lease Term.

4.3 Insurance; Indemnity.

4.3.1 During the Lease Term, Tenant shall maintain or cause to be maintained a policy of insurance consistent with the operation of a typical mixed use building in the Chapel Hill, North Carolina area, including commercial general liability insurance in the initial minimum amount of \$25 million per occurrence. Tenant shall name Landlord as an additional insured under such policy and may name the Lenders allowed under this Lease as additional insureds. The liability insurance obtained by Tenant under this **Section 4.3.1** shall be primary and non-contributing. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease. At no additional cost to Tenant, Landlord may also obtain comprehensive public liability insurance in an amount and with coverage determined by Landlord insuring Landlord against liability arising out of ownership, operation, use or occupancy of the Leased Premises and/or Improvements.

4.3.2 Property Insurance. During the Lease Term, Tenant shall maintain policies of insurance covering loss of or damage to the Improvements in the full amount of its replacement value. Such policy shall provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), sprinkler leakage and any other perils which Tenant deems reasonably necessary. Tenant shall not do or permit anything to be done that invalidates any such insurance policies. Landlord shall be shown as an additional insured party under said policies.

4.3.3 Workers' Compensation Insurance. Tenant shall carry workers' compensation insurance required to be carried by Tenant by North Carolina law in amounts not less than the amount required by law. Tenant shall require all contractors that Tenant enters into contracts with in connection with the Improvements to promise to carry workers' compensation insurance in amounts not less than the amount required by law covering all persons employed by the contractor in connection with the Improvements and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against Landlord or Tenant.

4.3.4 Builders' Risk Insurance. During the course of any alteration, construction, or reconstruction of the Improvements, Tenant shall provide or cause to be provided builders' risk insurance.

4.3.5 Payment of Premiums. Tenant shall pay all premiums for the insurance policies described in **Sections 4.3.1** and **4.3.2** no later than the due date. Tenant shall deliver to Landlord a copy of any policy of insurance which Tenant is required to maintain under this **Article 4**. As an alternative to providing a policy of insurance, Tenant shall have the right to provide Landlord evidence of insurance (Accord Form 27), executed by an authorized officer of the insurance company, showing that the insurance which Tenant is required to maintain under this **Article 4** is in full force and effect and containing such other information which Landlord reasonably requires.

4.3.6 General Insurance Provisions.

4.3.6.1 If Tenant fails to deliver any policy, evidence of insurance or renewal to Landlord required under this Lease within fifteen (15) business days after written notice from Landlord, or if any such policy is canceled or modified in any material manner during the Lease Term without Landlord's consent, Landlord may obtain such insurance, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) business days after receipt of a statement that indicates the cost of such insurance.

4.3.6.2 Tenant shall maintain all insurance required under this Lease with companies holding a "General Policy Rating" of A-, VIII or better, as set forth in the most current issue of "Best Key Rating Guide". Landlord makes no representation that the limits of liability specified to be carried by Tenant are adequate to protect Tenant. Tenant may obtain, at Tenant's sole election and expense, such additional insurance coverage as Tenant deems adequate. Landlord shall have the right to increase the insurance requirements hereunder from time to time as may be necessary to maintain adequate insurance coverages as measured by insurance then typically required for land and improvements similar to the Property in the greater Chapel Hill, North Carolina metropolitan area. All such policies of insurance as provided under this Lease shall be non-accessible and shall contain language to the effect that the policies cannot be cancelled, materially changed or not renewed except after thirty (30) days' written notice by the insurer to the Landlord.

4.3.6.3 Unless prohibited under any applicable insurance policies maintained, to the extent of the proceeds of insurance paid with respect to a claim of loss or damage, Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to its property or the property of others under its control, if such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage. Upon

obtaining the required policies of insurance, Landlord and Tenant shall give notice to the insurance carriers of this mutual waiver of subrogation.

4.3.6.4 Tenant shall be relieved from these insurance requirements as to any leasehold condominium unit insured in an identical manner by the Lot 5 Condominium Association(s).

4.3.7 Indemnity. Tenant shall indemnify Landlord, its respective officers, directors, Town Council members, employees and agents from any and all liability, damages, suits, claims and judgments arising from or in connection with any injury or death to a person or any damage to property arising out of or in connection with Tenant's use or occupancy of the Leased Premises or any negligence or willful misconduct of Tenant or its respective contractors, employees, officers, directors, or agents. Likewise, Landlord shall, to the extent permitted by applicable law, indemnify Tenant and its respective contractors, employees, officers, directors and agents from any and all liability, damages, suits, claims and judgments arising from or in connection with any injury or death to a person or any damage to property arising out of or in connection with Landlord's use or occupancy of the Leased Premises or any negligence or willful misconduct of Landlord or its respective contractors, officers, directors, Town Council members, employees and agents. Landlord's obligation to indemnify hereunder, with respect to claims of or by third parties (which shall include agents and employees of Landlord) shall be limited to the extent of insurance proceeds actually collected from the policies of insurance maintained by or on behalf of Landlord; provided, however, that nothing herein contained shall constitute or be construed as a waiver of Landlord's governmental immunity. Landlord shall not be liable to Tenant or Tenant's employees, agents, patrons or visitors, or to any other person whomsoever, for any injury to person or damage to property on or about the Leased Premises, caused by the acts or omissions of Tenant, its agents, employees, patrons or visitors, or of any other person entering upon the Leased Premises, or caused by the Improvements becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Leased Premises, or due to any cause whatsoever, unless caused by the negligence or misconduct of Landlord, its agents, employees, patrons or visitors. Tenant shall not be liable to Landlord or Landlord's employees, agents, patrons or visitors, or to any other person whomsoever, for any injury to person or damage to property on or about the Leased Premises, caused by the acts or omissions of Landlord, its agents, employees, patrons or visitors, or of any other person entering upon the Leased Premises, or due to any cause whatsoever, unless caused by the negligence or misconduct of Tenant, its agents, employees, patrons or visitors.

4.3.8 Release. Except with respect to the representations and warranties of Landlord set forth in the Development Agreement, each of which is affirmed by Landlord as if set forth herein in full, Tenant acknowledges that Landlord makes no additional warranty, express or implied, and expressly disclaims any and all oral, written or implied representations or commitments as to the

suitability or fitness of the Leased Premises or any of the contemplated Improvements thereon, or as to the existence or non-existence of radon or any other substance in, on, under or about the Leased Premises, or as to the quality, condition or suitability of the Leased Premises for the making of any Improvements or construction thereon, or as to the economic viability of the proposed Improvements. Except for Landlord's liability arising out of an Event of Default under the Development Agreement, Tenant, for itself, its successors, heirs and assigns, and any and all future Lot 5 Condominium Unit owners, hereby releases Landlord from any and all liability in connection with or arising out of the construction, development and operation of the Improvements for retail and residential condominium purposes as more fully described in the Development Agreement, and Tenant shall indemnify Landlord, its respective officers, directors, Town Council members, employees and agents from any and all liability, damages, suits, claims and judgments arising from or in connection with any injury or death to a person or any damage to property arising out of or in connection with the construction, development and operation of the Improvements for retail and residential condominium purposes as more fully described in the Development Agreement.

4.3.9 Landlord's Insurance. Except with respect to the Leased Premises, Landlord shall maintain all policies of insurance required under the Land Condominium Declaration and Landlord further agrees not to amend such requirements of insurance under the Land Condominium Declaration, without the prior written consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed.

4.4 Cost of Loans to be Paid by Tenant. Tenant affirms that it shall bear all of the costs and expenses charged by any lender in connection with any debt on Tenant's Leasehold Estate (as defined below) for the Property and all Improvements located thereon.

4.5 Assessments and Other Charges Imposed. Tenant shall further pay, as an Additional Rent, all annual assessments or charges levied by the Lot 5 Land Condominium Owner's Association, Inc., its successors and assigns (the "Association"), all special assessments for capital improvements levied by the Association, and all additional assessments levied by the Association with respect to the Building Unit and after it becomes a portion of the Leased Premises, the Private Parking Unit. Tenant shall further be responsible for paying as Additional Rent hereunder any and all other fees, charges or expenses, including late fees and interest imposed by the Association with respect to all or any portion of the Leased Premises. Landlord agrees to be responsible for and pay, or cause to be paid, all annual assessments or charges levied by the Association, all special assessments for capital improvements levied by the Association, and all additional assessments levied by the Association with respect to the Public Space Unit and Public Parking Unit.

4.6 Direct Payment by Landlord. If any Additional Rent must be paid directly by Landlord and the payee refuses to accept payment from Tenant, then: (a) Landlord appoints Tenant as Landlord's attorney-in-fact for making such payment; and (b) if the payee nevertheless refuses to accept payment from Tenant, then Tenant shall notify Landlord of such fact and shall pay such amount to Landlord in a timely manner accompanied by reasonable instructions on the further remittance of such payment. Landlord shall with reasonable promptness comply with Tenant's reasonable instructions. Landlord shall indemnify and hold harmless Tenant against Landlord's failure to timely remit such payment.

4.7 Payment of Rent. Base Rent and Additional Rent shall be paid by Tenant without demand, deduction, abatement or set off, and without diminution by reason of any obligations which are to be borne by Landlord under this Lease. Upon the giving of such notice as shall be required by **Article 10** hereof and Tenant's failure to cure any Default within the time period(s) specified in **Article 10**, Landlord shall have the right (but not the obligation) to advance such sums as are in Landlord's reasonable opinion necessary to cure a Default by Tenant in payment of Additional Rent, and Tenant covenants to pay as Additional Rent the amount of any such expenditures together with interest thereon at the lesser of: (i) the highest rate of interest permitted by law or (ii) the prime rate of interest posted by Bank of America, or the prime rate of a comparable bank as reasonably determined by Landlord if Bank of America's prime rate is not available, as adjusted from time to time plus 3% from the date due until paid.

5. USE OF PROPERTY

5.1 Use of Property.

- (a) The Leased Premises shall be used only for the construction, development and operation of the Improvements for retail and residential condominium purposes, and upon execution and delivery of the Lease Amendment, for parking purposes, as more fully described in the Development Agreement, and for no other purpose whatsoever unless otherwise approved in writing by Landlord in its sole discretion. The use of the Leased Premises shall at all times either (i) comply with, (ii) be granted a variance from, (iii) be authorized under a special use permit, or (iv) be grandfathered from compliance with the Municipality zoning regulations. At Tenant's sole cost and expense, Tenant shall, subject to limitations in **Section 5.2**, construct the Improvements on the Leased Premises as more particularly described in the Development Agreement. Tenant and its successors and assigns, including purchasers of Lot 5 Condominium Units comprising a portion of the Improvements, shall be deemed the owner of Improvements that it constructs for the duration of the Lease Term. Landlord and Tenant acknowledge that it is the intention of the parties that, to the extent Tenant performs all of its obligations under this Lease, Landlord relinquishes, during the Lease Term, any and all rights to share in the income of the Leased Premises and Improvements on account of its interest in the Leased Premises, its interest under this Lease or otherwise.

- (b) Landlord acknowledges and understands that Tenant proposes to develop on the Leased Premises leasehold condominiums consistent with Section 47C-2-106 of the North Carolina Condominium Act. In furtherance thereof, Landlord agrees that: (i) this Lease shall be recorded in its entirety; (ii) Landlord will join in and sign the Lot 5 Condominium Declaration creating the leasehold condominiums provided that Landlord has reviewed the same and confirmed it includes such provisions as are required by and consistent with the provisions contemplated in the Development Agreement; (iii) neither Landlord nor any successor in interest of Landlord may terminate the leasehold interest of a Lot 5 Condominium Unit owner, who, after demand, makes timely payment of his share of the Rent determined in proportion to his common element interest and otherwise complies with all covenants which, if violated, would entitle Landlord to terminate this Lease; (iv) a Lot 5 Condominium Unit owner's interest is not affected by failure of any other person to pay Rent or fulfill any other covenant as set forth in this Lease; and (v) the acquisition of a Lot 5 Condominium Unit by Landlord or the owner of the reversion or remainder hereunder, does not merge the leasehold and fee simple interest unless the leasehold interest of all Lot 5 Condominium Unit owners subject to the reversion or remainder is acquired.
- (c) As contemplated by the Development Agreement, Landlord shall use, operate and maintain the improvements located in the Public Space Unit and the Public Parking Garage Unit in accordance with the Land Condominium Declaration.

5.2 Affordable Housing Requirement. Notwithstanding anything contained in this Lease to the contrary, during the Lease Term Tenant shall provide a minimum of fifteen percent (15%) of the aggregate residential units in the Building (rounding upward for any fraction) that will qualify as Affordable Housing through the Land Trust as more particularly described in the Development Agreement.

5.3 Manner of Use. Tenant shall not cause or permit the Leased Premises to be used in any way which constitutes a violation of any applicable law, ordinance, or governmental regulation or order, or which constitutes a nuisance or waste. Tenant shall obtain and pay for all permits, including a Certificate of Occupancy (to the extent applicable), required for Tenant's occupancy of the Improvements and shall promptly take all actions necessary to comply with, be granted a variance from, or be grandfathered from compliance with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Tenant of the Property.

5.4 Compliance with Zoning. Tenant agrees that any improvements constructed on the Leased Premises shall at all times be maintained in compliance (or be granted a variance from or "grandfathered" in its compliance) with all applicable zoning, environmental, land use, safety and health laws and regulations.

5.5 Utilities. Prior to delinquency, Tenant shall pay, directly to the appropriate supplier, the cost of all natural gas, heat, light, power, sewer service, telephone, water, refuse disposal and other utilities and services supplied to the Improvements located within Building Unit and after the Lease Amendment, to the Private Parking Unit.

5.6 Compliance with Declaration. Tenant shall at all times comply with all terms, provisions and conditions of the Declaration applicable to the Building Unit.

5.7 Hazardous Materials. Tenant shall not violate any law or regulation of any federal, state or local governmental authority having jurisdiction over Hazardous Material. As used in this Lease, the term “Hazardous Material” means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials” or “toxic substances” now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons. Tenant shall have the duty and obligation to cure any environmental contamination in connection with the Building caused by Tenant and first occurring on or after the date Tenant takes possession of the Leased Premises, and Tenant agrees to indemnify and hold harmless Landlord from and against all claims and damages of whatsoever nature, asserted against Landlord, or the Leased Premises relating to or as a result of Tenant’s or any sub-lessee’s use and occupancy of the Property, including but not limited to all clean-up and remediation costs, claims of personal injury or property damage, and court costs and reasonable attorneys’ fees incurred in any mediation, arbitration trial or appellate proceeding pertaining thereto. Tenant shall have no obligation to remediate any preexisting Hazardous Substances on the Leased Premises and Landlord agrees to indemnify and hold harmless Tenant from the same to the extent permitted by law. Landlord shall be responsible for any violation of any environmental laws, rules or regulations, or the presence of any Hazardous Substances in connection with the Leased Premises first occurring prior to the date Tenant takes possession of the Leased Premises, shall pay for the remediation thereof as set forth in the Development Agreement and shall, to the extent permitted by applicable law, indemnify Tenant with respect thereto.

5.8 Quiet Possession. If Tenant pays the Base Rent and Additional Rent (collectively referred to herein as the “Rent”) and complies with all other terms of this Lease and the Land Condominium Declaration, Tenant or its subtenant(s) may occupy and enjoy the Property for the full Lease Term without molestation or disturbance by or from Landlord or anyone claiming by or through Landlord or having title to the Leased Premises paramount to Landlord, and free of any encumbrance created or suffered by Landlord.

5.9 Addition to the Leased Premises. The Land Condominium Declaration creates three separate condominium units: the Building Unit which constitutes the Leased Premises hereunder, the Public Space Unit owned by Landlord and the Parking Garage Unit, initially owned by Landlord. Following Substantial Completion of the Parking Garage, the Parking Garage Unit shall be divided into two separate Land Condominium Units: the Private Parking Unit consisting of approximately 169 parking spaces within the Parking Garage and the Public Parking Unit consisting of approximately 161 parking spaces in the Parking Garage. Within thirty (30) days after the subdivision of the Parking Garage Unit into two (2) separate Land Condominium Units, this Lease shall be amended to include (i) the Private Parking Unit and (ii) any Excess Spaces (if applicable), as a portion of the Leased Premises and as a permitted use hereunder. The amendment to this Lease for the purpose of adding the Private Parking Unit as a portion of the Leased Premises shall be substantially in the form attached hereto as Exhibit C (the "Lease Amendment").

5.10 Nondisturbance. Landlord may pledge, hypothecate, or otherwise encumber its interest as Landlord under the terms of this Lease, provided that in so doing, Landlord will deliver to Tenant (and, upon written request, any Lender) a subordination, nondisturbance and attornment agreement with commercially reasonable provisions reasonably satisfactory to Tenant and its Lender recognizing the rights of Tenant (and any Lender) in, to and under this Lease.

5.11 Applications and Filings. Upon Tenant's request, Landlord shall, without cost to Landlord, promptly join in and execute any Application or Filing (as defined below) as Tenant may from time to time request, provided that: (a) such Application or Filing is in customary form; (b) Landlord will incur no cost, expense or liability in connection therewith, and (c) no uncured Default (as defined below) exists beyond any notice or grace period. For purposes of this **Section 5.11** of the Lease, the term "Application or Filings" shall mean and refer to any instrument, document, agreement, certificate, or filing (or amendment of any of the foregoing): (a) necessary or appropriate for any construction work this Lease or the Development Agreement allows, including any application for any utility service or hookup, easement, covenant, condition, restriction, subdivision plat, variance or such other instruments as Tenant may from time to time request in connection with such construction work; (b) subject to the provisions of **Section 5.1** hereof, to enable Tenant from time to time to seek any approval or to use and operate the Property in accordance with this Lease; (c) otherwise reasonably necessary and appropriate to permit Tenant to realize the benefits of the Property under this Lease; or (d) that this Lease or the Development Agreement otherwise requires Landlord to sign for Tenant.

6. MAINTENANCE, REPAIRS AND ALTERATIONS

6.1 Tenant's Obligations.

6.1.1 Except as provided in **Section 7** (Damage or Destruction) and **Section 8** (Condemnation), Tenant shall keep all portions of the Improvements (including structural, nonstructural, interior and exterior areas, portions, systems, equipment, and landscaping) in good order, condition and repair as needed, excluding ordinary wear, tear, casualty and condemnation. Tenant's obligations shall extend to both structural and non-structural items, and to all maintenance, repair and replacement work, including but not limited to unforeseen and extraordinary items.

6.1.2 Tenant shall, at its own cost and expense, promptly observe and keep all laws, rules, orders, ordinances and regulations of the federal, state and city governments and any and all of their departments and bureaus and those of any other competent authority applicable to the Leased Premises (the "Legal Requirements"), whether or not such Legal Requirements affect the interior or exterior of the Improvements, necessitate structural changes or improvements, or interfere with the use and enjoyment of the Property, and whether or not compliance with the Legal Requirements is required by reason of any condition, event, or circumstance existing before or after the Lease Term commences; and shall promptly comply with all laws, rules, orders, regulations and requirements of the issuer(s) of the insurance policy(ies) contemplated under this Lease, and will use no part of said Property for any unlawful purposes. If Tenant in good faith shall desire to contest any Legal Requirements requiring repairs, alterations or changes in the Leased Premises or in any building at any time situated thereon, Tenant may contest same provided (a) Tenant shall promptly comply with the Legal Requirements that it wishes to contest unless such compliance would prevent Tenant from pursuing a contest of such Legal Requirements and (b) if such compliance would prevent Tenant from pursuing a contest of such Legal Requirements, then Tenant shall not be required to make such repairs, alterations, or changes so long as it shall, in good faith, at its own expense, contest the same or the validity thereof by appropriate proceedings, and any such delay of Tenant in complying with any such laws, rules, orders, ordinances and regulations until final determination of such disputed matter shall not be deemed a Default in the conditions of this Lease. Tenant shall hold Landlord harmless of all costs, expenses, and fines that may in any manner arise out of or be imposed because of the failure of Tenant to comply with any Legal Requirement as aforesaid.

6.1.3 Tenant shall fulfill all of Tenant's obligations under this **Section 6** at Tenant's sole expense. If Tenant fails to maintain, repair or replace any material element of the Improvements to the condition required hereunder within thirty (30) days of written notice from Landlord, Tenant shall be deemed to be in Default of its obligations under **Section 6.1** hereof; provided, however, that if the nature of the maintenance, repair or replacement is such that it cannot, in the

exercise of reasonable diligence, be cured within such thirty (30) day period, Tenant shall not be in Default if Tenant commences performance within such period and diligently proceeds to cure the default within a reasonable time period.

6.1.4 If Tenant refuses or neglects to repair, replace, or maintain the Leased Premises, or any part thereof (including any Improvements thereon), in a manner reasonably satisfactory to Landlord and consistent with Tenant's obligations under this Lease, Landlord shall have the right, but not the obligation, upon giving Tenant reasonable notice of its election to do so, to enter the Leased Premises and make such repairs or perform such maintenance or replacements on behalf of and for the account of Tenant. Nothing herein contained shall imply any duty of Landlord to do any work that, under any provision of this Lease, Tenant is required to do, nor shall Landlord's performance of any repairs or maintenance work on behalf of Tenant constitute a waiver of Tenant's default in failing to do the same. No exercise by Landlord of any rights herein reserved shall entitle Tenant to any compensation, damages or abatement of Rent from Landlord for any injury or inconvenience occasioned thereby. If Landlord performs any maintenance or other obligations that Tenant is required to perform under the terms of this Lease, Tenant shall, upon demand, pay to Landlord (as Additional Rent) the costs and expenses incurred by Landlord in doing the same (or shall deposit with Landlord the anticipated amounts thereof).

6.1.5 Except for the negligence or willful misconduct of Landlord, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all liability, claim, loss, cost, expense, damage (including reasonable attorneys' fees and consultants fees), lien, judgment or penalty arising in any manner whatsoever out of, involving, or in connection with, the use and/or occupancy of the Property by Tenant and/or its subtenants or any one else claiming by or through Tenant.

6.2 Alterations, Additions, and Improvements.

6.2.1 All alterations, additions, and Improvements to the Leased Premises shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations. The initial Improvements constructed and developed on the Leased Premises shall be in accordance with the Approved Architectural Drawings and the terms and provisions of the Development Agreement. Landlord's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) will be required for all exterior or structural improvements or modifications to the Improvements (a) not necessitated by repairs, alterations or maintenance required by laws applicable to the Improvements constructed on the Leased Premises; (b) not otherwise authorized by Landlord in connection with retail tenant upfitting improvements, or (c) 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 North Carolina Condominium Act.

6.2.2 Tenant shall pay when due all claims for labor and material furnished on or about the Leased Premises or in connection with the Improvements.

6.2.3 Tenant shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the reversion or other estate of Landlord or that would be prior to any interest of Landlord in the Leased Premises. Tenant shall not suffer or permit any liens to attach to the interest of Tenant in all or any part of the Property by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to Tenant or anyone occupying or holding an interest in all or any part of the Improvements on the Property through or under Tenant. If any mechanic's, construction or other liens or orders for the payment of money shall be filed against the Property or any improvements thereon by reason of, or arising out of any labor or material furnished to, or for Tenant at the Property or for or by reason of any change, alteration or addition, by Tenant, or the cost or expense thereof, or any contract relating thereto, or against Landlord as leased fee owner thereof by reason of Tenant's work or contract relating thereto, then within thirty (30) days, Tenant shall cause the same to be canceled and discharged of record, by bond or otherwise, at the election and expense of Tenant, and shall also defend on behalf of Landlord, at Tenant's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien, liens or orders, and Tenant will pay any damages and discharge any judgment entered therein and hold Landlord harmless from any loss, claim or damage resulting therefrom, including reasonable attorneys' fees.

Nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of Landlord, express or implied, by inference or otherwise, to any person, firm, or entity for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Property or to the Improvements, or as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Landlord's interest in the Property or against Landlord's interest, if any, in the Improvements. Tenant is not intended to be an agent of Landlord for the construction of Improvements on the Property. Landlord shall have the right to post and keep posted at all reasonable times on the Property and on the Improvements any notices that Landlord may reasonably wish to post for the protection of Landlord and of the Property and of the Improvements from any such lien. The foregoing shall not be construed to diminish or vitiate any rights of Tenant to the extent permitted in this Lease to construct, alter, or add to the Improvements.

7. DAMAGE OR DESTRUCTION

7.1 Casualty. If Tenant becomes aware of any significant damage or destruction to all or any material portion of the Improvements, whether ordinary or extraordinary, foreseen or unforeseen, affecting any or all Improvements and/or the Leased Premises (each, a “Casualty”), Tenant shall promptly notify Landlord of such fact.

7.2 Effect of Casualty. No Rent shall abate in the event of a Casualty. Except as set forth below, if a Casualty occurs and the Improvements are damaged or destroyed by fire or other casualty, Tenant, at its sole cost and expense, shall rebuild and/or restore the Improvements damaged by such Casualty to, as nearly as possible, the same condition as existed immediately prior to such Casualty and in conformance with this Lease, except for any modifications approved by Landlord in writing, such approval not to be unreasonably withheld, conditioned or delayed. Tenant shall commence its restoration work within ninety (90) days after the later of the date (a) the Casualty occurs, (b) Tenant receives written confirmation from the Land Condominium Association that it will rebuild the improvements in the Public Space Unit and the Public Parking Unit, (c) the Land Condominium Association and the Tenant have agreed upon a coordinated plan to restore the improvements within and on all of the Land Condominium Units (recognizing that some of the improvements outside the Leased Premises also provide the necessary support and access to the Improvements), (d) the Tenant receives all necessary approvals and permits as required under the Legal Requirements to commence the restoration work, (e) the insurance proceeds have been received and deposited as contemplated in Section 7.3 herein, said date being the “Restoration Commencement Date” and Tenant shall complete such work with due diligence, but not longer than five hundred forty (540) days after the date such work is commenced. Landlord acknowledges that Tenant will construct a “leasehold condominium” on the Leased Premises. Accordingly, notwithstanding the above, if a Casualty occurs to the Property and (i) the Lot 5 Condominium Declaration is terminated, or (ii) repair or replacement of the Improvements would be illegal under applicable Legal Requirements, including local health or safety statutes or ordinances, or (iii) the Lot 5 Condominium Unit owners decide not to rebuild by an eighty percent (80%) vote (including one hundred percent (100%) approval of owners of Lot 5 Condominium Units not to be rebuilt or owners assigned to limited common elements not to be rebuilt) or (iv) the unit owners of the Land Condominium decide not to rebuild, being hereinafter called a “Termination Event”), then Tenant shall have the option of terminating this Lease upon notice to Landlord, which termination shall be effective as of the date set forth in said notice, provided that in no event shall such date be earlier than the date of such Casualty. In the event of such a termination, Tenant shall have no obligation to repair or restore any damage caused by such Casualty, but shall be obligated to remove (i) all Improvements and return the Leased Premises as near as practicable to the condition existing upon commencement of construction of the Improvements and receive the balance of the insurance proceeds, or (ii) but only with Landlord’s written permission, that portion of the Improvements damaged by such Casualty and receive the balance of the insurance proceeds. If as a result of the occurrence of a Casualty Tenant has the right pursuant to

the provisions of this Lease to terminate this Lease but Tenant does not elect to so terminate this Lease as provided hereunder, then Tenant, at its sole cost and expense, shall rebuild and/or restore the Improvements damaged by such Casualty to, as nearly as possible, the same condition as existed immediately prior to such Casualty and in conformance with this Lease, except for any modifications approved by Landlord in writing, such approval not to be unreasonably withheld, conditioned or delayed.

7.3 Adjustment of Claims; Use of Property Insurance Proceeds. Tenant shall be solely responsible for adjusting any insurance claim(s) pertaining to any Casualty, subject to the rights of any Lender. If Tenant is required by the terms of this **Article 7** or if Tenant otherwise elects to rebuild the Improvements, then insurance proceeds shall be disbursed directly to a depository acceptable to Lender and Landlord to be disbursed for the safeguarding, clearing, repair, restoration, alteration, replacement, rebuilding and reconstruction of the portion of the Improvements damaged by such Casualty, to rebuild, repair and/or restore the affected Improvements to a condition that complies with applicable laws and is otherwise consistent with Tenant's permitted use of the Property. If such insurance proceeds are insufficient for the foregoing purposes, prior to its commencement of work, Tenant or its Lender shall pay the deficiency out of its own funds to the depository agreed upon by Lender, Landlord and Tenant. In the event all of the insurance proceeds collected from such Casualty are not used for such repairs or restoration, then Tenant shall be entitled to any excess in the amount of such proceeds. Should Tenant fail or refuse to make the repairs or restoration, if and as hereinabove required by the provisions of this **Article 7**, such failure or refusal shall constitute a Default under this Lease upon notice and the expiration of the applicable cure period, and all insurance proceeds so collected shall be forthwith paid over to Landlord or an insurance trustee designated by the Landlord to be applied, together with any funds received from Tenant on account of any shortfall, to the costs of repair or reconstruction of the Improvements, to be disbursed in the same manner as if they were proceeds from a construction loan from a commercial lender and Tenant shall pay all costs and fees associated therewith. Notwithstanding the foregoing, if sufficient funds are not received from Tenant or Tenant's Lender, Landlord shall have the option to either provide such funds as are necessary to repair or reconstruct the Improvements and such funds shall constitute Additional Rent, payable to Landlord as set forth herein, or to elect to expend such of the insurance proceeds as are necessary to remove all damaged Improvements from the Leased Premises and restore the Leased Premises to its condition prior to the construction of such Improvements, as far as practical, and any remaining insurance proceeds shall be paid to any Lender to satisfy any financing constituting a lien on the Property, and the remainder, if any, to be retained by Tenant.

7.4 Waiver. Tenant waives the protection of any statute, code or judicial decision which grants a tenant the right to terminate a lease in the event of the substantial or total destruction of the leased property. Tenant agrees that the provisions of **Section 7** hereof shall govern the rights and obligations of Landlord and Tenant in the event of any such Casualty.

8. CONDEMNATION. If a portion of the Property is taken under the power of eminent domain or sold under the threat of that power (all of which are called “Condemnation”), the Condemnation award shall be distributed in the following order of priority:

8.1 First, to Landlord, in an amount calculated to reflect its reversionary interest in the Leased Premises so taken as encumbered by the Option as defined in **Section 13.19**; and

8.2 Second, to Tenant or its assigns, in an amount equal to the balance of the Condemnation award, including the award for the Improvements and Tenant’s leasehold interest in the Property.

8.3 If title to the whole or materially all of the Property shall be taken or condemned, this Lease shall cease and terminate, and all rental and other charges hereunder payable by Tenant shall be apportioned as of the date of vesting of title in such taking or condemnation proceedings. For the purposes of this Section, a taking or condemnation of materially all of the Property, as distinguished from a taking or condemnation of the whole of the Property, means a taking of such scope that the untaken portion of the Property is insufficient to permit the restoration of the then existing Improvements thereon in Tenant’s judgment, reasonably exercised, taking into consideration the performance of all covenants, agreements and provisions herein provided to be performed by Tenant.

8.4 In the event of a partial taking or condemnation, i.e., a taking or condemnation of less than materially all of the Property, this Lease (except as hereinafter provided) shall continue, and Tenant shall promptly restore the Improvements, as provided below. The award for the said taking or condemnation in respect to the Property shall be held by a depository approved by Landlord and Lender; and the award balance shall be used and paid as follows and in the following priority:

- (a) First - so much as shall be necessary to repair and restore the Improvements to, as nearly as reasonably possible but subject to the extent of the Condemnation award, the condition existing prior to the taking or condemnation; and
- (b) Second - the balance shall be shared by Landlord and Tenant in the same proportion set forth in **Section 8.1** and **Section 8.2** that they would have shared in the award balance were there to have been a taking or condemnation of the whole or materially all of the Property at the time of the partial taking or condemnation.

The Tenant shall undertake its work of repair and restoration as soon as reasonably practicable on the same terms and conditions as set forth in Section 7.2 and 7.3; and Tenant shall make such repairs and restoration.

8.5 In the event of a temporary Condemnation, i.e., one that will affect the Leased Premises for less than ____ days, this Lease shall continue, and Tenant shall receive all of the award attributable to the Leased Premises. If a temporary Condemnation relates to a period longer than ____ days, then Tenant may, by written notice to Landlord within sixty (60) days of receiving written notice regarding the length of the temporary Condemnation, terminate this Lease and the award shall be allocated as set forth in Section 8.1 and Section 8.2. If Tenant does not terminate this Lease, then Tenant shall receive all of the award attributable to the Leased Premises.

9. ASSIGNMENT AND SUBLETTING

9.1 Tenant's Right to Sublease. Subject to the terms of the Development Agreement, Tenant shall have the right, without the prior consent of Landlord, to sell, convey, lease, or assign all or a portion of its leasehold ownership rights hereunder to buyers and tenants of (i) the residential leasehold condominium units in the Building and/or (ii) the retail space or leasehold condominium unit(s) of the Building. After the Project has been Substantially Completed and at least seventy five percent (75%) of the residential leasehold condominium units created under the Lot 5 Condominium Declaration have been transferred by Tenant to a third party, Tenant shall have the right, without the prior consent of Landlord, to convey, transfer and assign to the Lot 5 Condominium Association(s), any or all of its rights and obligations under this Lease; provided, however, that Tenant shall remain primarily liable unless the Lot 5 Condominium Association(s) agree in writing to expressly assume all such obligations in a manner reasonably acceptable to Landlord.

9.2 No Assignment. Except as set forth above in **Section 9.1** and the Development Agreement, this Lease shall not be assigned without the prior written consent of Landlord, which Landlord may grant or withhold in its reasonable discretion. It shall be deemed unreasonable for Landlord to withhold its consent if the assignment is requested more than three (3) years after the Project has been Substantially Completed and the proposed assignee has agreed to assume any obligations under this Lease not previously assumed by the Lot 5 Condominium Association in a manner reasonably acceptable to Landlord. Notwithstanding the provisions of this **Section 9.2**, (a) Tenant shall be permitted to assign or otherwise transfer its interest in this Lease to a newly created entity controlled by the managers of Tenant in connection with a reorganization of entities controlled by such managers and (b) a Lender shall have the right to assign this Lease in accordance with the provisions of **Article 11** hereof.

10. DEFAULTS; REMEDIES

10.1 Defaults. Tenant shall be in material default (herein referred to as a "Default") under this Lease:

10.1.1 If Tenant shall fail to make any payment of Base Rent or Additional Rent for a period of ten (10) days following receipt of written notice from Landlord of such default; or

10.1.2 Except as expressly provided otherwise herein, in the event that there is an Event of Default by Tenant under the Development Agreement or Tenant shall default or fail in the performance of a material covenant or agreement to be performed by it under this Lease including, without limitation, its obligations under **Section 7** and **Section 8** hereof, and such default shall not have been cured for a period of thirty (30) days after receipt by Tenant of written notice of such default or failure in performance; provided, however, if such default or failure cannot, with due diligence, be cured within thirty (30) days after receipt by Tenant of any such written notice, and Tenant shall not have commenced the remedying thereof within such period or shall not be proceeding with due diligence to remedy such default or failure (it being intended in connection with any such default or failure that is not susceptible of being cured by Tenant with due diligence within any such thirty (30) day period, that the time within which to remedy that default or failure shall be extended for such period as may be necessary to complete same with due diligence); or

10.1.3 Abandonment of the Property; or

10.1.4 If Tenant shall make an assignment for the benefit of creditors or file a voluntary petition in bankruptcy or be adjudicated a bankrupt or insolvent by any court, or file a petition for reorganization or an arrangement under the Federal Bankruptcy Code or any state insolvency act, or a receiver or trustee for its property shall be appointed in any proceeding other than a bankruptcy proceeding, and such appointment shall not be vacated within ninety (90) days after it has been made; or

10.1.5 Subject to events of force majeure, if Tenant (i) fails to “substantially complete” (as defined in the Development Agreement) the Improvements on or before the deadlines established in the Development Agreement, or (ii) fails for ninety (90) days within any one hundred twenty (120) day period to continuously and diligently pursue the completion of construction of the Improvements after commencement of construction; or

10.1.6 Subject to casualty, condemnation and/or events of force majeure, if the Building shall cease to operate consistent with the provision set forth in **Section 5.1** hereof or such other use as is permitted under the provisions of said **Section 5.1** on the Property for more than three hundred sixty (360) consecutive days.

10.2 Landlord’s Remedies. Upon the occurrence of an event of Default, subject to the provisions of **Article 11** below and the special limitations set forth in **Section 5.1(b)**, Landlord may, at Landlord’s sole option and without order of any court or further written notice to Tenant, and without limiting in any manner any other remedies available at law or equity, exercise any one or more of the remedies set forth in this **Section** or any other remedy available under applicable law or contained in this

Lease. If any voluntary or involuntary proceeding for a reorganization or an arrangement is instituted, and no application is made in any such proceeding and no relief is requested therein by Tenant to reject this Lease, or to reform or recast the same or for any change, modification or alteration of any of the terms, covenants and conditions of this Lease or to relieve Tenant from the punctual payment of the Rent, including Base Rent and Additional Rent, or other charges required to be paid by Tenant under this Lease, and if all Rent, including Base Rent and Additional Rent, and other charges due from Tenant under this Lease are paid within the time period(s) hereinbefore provided, and all of the terms, covenants and conditions of this Lease required to be performed by Tenant are promptly performed and complied with within the time period(s) hereinbefore provided, then Tenant shall have the continuous and uninterrupted quiet enjoyment and exclusive possession of the Property during the Lease Term; provided however, nothing herein contained shall modify the rights of Landlord or the obligations of Tenant with respect to this Lease under the Federal Bankruptcy Code in the event of the filing of a petition thereunder by Tenant.

Landlord may terminate this Lease whereupon the Tenant shall be obligated, without further action by the Landlord, to comply with the provisions of **Section 13.16** hereof.

Landlord or Landlord's agents and employees may by summary ejectment proceedings or by any suitable action or proceeding at law, with or without terminating this Lease, enter upon and take possession of the Property, securing it against unauthorized entry and expel or remove Tenant and any other occupant therefrom and alter locks and other security devices at the Property, without being liable to indictment, prosecution, or damages.

Landlord may relet the whole or any part of the Property from time to time, either in the name of Landlord or otherwise, to such tenants, for such terms ending before, on, or after the expiration date of the Lease Term, at such rentals and on such other conditions as Landlord may determine to be appropriate.

Landlord may recover its damages, including without limitation all lost rentals, all legal expenses including reasonable attorneys' fees, all costs incurred by Landlord in restoring the Property (except, as to an event of casualty, Tenant shall be liable only to the extent that such restoration costs are not covered by insurance proceeds received by Landlord) or otherwise preparing the Property for reletting for any purposes consistent with the Permitted Uses, and all costs incurred by Landlord in reletting the Property and interest thereon at the rate set forth above for past due Rent under this Lease.

If Tenant should fail to make any payment, perform any obligation, or cure any default hereunder after such notice and the expiration of such cure period as provided herein, Landlord, without obligation to do so and without thereby waiving such failure or default, may make such payment, perform such obligation, and/or remedy such other default for the account of Tenant (and enter the Property for such purpose), and Tenant shall pay, as Additional Rent, upon demand all costs, expenses and disbursements

(including reasonable attorney's fees) incurred by Landlord in taking such remedial action, plus interest thereon at the rate set forth above for past due Rent under this Lease.

No failure by Landlord to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Tenant, and no breach by Tenant shall be waived, altered, or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach. Tenant shall have no liability for any consequential or incidental damages of Landlord, or anyone claiming by, through or under Landlord, for any reason whatsoever.

Upon expiration or earlier termination of this Lease, Tenant hereby covenants and agrees to surrender and deliver the Property peaceably to Landlord together with all the Improvements described in this Lease in their then current "as is" condition, together with an assignment of Tenant's Development Rights and Special Declarant Rights as defined in the North Carolina Condominium Act. FF&E may be removed by Tenant or any subtenant at or before this Lease terminates, provided, however, that the removal will not injure the Improvements or necessitate repairs to the same, or if such repairs are required, those repairs will be made promptly following any such removal. Tenant shall pay or cause to be paid to Landlord the cost of repairing any damage arising from such removal and restoration of the Improvements to their condition before such removal. Any personal property of Tenant that shall remain on the Property for a period of more than thirty (30) days after the termination of this Lease and the removal of Tenant from the Property may, at the option of Landlord, be deemed to have been abandoned by Tenant and may either be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit, or if Landlord gives written notice to Tenant to such effect, such property, shall be removed by Tenant at Tenant's sole cost and expense.

10.3 Landlord's Default. Landlord shall be in Default under this Lease:

10.3.1 If there is an Event of Default by Landlord under the Development Agreement; or

10.3.2 If the Land Condominium Declaration is terminated; or

10.3.3 In the event Landlord shall have failed to perform an obligation required herein within thirty (30) days (or such additional time as is reasonably required to perform such obligation) after receipt of written notice from Tenant specifying the manner in which Landlord has breached this Lease. Tenant shall

have all rights available to it hereunder or at law or in equity. To the extent Landlord's Default is the failure to maintain and/or restore the improvements located in the Public Space Unit or Public Parking Unit in keeping with other first class downtown public spaces and other first class parking garages located in the Chapel Hill, North Carolina, or as required to allow Tenant to maintain and/or restore the Improvements as required under this Lease, Tenant shall have the right, but not the obligation to do so and without thereby waiving such failure or default, to make such payment, perform such obligation, and/or remedy such other default for the account of Landlord (and enter the Public Space Unit and Public Parking Unit for such purpose), and Landlord shall pay to Tenant, upon demand all costs, expenses and disbursements (including reasonable attorney's fees) incurred by Tenant in taking such remedial action, plus interest thereon at the rate set forth in this Lease for past due Rent. Tenant's right to seek any remedy for Landlord's default shall not be deemed waived by the failure to exercise said right nor shall any such failure estop Tenant from afterward asserting said right to seek any remedy as provided herein or as provided by law or in equity. The remedies of Tenant shall be cumulative, and include any and all remedies as provided herein or by law or in equity, and no one of them shall be construed as exclusive of any other or of any remedy provided herein or by law or in equity. Any prior waiver of any of Tenant's rights under the Lease shall not constitute a waiver of Tenant's rights to damages in event of subsequent default or breach of Landlord. In the event a court of competent jurisdiction finds that Landlord has breached the terms and conditions of this Lease, in addition to any civil remedies, Tenant shall be entitled to its reasonable attorneys' fees associated with such suit and/or claim. Landlord shall have no liability for any consequential or incidental damages of Tenant, or anyone claiming by, through or under Tenant, for any reason whatsoever.

10.4 No Indirect Damages. In no event shall either party hereto be liable under any provision of this Lease for any special, indirect, incidental, consequential, exemplary, treble or punitive damages, in contract, tort or otherwise, whether or not caused by or resulting from the sole or concurrent negligence of such party or any of its affiliates or related parties. Notwithstanding the foregoing, except as may otherwise be provided herein, this limitation of liability shall not apply to third-party claims.

10.5 Remedies Are Cumulative. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

11. PROTECTION OF LENDERS AND LEASEHOLD CONDOMINIUM OWNERS

11.1 Consent to Encumbrance of Leasehold Interest. Tenant or its approved assignee shall be responsible for funding the entire cost of, and securing all financing required, in order to complete construction of the Improvements in accordance with the Development Agreement and provide the necessary tenant upfitting desired by Tenant or its assigns, and Landlord hereby consents to the encumbrance of Tenant's leasehold estate created under this Lease; provided, however, that the fee simple ownership interest of Landlord to the Leased Premises shall be prior, superior and paramount to the lien of any mortgage or deed of trust which may now or hereafter affect the leasehold interest of Tenant in and to the Leased Premises, or any part thereof. Notwithstanding the foregoing, Landlord will provide to Tenant's Lender an appropriate non-disturbance agreement in the form more particularly attached hereto as Exhibit B-1 and incorporated herein by reference and to any purchaser of a Lot 5 Condominium Unit a non-disturbance agreement in the form attached hereto as Exhibit B-2. Tenant acknowledges and understands that under no circumstances will any party providing financing for the Improvements be permitted to encumber in any manner by lien of a deed of trust, mortgage, security agreement or other encumbrance, Landlord's fee simple title to the Leased Premises.

11.2 Definition. As used in this Lease, "Lender" shall collectively mean, each and every lender which (a) takes a security interest in, or otherwise encumbers, Tenant's leasehold interest in the Property (the "Leasehold Estate"), which security interest is evidenced by a deed of trust, or mortgage, or other security instrument (herein referred to, collectively, as the "Lender's Security Instrument") as recorded in the office of the County Recorder of Orange County, in the State of North Carolina, and (b) has notified Landlord of such recorded Lender's Security Instrument.

11.3 General. All rights acquired under any Lender's Security Instrument shall be subject and subordinate to the terms of this Lease and to all rights and interests of Landlord hereunder, and shall incorporate all relevant terms and requirements contained herein, including, without limitation, a statement that Lender disclaims any interest or lien against Landlord's fee simple interest in the Leased Premises and improvements thereon, a statement that insurance proceeds from Casualty or proceeds from condemnation or payments in lieu thereof shall be used for the repair or rebuilding of the Improvements if so required by this Lease and not to the repayment of Lender (except as expressly set forth in this Lease), and a statement that Landlord shall have no liability whatsoever in connection with the financing under the agreement, notes, and security instruments executed, delivered and/or recorded in connection with such financing. Notwithstanding the foregoing, Landlord acknowledges and agrees that Lender's Security Instrument may include an after acquired property clause that will be effective upon the Option Closing. At all times during the Lease Term, Lender shall have the right to (a) exercise its remedies pursuant to its Lender's Security Instrument and to transfer, convey, and assign Tenant's Leasehold Estate created hereby to any purchaser at any foreclosure sale, trustee's sale, or other sale held pursuant to such Lender's Security Instrument, and

to acquire and succeed to the interest of Tenant hereunder by virtue of any such sale, without the consent of Landlord. In furtherance of the foregoing, if Lender is the successful bidder at such sale held pursuant to any such Lender's Security Instrument (or a senior security instrument) then Lender shall be entitled to further assign or transfer this Lease or sublet the Property in the same manner as provided under **Article 9**, above, without the prior written consent of Landlord; and (b) to accept an assignment in lieu of foreclosure under the Lender's Security Instrument, without the consent of Landlord or otherwise acquire Tenant's Leasehold Estate, by assignment or conveyance in lieu of any such foreclosure proceedings, in which case the Lender's rights and interest under its Lender's Security Instrument shall not merge into the Leasehold Estate but shall remain separate and distinct in all respects, the Lender's Security Instruments shall remain in full force and effect; and the Lender shall be entitled to further assign or transfer this Lease or sublet the Property in the same manner as provided under **Article 9**, above, without the prior written consent of Landlord. Landlord hereby subordinates all of its present and future claims and rights, if any, to any and all Leases and Rents (as defined below) to the full payment in cash of the loan obligations. For these purposes, the term "Leases and Rents" means any and all subleases now or hereafter affecting the Property or any part thereof and all of the rents, issues, profits, revenues, awards and other benefits now or hereafter arising from the Property or any part thereof. Landlord agrees that as long as any of the Lender's Security Instruments remain outstanding, Landlord will not take any action or initiate any proceedings, judicial or otherwise, to enforce any of Landlord's rights or remedies with respect to any Leases and Rents.

11.4 Lender Protections. If any Lender sends to Landlord a true copy of its Lender's Security Instrument, together with written notice specifying the name and address of the Lender and the pertinent recording data with respect to such Lender's Security Instrument, then from and after Landlord's receipt of Lender's notice and so long as any such Lender's Security Instrument shall remain unsatisfied of record, or until written notice of satisfaction is given by Lender to Landlord, the following provisions shall apply:

11.4.1 Except as set forth with respect to a Default (beyond applicable notice and cure periods) by Tenant in the terms of this Lease, and except for Tenant's right to terminate this Lease pursuant to **Section 7** and **Section 8** hereof, there shall be no cancellation, surrender, amendment or modification of this Lease by joint action of Landlord and Tenant without the prior consent in writing of the Lender and except for a voluntary surrender by Tenant under **Section 7** and **Section 8** Landlord shall not accept Tenant's voluntary surrender of the Leasehold Estate so long as the Lender's Security Instrument is outstanding;

11.4.2 While such Lender's Security Instrument remains unsatisfied of record, Landlord shall simultaneously serve upon the Lender (in the manner required by the provisions of **Section 13.4** hereof and any notice from Lender to Landlord will likewise be sent in the manner required by the provisions of **Section 13.4** hereof) a copy of any notice of Default or other notice under this Lease served upon the Tenant. If any Default occurs pursuant to any provision of

this Lease, and before the expiration of sixty (60) days from the date of service of notice of Default upon such Lender, if such Lender notifies Landlord in writing of its desire to nullify such notice, pays to Landlord all Rent and other payments herein provided for and then in Default, complies or commences the work of complying with all of the other requirements of this Lease, if any are then in Default, and prosecutes the same to completion with reasonable diligence, then Landlord shall not be entitled to exercise any remedies set forth in this Lease for such Default and any notice of Default theretofore given shall be void and of no effect. Landlord and Tenant agree that Lender may enter upon the Property to cure any Default of Tenant hereunder at all reasonable times, and that neither Landlord nor Tenant shall in any way obstruct or limit Lender's right of entry upon the Property. Nothing contained herein shall in any manner obligate Lender to cure any Default of Tenant.

11.4.3 In no event shall Landlord exercise any default remedies because of any Default by Tenant which is not susceptible of being cured by Lender or its assignee, so long as the following covenants of this Lease are being complied with (the "Required Covenants"): (i) Rent and other payments to be made by Tenant under the Lease are paid current, (ii) Tenant is diligently pursuing construction of the Parking Garage, Public Space improvements and Building as required by the Development Agreement, (iii) the Improvements are maintained in good repair or, in the event the circumstances set forth in **Section 7** or **Section 8** hereof are applicable, the Tenant is diligently complying with the same, (iv) the Improvements are in compliance (granted a variance from or "grandfathered" with respect to compliance) with all applicable laws, codes and regulations applicable to the Leased Premises, (v) no liens, other than that of the Lender's Security Instrument, against the Property remain uncanceled, (vi) all insurance policies to be carried by Tenant are in full force and effect; and (vii) the other covenants and conditions of the Lease that are susceptible of being complied with by Lender are being complied with by Lender or its assignee. The obligation of Tenant to develop the Project, including the Parking Garage, Public Space improvements and the Building in accordance with the Development Agreement is a material obligation of Tenant and a Required Covenant; a default by Tenant under the Development Agreement is a Default under this Lease which may be cured by Lender performing Tenant's obligations under the Development Agreement; and that will be binding upon the Lender or any assignee of the Lender under any new lease for the Property entered into in accordance with the provisions of Section 11.4.5. In case any Default by Tenant under the Lease, as to which notice has been given as provided herein, remains uncured after the time within which the same may be cured under the Lease, and notice of Default is given as above provided, and Lender or its assignee takes steps required above to cure and thereby render the notice of Default void and of no effect, such Lender or its assignee shall be entitled, at its option and upon notice to Landlord within thirty (30) days after the date of such cure and upon the payment of all sums then due to the Landlord from Tenant under this Lease and any expenses, including reasonable attorneys' fees, to which Landlord shall have been subjected by reason

of such Default, to enter into a new lease for the Property in accordance with the provisions of **Section 11.4.5**.

11.4.4 The name of the Lender shall be added to the “loss payable endorsement” of any and all insurance policies required to be carried by Tenant hereunder, and the Lender shall be added to such policies as mortgagee as its interest may appear; provided that the Lender shall expressly provide that the insurance proceeds are to be applied in accordance with the provisions of this Lease.

11.4.5 In the event of the commencement of a bankruptcy proceeding concerning Tenant, Landlord agrees and acknowledges that the actual or deemed rejection of the Lease (or any new lease entered into pursuant to the terms of this Lease) under any provision of the Bankruptcy Code, or any successor law having similar effect, shall not effect a termination of the Lease, or affect or impair the Lender’s lien thereon or rights with respect thereto. If it appears necessary to the Lender, in order to give legal or practical effect to the preceding sentence, or if a court of competent jurisdiction determines that the Lease has been terminated by operation of law, Landlord agrees that, promptly upon the written request of the Lender made within thirty (30) days of such rejection of this Lease and upon the payment of all sums then due Landlord from Tenant under this Lease and any expenses, including reasonable attorney’s fees, to which Landlord shall have been subjected by reason of such Default, the Landlord will enter into a new lease of the Property to Lender, or its designee, upon the same terms and conditions as the Lease, and having a term expiring on the same date as the Lease (excluding requirements which are not applicable or which have already been fulfilled). In such event, all right, title and interest of Tenant in the Lease and in the Property shall be thereby terminated and ended, and, at Lender’s election, the parties shall execute and record a memorandum with the Register of Deeds of Orange County evidencing such new lease, provided, however, Tenant shall not be released of any of its liability arising under this Lease prior to such termination. Notwithstanding anything to the contrary in this Lease or any other document, the new lease shall be (and Landlord shall take all action necessary to cause the same to be) prior to any mortgage, deed of trust or other lien, charge or encumbrance on the fee interest of Landlord, and the new tenant shall have the same right, title, interest, and priority in and to the Property as the Tenant had under this Lease. The effectiveness of any provisions of the new lease entered into with Lender pursuant to this **Section 11.4.5** which are incapable of performance by Lender due to the laws, rules and regulations pertaining to Lender shall be suspended while the Lender is the tenant under the new lease; provided, however, that the Required Covenants shall not be suspended or modified during such period as the Lender is the tenant under the new lease. The new tenant may, subject to the prior written consent of Landlord, assign its interest under the new lease, by written assignment, pursuant to which the assignee assumes and agrees to perform all covenants of Tenant thereunder, and

Landlord shall be delivered a copy of the written assignment promptly following its execution.

11.4.6 Except as required by **Sections 11.4.3** and **11.4.5** upon Lender's assumption of this Lease, nothing herein contained shall impose any liability upon Lender for Tenant's obligations hereunder unless and until (and only for so long as) Lender becomes and is the holder of the leasehold interest hereunder (whether by foreclosure, assignment-in-lieu of foreclosure or otherwise) or otherwise assumes such liability. Any Lender which so acquires the Leasehold Estate shall be entitled to further assign or transfer this Lease or sublet the Property in the same manner as provided under **Article 9**, above, without the prior written consent of Landlord.

11.4.7 If Lender shall acquire the Leasehold Estate by foreclosure of its Lender's Security Instrument or by assignment-in-lieu of foreclosure, Lender may, with Landlord's approval (which approval shall not be unreasonably conditioned, withheld or delayed if the Required Covenants have been performed), assign this Lease or such new lease, as the case may be, and shall thereafter be released from all liability for the performance or observance of the covenants and conditions in such lease contained on the Tenant's part to be performed and observed from and after such assignment, provided the assignee from Lender shall have assumed and agreed to perform such lease.

11.5 Implementation of Lender Protection Provisions. Landlord and Tenant shall cooperate to include in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed Lender for the purpose of implementing the "lender protection" provisions contained in this Lease and allowing such Lender reasonable means to protect or preserve such Lender's lien and security interest in the Leasehold Estate on the occurrence of a Default under the terms of this Lease. Landlord and Tenant shall execute and deliver (and acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term of this Lease or Rent under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease; and further provided, however, that Landlord shall not be obligated to encumber its fee interest or reversionary interest in the Property ("subordinate the fee"), execute any document creating personal liability on the part of Landlord, or otherwise subject Landlord or Landlord's interest in the Property to liability whatsoever for such loan. Notwithstanding the foregoing, Landlord and/or its lender shall be required to execute any reasonable subordination and non-disturbance agreement requested by any Lender to ensure that Lender's interest in the Leasehold Estate shall not be disturbed by Landlord and/or any of Landlord's lenders on the Leased Premises (if any) in the event of a foreclosure action.

11.6 Merger of Estates. In the event Tenant acquires the reversionary interest of Landlord in the Property and any Lender holds a Lender's Security Instrument encumbering the Leasehold Estate, then the Leasehold Estate shall not merge with such

reversionary interest, but shall remain a separate and distinct estate until all obligations to all Lenders have been fully paid, performed and satisfied, and such security interest in the Leasehold Estate shall remain in full force and effect, unless and until such time as Tenant has executed an appropriate security interest in the Property in a form, and having a priority, acceptable to all such Lenders.

11.7 Leasehold Condominium Owner Protections. The rights of Landlord upon the occurrence of any Default by Tenant under this Lease shall be limited as to the owners of leasehold condominiums created by the Lot 5 Condominium Declaration as set forth in **Section 5.1(b)** and Section 47C-2-106 of the North Carolina Condominium Act as of the Commencement Date of this Lease (and as said Act may be modified or amended, but only to the extent that such modification or amendment by its terms has prospective application).

11.8 Multiple Lenders. If at any time multiple Lenders exist on a single Lot 5 Condominium Unit: (a) any consent by or notice to Lender refers to all Lenders; (b) except under clause “a,” the most senior Lender may exercise all rights of Lender to the exclusion of junior Lender(s); (c) to the extent that the most senior Lender declines to do so, any other Lender may exercise those rights, in order of priority; and (d) if Lenders do not agree on priorities, a written determination of priority issued by a lawyer licensed in the State of North Carolina shall govern. Notwithstanding anything to the contrary in this Lease, Lender may: (i) exercise its rights through an affiliate, assignee, designee, nominee, subsidiary, or other entity acting in its own name or in Lender’s name (and anyone acting on behalf of Lender shall automatically have the same protections, rights, and limitations of liability as Lender; (ii) refrain from curing any Default; or (iii) abandon such cure at any time.

12. PROCEEDINGS. If any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the prevailing party a reasonable sum as attorneys’ fees and costs both for trial and any appeal. The non-prevailing party in such action shall pay such attorneys’ fees and costs both for trial and any appeal. Tenant agrees to indemnify and save harmless Landlord and its partners, officers, agents, employees and affiliates from and against any and all losses, claims, demands or suits by third parties in the manner contemplated in **Section 6.1.5** (including reasonable attorneys’ fees). If any action or proceeding is brought against Landlord by reason of any such claims, Tenant upon notice from Landlord covenants at Tenant’s cost and expense to resist or defend such action or proceeding or to cause it to be resisted or defended by an insurer, or if uninsured by counsel reasonably acceptable to Landlord, appointed and paid by Tenant.

13. MISCELLANEOUS PROVISIONS

13.1 Representations. Landlord represents and warrants to Tenant that the following facts and conditions exist and are true as of the Commencement Date and, to the extent specifically so stated, will remain true throughout the Lease Term:

13.1.1 Due Authorization and Execution. Landlord has full right, title, authority, and capacity to execute and perform this Lease, and any other

agreements and documents to which Landlord is a party and referred to or required by this Lease (collectively, the “Lease-Related Documents”); the execution and delivery of the Lease-Related Documents has been duly authorized by all requisite actions of Landlord; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Landlord; and neither the execution of the Lease-Related Documents nor the consummation of the transactions contemplated thereby violates any agreement (including Landlord’s organizational documents), contract or other restriction to which Landlord is a party or is bound. Landlord’s representations and warranties contained in this paragraph shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

13.1.2 No Litigation. There is no existing or, to Landlord’s knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting the Leased Premises that would, if adversely determined, adversely affect the Leased Premises, or Tenant’s ability to develop and operate the Property for the purposes set forth herein.

13.1.3 Hazardous Materials. 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, dated August 18, 2004 prepared by Environmental Consulting Services for Stainback Public/Private Real Estate and referred to as ECS Project Number 12494, the Landlord 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 Landlord’s knowledge without independent investigation in compliance with all environmental, health and safety laws, and Landlord has received no correspondence from any regulatory agency regarding possible violations concerning Lot 5.

13.1.4 Title. Landlord 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 Tenant from developing and constructing the Project. Landlord 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 Tenant. No other person or entity other than Landlord owns or has any legal or equitable interest in the Leased Premises.

13.2 Severability. A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel

or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.

13.3 Interpretation. The captions of the Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. For purposes of this Lease, Tenant shall be deemed to have complied with a Legal Requirement if Tenant has obtained a variance from or is “grandfathered” from compliance of such Legal Requirement.

13.4 Notices. All notices require or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or sent for overnight delivery by a nationally recognized courier such as Federal Express. Notices to Tenant shall be delivered to the address specified in **Section 1.1** above. Notices to Landlord shall be delivered to the address specified in **Section 1.2** above. All notices shall be effective upon delivery or delivery refused. Either party may change its notice address upon written notice to the other party.

13.5 Waivers. Except as otherwise provided under the terms of this Lease all waivers must be in writing and signed by the waiving party. Landlord’s failure to enforce any provision of this Lease or its acceptance of Rent shall not be a waiver and shall not prevent Landlord from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement.

13.6 Recordation of Lease. Landlord shall record this Lease in the Office of the Recorder of Orange County, North Carolina contemporaneously with the Closing as contemplated under the Development Agreement. Any transfer taxes or conveyance fees payable upon recordation of the Lease will be payable by Tenant.

13.7 Binding Effect; Choice of Law. This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant’s successor unless the rights or interests of Tenant’s successor are acquired in accordance with the terms of this Lease. The laws of the state in which the Leased Premises is located shall govern this Lease.

13.8 Corporate Authority; Partnership Authority. If Tenant is a corporation or limited liability company, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation or limited liability company.

13.9 Execution of Lease. This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord’s delivery of this Lease to Tenant shall not be deemed to

be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

13.10 Survival. All representations and warranties of Landlord and Tenant shall survive the termination of this Lease.

13.11 Lease Termination. This Lease shall terminate on the Expiration Date.

13.12 Controlling Document. In the event that there is a conflict in the terms, conditions, rights, or obligations, including but not limited to Landlord's right to receive income, in any documents entered into by and between Landlord and Tenant, the terms, conditions, rights, and obligations of this Lease shall control. Notwithstanding the foregoing, the Development Agreement shall control in the event of any conflict with this Lease.

13.13 Counterparts. If this Lease is executed in any number of counterparts in the manner contemplated under **Section 13.9**, above, all such counterparts, taken together, shall constitute one and the same instrument.

13.14 Waiver of Jury Trial. To the fullest extent permitted by law, Landlord and Tenant waive any right to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Lease. This waiver is knowingly, intentionally, and voluntarily made by Landlord and Tenant, and Landlord and Tenant acknowledge that neither Landlord nor any person acting on behalf of Landlord nor Tenant nor any person acting on behalf of Landlord or Tenant has made any representations of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect.

13.15 Ownership of Improvements During Term. During the Lease Term, title to any and all Improvements, including, without limitation, buildings, parking areas, drives, walkways, landscape improvements and infrastructure improvements such as roadways, utilities, mains and lines, curbs and drainage facilities, which are constructed, installed or erected on the Leased Premises by Tenant during the Lease Term shall vest in Tenant and its permitted successors and assigns (unless any such improvements are dedicated to the local municipality or applicable utility service provider or attached and/or affixed to any building by Tenant), shall remain with Tenant and its permitted successors and assigns during the Lease Term or until the Expiration Date or earlier termination or cancellation of this Lease and shall thereupon automatically vest in Landlord as provided in **Section 13.16**, below. Notwithstanding the foregoing, title to any and all FF&E (as defined in **Section 13.16**, below) belonging to Tenant or any subtenant, shall keep and retain their character as personal property, shall not be deemed to be a part of the Leasehold Estate, and shall be and remain the property of Tenant or its subtenant, as applicable, during the Lease Term and thereafter, following the Expiration Date. Similarly, if this Lease is terminated as a result of Tenant exercising the Option, all Improvements shall be and remain the property of Tenant or its subtenant from and after the Option Closing.

13.16 Expiration or Termination of Term. Except in connection with the Option Closing, upon the Expiration Date or any early termination of this Lease by Tenant or termination by Landlord following a Tenant Default: (a) all Improvements constituting part of the Leased Premises (including any buildings) shall become Landlord's property and shall be vacated in broom-clean condition; (b) Tenant shall deliver to Landlord possession of the Property; (c) Tenant shall surrender any right, title, or interest in and to the Property; (d) Tenant shall, at Landlord's election, either (i) deliver the Property free and clear of all subleases, and all liens other than liens created as a result of Landlord's or any of its agents' acts or omissions (ii) assign to Landlord, without recourse, and give Landlord copies or originals of, any then current subleases that Landlord has elected to assume from Tenant, and all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Property, if any in which case the parties shall cooperate to achieve an orderly transition of operations from Tenant to Landlord without interruption, including delivery of such books and records (or copies thereof) as Landlord shall reasonably require; and (e) the parties shall terminate the recorded Lease. Notwithstanding anything to the contrary set for herein, Tenant may remove from the Property any FF&E (as defined herein) that Tenant or any subtenant acquired or utilized in connection with the use, operation and occupancy of the Property, but Tenant or its subtenant must do so, if at all, before or within thirty (30) days after the Expiration Date and repair all damages caused as a result of such removal. During such 30-day period: (a) Tenant may enter the Property for such purposes, without being deemed a holdover; (b) Landlord shall have no obligation to preserve or protect such FF&E; and (c) in entering the Property, Tenant shall comply with Landlord's reasonable instructions. During said thirty (30) day period Tenant shall keep in force all insurance coverages as required under the terms of this Lease, with Landlord being named as an additional insured. Tenant shall also indemnify, hold and save harmless Landlord from any and all claims, losses and damages of whatsoever nature that might occur or be claimed as a result of Tenant's actions during said thirty (30) day period. Tenant's FF&E not removed from the Property within thirty (30) days after the Expiration Date shall be deemed abandoned. For purposes of this Lease, "FF&E" means all movable furniture, fixtures, equipment, and personal property of Tenant that may be removed from the Property without material damage thereto and without adversely affecting: (a) the structural integrity of the Property; (b) any electrical, plumbing, mechanical, or other system of the Property; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Property. FF&E includes, but is not limited to, such items such as such as factory equipment, furniture, fixtures and equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, and computer systems.

13.17 Force Majeure. Notwithstanding anything in this Lease to the contrary, neither Landlord nor Tenant shall be deemed in Default with respect to the performance of any of the terms, covenants, and conditions of this Lease to be performed by it if any failure of its performance shall be due to any strike, lockout, civil commotion, war, warlike operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material or service, Act of God, or any other cause whatever beyond the reasonable control of such party, and the

time for performance by Landlord, or Tenant as applicable, shall be extended by the period of delay resulting from or due to any of said causes.

13.18 Right of First Refusal. If during the term of this Lease, Landlord receives a bona fide offer from an unaffiliated third party to purchase all or any portion of the Leased Premises (“Third Party Offer”) and Tenant is not in default hereunder beyond all applicable cure periods, to the extent permitted by applicable law, Landlord shall offer Tenant the right to purchase all or such portion of the Leased Premises by sending to Tenant a written notice of the specific terms of the Third Party Offer, including the price, payment terms, conditions of title, costs of escrow and other relevant terms. Tenant shall have fifteen (15) days after receipt of such notice to exercise its right of first refusal hereunder and to purchase all or a portion of the Leased Premises pursuant to the terms of the Third Party Offer by providing written notice of same to Landlord (“Tenant ROFR Notice”). If Tenant exercises its right of first refusal hereunder, such purchase and sale shall be on the same conditions as the Third Party Offer, and the closing shall occur within sixty (60) days of Landlord’s receipt of the Tenant ROFR Notice. If Tenant does not elect to exercise its right of first refusal hereunder or Tenant fails to provide notice within said fifteen (15) day period, Tenant’s right of first refusal under this Section 13.18 Landlord may accept such Third Party Offer and provided the conveyance of the Leased Premises is closed in accordance with the Third Party Offer, then and only then, Tenant’s right of first refusal shall be deemed null and void. The right of first refusal as set forth in this **Section 13.18** may be assigned by the Tenant to the Lot 5 Condominium Owner’s Association(s) created under the Lot 5 Condominium Declaration, or any other permitted successors and assigns of Tenant under this Lease.

13.19 Tenant Termination Right – Option to Purchase.

13.19.1 Exercise of the Option. Provided Tenant is not in default hereunder beyond all applicable cure periods, commencing on (a) the first (1st) day of the month following the fiftieth (50th) anniversary of the Commencement Date and continuing for a period of twenty four (24) consecutive calendar months thereafter; and (b) if applicable, the date Tenant receives written notice of a Condemnation of all or a portion of the Leased Premises of a magnitude such that Section 8.3 of this Lease is operative (provided said Condemnation occurs after the fifth anniversary of the Building being “Substantially Complete” as defined in the Development Agreement or before the period of time described in the immediately preceding subsection (a) and the owners of residential units in the Lot 5 Condominium elect to terminate the Lot 5 Condominium Declaration) and continuing for a period of twenty four (24) consecutive calendar months thereafter; (said periods of time set forth in the immediately preceding subsections (a) and (b) being hereinafter referred to individually as the “Option Period” or collectively as the “Option Periods,” as the case may be), upon prior written notice to Landlord (“Option Notice”), Tenant shall have the right and option to purchase (the “Option”) the Building Unit and the Private Parking Unit, together with all appurtenant easements thereto and any related air or subterranean rights (if the same shall be part of the Leased Premises at such time) (collectively, the “Option Property”) for a purchase price of Two Million and No/100 Dollars (\$2,000,000.00) to be paid in full at the closing of such purchase by wire or other immediately available funds, which closing shall take place within ninety (90) days after

Landlord's receipt of the Option Notice (the "Option Closing"). In the event Tenant fails to deliver to Landlord the Option Notice prior to the expiration of either of the Option Periods, Tenant's Option shall be deemed null and void and of no further force or effect. In the event Tenant exercises its Option during an Option Period that arises due to an event of Condemnation, Landlord shall credit against the purchase price all Condemnation proceeds Landlord has received for the Option Property or shall assign all right, title and interest Landlord has to receive and/or negotiate the proceeds due to Landlord for the Option Property pursuant to the Condemnation.

13.19.2 Closing. Upon the closing of such sale and purchase, Landlord shall deliver to the Tenant, a Special Warranty Deed conveying fee simple title to the Option Property free and clear of all monetary liens and encumbrances; provided, however, said Special Warranty Deed shall be subject to the terms of the Declaration and shall contain restrictions for the benefit of the Town as well as owners of Lot 5 Condominium Units, which such restrictions shall run with the land, incorporating the provisions of **Sections 5 and 6** hereof, including restrictions on the use of the Option Property to the construction, development and operation of the Improvements (including the construction, development and operation of the Building and the operation of the Private Parking Unit and Private Parking Spaces (if same are made a part of the Leased Premises), for retail and residential condominium purposes as more fully described in the Development Agreement. In addition to the Special Warranty Deed, Landlord shall deliver to Tenant at the Option Closing (i) an owner's affidavit in form and substance satisfactory to Tenant's title insurance company, (ii) a non-foreign affidavit, and (iii) such other reasonable documentation or information as is requested by Tenant or its title insurance company. At the Option Closing, Landlord and Tenant agree that all real property taxes related to the Option Property, shall be prorated on a calendar year basis as of date of the Option Closing. Landlord shall pay deed stamps and other conveyance fees or taxes to the extent required by applicable law, and Tenant shall pay recording costs, costs of any title search, title insurance premiums and survey and other inspection costs. Each party shall be responsible for their own attorneys' fees.

13.19.3 Assignment of Option. The right and option of Tenant to purchase the Option Property may be assigned by the Tenant in whole or in part to the Lot 5 Condominium Owner's Associations for benefit of the owners of the Lot 5 Condominium Units within the Building, or any other permitted successors and assigns of Tenant under this Lease.

13.20 Brokers. Each party represents and warrants to the other that it has dealt with no broker, finder or other person with respect to this Lease. Landlord and Tenant each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, expense or claim incurred by reason of any brokerage commission alleged to be payable because of any act, omission or statement of the indemnifying party. Such indemnity obligation shall be deemed to include the payment of reasonable attorneys' fees and court costs incurred in defending any such claim.

13.21 Nondisturbance and Estoppel Certificates.

13.21.1 Within fifteen (15) days of request, Landlord and/or its lender, if any, shall be required to execute any reasonable subordination and non-disturbance agreement requested by any Lender to ensure that Lender's interest in the leasehold interest in the Property shall not be disturbed by Landlord and/or any of Landlord's lenders, if any, on the Leased Premises in the event of a foreclosure action by Landlord's lender.

13.21.2 Within fifteen (15) days of request, Landlord and/or its lender, if any, shall be required to execute any reasonable subordination and non-disturbance agreement requested by any subtenant to ensure that subtenant's interest in the leasehold interest in the Property shall not be disturbed by Landlord and/or any of Landlord's lenders, if any, on the Leased Premises in the event of a Default by Tenant.

13.21.3 Within thirty (30) days of request, Landlord shall be required to execute any reasonable estoppel certificates requested by any lessee, Lender and/or any subtenant to confirm that there are no Tenant Defaults, that this Lease is in full force and effect, the Commencement Date, the Termination Date, the Rent, and any other matters reasonably requested.

13.22 Incorporation of Recitals. The Recitals are hereby incorporated into the terms of this Lease as if fully set forth herein.

[SIGNATURES ON NEXT PAGE]

SIGNATURE PAGE
Ground Lease

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

Landlord:

THE TOWN OF CHAPEL HILL,
a North Carolina municipal corporation

By: _____

Name: _____

Title: _____

Tenant:

RAM DEVELOPMENT COMPANY,
a Florida corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

Legal Description

[TO BE INSERTED]

EXHIBIT B-1

LENDER'S NON-DISTURBANCE, ATTORNMENT AND ESTOPPEL AGREEMENT

This Agreement (the "Agreement") is made and entered into this ____ day of _____, 200__, by and between the Town of Chapel Hill, a municipal corporation organized and existing under the laws of the State of North Carolina (the "Ground Lessor"), Ram Development Company, a Florida corporation ("Tenant"), and _____ ("Lender").

WITNESSETH:

WHEREAS, Ground Lessor as Landlord and Tenant, as Tenant have entered into a Ground Lease dated _____, 200__ (the "Ground Lease"), recorded in Book _____, Page _____ of the Orange County Register of Deeds for certain real property legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Leased Premises"); and

WHEREAS, Tenant has entered into that certain General Development Agreement dated as of February ____, 2007, with Landlord pursuant to which Tenant is undertaking to develop various improvements on the Leased Premises; and

WHEREAS, Ground Lessor has been advised that Tenant is concurrently herewith borrowing the sum of _____ (\$_____) from Lender (the "Loan") and that Tenant is encumbering Tenant's leasehold interest under the Ground Lease and the Leased Premises with a Leasehold deed of trust **[insert other security documents]** (collectively, the "Deed of Trust"); and

WHEREAS, Ground Lessor is providing this Agreement to Tenant and Lender in accordance with the provisions of the Ground Lease.

NOW, THEREFORE, for and in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Ground Lessor represents to the Tenant and the Lender that the Ground Lease is in full force and effect, and has not been amended, modified, supplemented or otherwise changed **[insert appropriate language if private parking unit has been added to the premises]**; that the term thereof commences on _____ and continues for a period of ninety-nine (99) years in accordance with the terms and provisions thereof, that the base rent for the entire term has been paid in full and that, as of the date hereof, no additional rent is unpaid under the Ground Lease. Ground Lessor further represents that Tenant is not in default with respect to any provision of, or obligation under, the Ground Lease and that Ground Lessor has no claim against Tenant for any act or failure to act concerning the Leased Premises. Tenant hereby represents that Ground Lessor is not in Default with respect to any provision of, or obligation under, the Ground Lease and that Tenant has no claim against Ground Lessor for any act or failure to act in any respect concerning the Leased Premises.

2. Ground Lessor hereby acknowledges receipt of a copy of the recorded Deed of Trust certified by Lender, or the recording officer, to be true and correct. Ground Lessor hereby agrees that Lender is entitled to the rights and benefits of a holder of a leasehold mortgage set forth in Section 11 of the Ground Lease. Ground Lessor hereby acknowledges that the making of the Loan and the encumbering of the Tenant's leasehold interest in the Leased Premises and the giving of the aforesaid Deed of Trust in favor of Lender do not constitute a Default under the Ground Lease.

3. Ground Lessor agrees that during the term of the Ground Lease, so long as the Tenant is not in Default thereunder beyond any applicable cure period, Tenant's possession of the Leased Premises shall not be terminated and Tenant's rights and privileges under the Ground Lease shall not be diminished or interfered with by the Ground Lessor.

4. In the event, by reason of foreclosure of the Deed of Trust for any reason, or deed in lieu of foreclosure, Lender or any successor or assignee of Lender, succeeds to the interest of the Tenant under the Ground Lease, then upon receipt by Ground Lessor of notice from Lender or such successor or assignee that is succeeded to the rights of the Tenant under the Ground Lease, Ground Lessor hereby agrees to recognize Lender or such successor or assignee as Ground Lessor's "tenant" under the Ground Lease, subject to Lender complying with the terms and provisions thereof, and the Ground Lease shall continue in accordance with its terms between the Ground Lessor as Landlord and Lender, as "tenant", or any successor-assignee of Lender as Tenant.

5. In the event of a default by the Tenant under the terms of the Ground Lease, the Ground Lessor shall, upon giving notice to the Tenant, simultaneously serve a copy of such notice upon the Lender. Lender agrees that in the event of a default by Tenant under the terms of the Deed of Trust, Lender shall, upon giving notice to the Tenant of such default simultaneously serve a copy of such notice upon the Ground Lessor.

6. Lender hereby acknowledges that Lender's Deed of Trust is junior in all respects to and subordinate to the Ground Lease.

7. To the extent of a conflict between the terms and provisions set forth in this Agreement and the terms and the terms and provisions sets in the Deed of Trust, the terms and provisions of this Agreement shall prevail.

8. All notices which may or are required to be sent pursuant to this Agreement shall be in writing, effective upon delivery or refusal to accept delivery, and shall be sent by certified U.S. mail, postage prepaid, return receipt requested, or by receipted overnight carrier, to the address appearing below or such other address as shall be provided in writing to the other parties:

If to Lender:

If to Ground Lessor:

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

If to Landlord:

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:

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

9. This Agreement shall inure to the benefit of and be binding upon the parties, their successors in interest, heirs and assigns and any subsequent owner of the Premises or any portion thereof.

10. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, including, but not limited to, taxable costs, and reasonable attorneys' fees.

11. Each party hereto hereby represents and warrants that it has obtained all necessary consents to the execution, delivery, performance and recordation of this Agreement.

12. Ground Lessor agrees that nothing contained herein shall be construed as an assumption by Lender of any obligations of Tenant under the Ground Lease.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

[EXECUTION]

EXHIBIT B-2

Prepared by and Return To:
Glen B. Hardyman, Esq.
Kennedy Covington Lobdell & Hickman, L.L.P.
The Hearst Tower
214 N. Tryon Street, 47th Floor
Charlotte, NC 28202

GROUND LEASE NON-DISTURBANCE AGREEMENT

This Ground Lease Non-Disturbance Agreement (this "Agreement") is made and entered into effective as of _____, 2007, by and between _____ (the "Tenant"), **RAM DEVELOPMENT COMPANY**, a Florida corporation (the "Landlord") and **THE TOWN OF CHAPEL HILL**, a North Carolina municipal corporation (the "Ground Lessor").

WITNESSETH:

WHEREAS, Ground Lessor, as landlord, and Landlord, as tenant, have entered into a Ground Lease dated _____, 200__ (the "Ground Lease") recorded in Book _____, Page _____ of the Orange County Register of Deeds, for certain real property legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises"); and

WHEREAS, Landlord has caused to be filed in the Orange County Register of Deeds a Declaration of Leasehold Condominium in accordance with the provisions of the North Carolina Condominium Act (the "Act") creating a leasehold condominium with respect to the Improvements constructed on the Premises; and

WHEREAS, Landlord and Tenant have entered into a Leasehold Condominium Lease ("Lease") dated _____, 200__, as evidenced by that certain Memorandum of Lease recorded in Book _____, Page _____ of the Orange County Register of Deeds, covering the leasehold condominium unit designated in the Declaration as unit _____ (the "Condominium Unit"); and

WHEREAS, Tenant has pledged, or in the future may pledge, its interest in the Lease to a lender (the "Lender") to finance Tenant's payment to Landlord of base rent due under the Lease, as permitted under the Lease and the Ground Lease; and

WHEREAS, the parties desire to assure Tenant's possession and control of the Condominium Unit under the Lease, and the Premises under the Ground Lease, and to the extent applicable, Lender's interest in the Condominium Unit under the Lease and the Premises under the Ground Lease as pledged to it by Tenant, all upon the terms and conditions contained in the Lease; and

NOW, THEREFORE, for and in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Ground Lessor represents to the Tenant and the Lender that the Ground Lease is in full force and effect, and has not been amended, modified, supplemented or otherwise changed **[insert appropriate language if private parking unit has been added to the premises]**; that the term thereof commenced on _____ and continues for a period of ninety-nine (99) years in accordance with the terms and provisions thereof, that the base rent for the entire term has been paid in full and that, as of the date hereof, no additional rent is unpaid under the Ground Lease. Ground Lessor further represents that Landlord is not in default with respect to any provision of, or obligation under, the Ground Lease and that Ground Lessor has no claim against Landlord for any act or failure to act concerning the Leased Premises. Landlord hereby represents that Ground Lessor is not in Default with respect to any provision of, or obligation under, the Ground Lease and that Landlord has no claim against Ground Lessor for any act or failure to act in any respect concerning the Leased Premises. Ground Lessor hereby confirms that Landlord has Substantially Completed the construction of the Project as set forth in the Development Agreement and required under the terms of the Ground Lease. In the event that the Ground Lease is terminated in accordance with Section 7 or Section 8 of the Ground Lease, Ground Lessor shall have no liability or obligation hereunder.

2. In the event the Ground Lease is terminated for any reason other than the reason set forth in Section 7 or Section 8 of the Ground Lease, Ground Lessor hereby agrees that the rights of Tenant under the Lease (as the same may be pledged to Lender) shall remain in full force and effect and its possession of the Condominium Unit thereunder shall remain undisturbed during the term of the Lease, subject to the terms of the Lease. In such event, and provided that such termination is not a termination in accordance with Section 7 or Section 8 of the Ground Lease, Ground Lessor agrees that it, and its successors and assigns, shall perform and be bound by all of the obligations imposed on the Landlord by the Lease for the balance of the term of the Lease and any extensions or renewals thereof.

3. All notices which may or are required to be sent pursuant to this Agreement shall be in writing, effective upon delivery or refusal to accept delivery, and shall be sent by certified U.S. mail, postage prepaid, return receipt requested, or by receipted overnight carrier, to the address appearing below or such other address as shall be provided in writing to the other parties:

If to Tenant:

If to Ground Lessor: 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

If to Landlord: 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

4. This Agreement shall inure to the benefit of and be binding upon the parties, their successors in interest, heirs and assigns and any subsequent owner of the Premises or any portion thereof.

5. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, including, but not limited to, taxable costs, and reasonable attorneys' fees.

6. Each party hereto hereby represents and warrants that it has obtained all necessary consents to the execution, delivery, performance and recordation of this Agreement.

7. Ground Lessor agrees that nothing contained herein shall be construed as an assumption by Tenant (or its Lender) of any obligations of Landlord under the Ground Lease.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

GROUND LESSOR:

THE TOWN OF CHAPEL HILL,
a North Carolina municipal corporation

By: _____

Name: _____

Title: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: _____.

Date: _____

Official Signature of Notary

(Official Seal)

Notary's printed or typed name, Notary Public

My commission expires: _____

[Official Seal]

LANDLORD:

RAM DEVELOPMENT COMPANY,
a Florida corporation

By: _____

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: _____.

Date: _____

Official Signature of Notary

(Official Seal)

Notary's printed or typed name, Notary Public

My commission expires: _____

[Official Seal]

TENANT:

By:_____

Name:_____

Its:_____

STATE OF _____

COUNTY OF _____

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: _____.

Date: _____

Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires:_____

[Official Seal]

EXHIBIT A

Attach legal description of ground leased site

EXHIBIT C

Prepared by and Return To:
Glen B. Hardyman, Esq.
Kennedy Covington Lobdell & Hickman, L.L.P.
The Hearst Tower
214 N. Tryon Street, 47th Floor
Charlotte, NC 28202

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

**FIRST AMENDMENT TO
GROUND LEASE**

THIS FIRST AMENDMENT TO GROUND LEASE (this "First Amendment") is made and entered into as of the __ day of _____, 200_, between **THE TOWN OF CHAPEL HILL**, a North Carolina municipal corporation ("Landlord"), and **RAM DEVELOPMENT COMPANY**, a Florida corporation (together with its permitted successors and assigns, "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Ground Lease dated _____, 200_ (the "Lease") for the lease by Tenant of that certain land condominium unit defined as the Building Unit in the Development Agreement (as hereinafter defined) and established pursuant to that certain Declaration of Condominium for the Lot 5 Land Condominium recorded in Book __, Page __ of the Orange County Register of Deeds Office (the "Declaration"), which Building Unit is located in The Town of Chapel Hill, Orange County, North Carolina, as more particularly described in the Lease (the "Leased Premises");

WHEREAS, Landlord has entered into that certain General Development Agreement with Tenant dated February __, 2007, governing the development of the Leased Premises and adjoining land owned by Landlord (the "Development Agreement").

WHEREAS, Landlord and Tenant desire to enter into this First Amendment for the purpose of amending the Lease to modify the definition of Leased Premises and certain other terms and provisions therein; and

WHEREAS, the defined terms used in this First Amendment, as indicated by the initial capitalization thereof, shall have the same meaning ascribed to such terms in the Lease, unless otherwise specifically defined herein;

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree to amend the Lease as follows:

1. Leased Premises. Pursuant to Section 5.9 of the Lease, the term “Leased Premises” as defined in Recital A of the Lease is hereby amended to include the Private Parking Unit, together with all appurtenant easements thereto, as such term is defined in the Declaration, as the same has been amended to subdivide the Parking Garage Unit, and as more fully described in Exhibit A hereto.

2. Improvements. The term “Improvements” as defined in Section 1.2.14 of the Lease is hereby amended to include the Private Parking Spaces and Excess Spaces together with any other related structures and improvements such as a controlled access gate constructed within the Private Parking Unit, as such terms are defined in the Development Agreement.

3. Ratification. The Lease, as amended by this First Amendment, shall remain in full force and effect and enforceable in accordance with its terms. As amended by this First Amendment, the terms and provisions of the Lease are hereby ratified and affirmed in all respects.

3. Due Authority. Landlord and Tenant each hereby represents and warrants to the other that it has the full right, power and authority to enter into and carry out the terms of this First Amendment.

5. Multiple Counterparts. This First Amendment 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. Furthermore, the parties agree that (i) this First Amendment may be transmitted between them by facsimile machine, (ii) that this First Amendment may be executed by facsimile signatures, and (iii) that facsimile signatures shall have the effect of original signatures relative to this First Amendment.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment in multiple original counterparts as of the date hereof.

Landlord:

THE TOWN OF CHAPEL HILL,
a North Carolina municipal corporation

By: _____

Name: _____

Title: _____

Tenant:

RAM DEVELOPMENT COMPANY,
a Florida corporation

By: _____

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: _____.

Date: _____

Official Signature of Notary

(*Official Seal*)

Notary's printed or typed name, Notary Public

My commission expires: _____

[Official Seal]

STATE OF
COUNTY OF

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: _____.

Date: _____

Official Signature of Notary

(*Official Seal*)

Notary's printed or typed name, Notary Public

My commission expires: _____

[Official Seal]

EXHIBIT A (to Exhibit C – First Amendment to Ground Lease)

Attach legal description of Private Parking Unit

EXHIBIT E

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT, dated as of February ___, 2007 is made by KEITH L. "CASEY" CUMMINGS, a resident of Palm Gardens, Florida (the "Guarantor") in favor of the TOWN OF CHAPEL HILL, a North Carolina municipal corporation ("Town").

STATEMENT OF PURPOSE

Town has entered into that certain General Development Agreement dated of even date herewith by and between the Town and RAM Development Company (the "Development Agreement") pursuant to which RAM Development Company (the "Developer") has agreed to construct the Project (as defined therein) on and subject to the terms, provisions, and conditions thereof, all on real property, or interests therein, owned by the Town and leased to the Developer. Included as a part of the Project is the construction and development of various public facilities to be owned by the Town. Guarantor is a stockholder of Developer and is thereby a beneficiary, directly or indirectly, of Developer's rights pursuant to the Development Agreement. As a condition of entering into the Development Agreement, Town has required this Guaranty from Guarantor with respect to the obligations created under the Development Agreement as more fully provided herein.

NOW, THEREFORE, in consideration of the Premises and the mutual agreements set forth herein, and in order to induce the Town to enter into the Development Agreement, Guarantor hereby agrees with the Town as follows:

SECTION 1. Definitions. Capitalized terms not otherwise defined in this Guaranty, including the preambles and recitals hereof, shall have the meanings assigned to them in the Development Agreement. In the event of a conflict between capitalized terms defined herein and in the Development Agreement, the Development Agreement shall control.

SECTION 2. Representations and Warranties of Guarantor. In order to induce the Town to enter into the Development Agreement, the Guarantor hereby represents and warrants to the Town that:

(a) the Guarantor is the legal and beneficial owner of fifty percent (50%) of the total outstanding ownership interest in the Developer and the parent entity of the Developer.

(b) The Guarantor has the legal capacity to execute, deliver and perform this Guaranty. This Guaranty has been duly executed and delivered by the Guarantor to the Town and this Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal debtor relief laws from time to time in effect which affect the enforcement of creditor's rights in general and the availability of equitable remedies. The execution, delivery and

performance by the Guarantor of this Guaranty, will not, by the passage of time, the giving of notice, or otherwise, violate any material provision of any applicable law or any material contractual obligation binding on the Guarantor and will not result in the creation or imposition of any lien upon, or with respect to, any property or revenues of the Guarantor.

SECTION 3. Unconditional Recourse Guaranty.

The Guarantor hereby unconditionally guarantees to the Town, for the benefit of the Town and its respective permitted successors, transferees and assigns, the obligation of the Developer to develop, construct and achieve Substantial Completion of the Project in accordance with the Development Agreement (such obligations set forth in this Section 3 as so guaranteed being referred to herein as the “Guaranteed Obligations”) without regard to whether or not such Guaranteed Obligations are enforceable or unenforceable as against the Developer, whether or not discharged, stayed or otherwise affected by any applicable insolvency law or proceeding thereunder.

SECTION 4. Nature of Guaranty. The Guarantor agrees that this Guaranty is a continuing, unconditional guaranty of completion, and that his obligations under this Guaranty shall be primary, absolute and unconditional, irrespective of, and unaffected by:

- (a) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, the Development Agreement or any other agreement, document or instrument to which Developer is or may become a party;
- (b) the absence of any action to enforce this Guaranty or the Development Agreement or the waiver or consent by the Town with respect to any of the provisions of this Guaranty or the Development Agreement;
- (c) the existence, value or condition of any security (including bonds) for or other guaranty of the Guaranteed Obligations or any action, or the absence of any action, by the Town in respect of such security or guaranty (including, without limitation, the release of any such security or guaranty); or
- (d) any other action or circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor;

it being agreed by the Guarantor that its obligations under this Guaranty shall not be discharged until the final performance, in full, of the Guaranteed Obligations. To the extent permitted by law, the Guarantor expressly waives all rights it may now or in the future have under any statute (including without limitation N.C.G.S. Section 26-7, et seq. or similar law), or at law or in equity, or otherwise, to compel Town to proceed in respect of the Guaranteed Obligations against Developer or any other party or against any security for, or bond or other guaranty of the payment and performance of the Guaranteed Obligations before proceeding against, or as a condition to proceeding against, Guarantor. To the extent permitted by law, the Guarantor further expressly waives and agrees not to assert or take advantage of any defense based upon the

failure of Town to commence an action in respect of the Guaranteed Obligations against Developer, any other guarantor or any other party or any security or bond for the payment and performance of the Guaranteed Obligations. Guarantor agrees that any notice or directive given at any time to Town which is inconsistent with the waivers in the preceding two sentences shall be null and void and may be ignored by Town, and, in addition, may not be pleaded or introduced as evidence in any litigation relating to this Guaranty for the reason that such pleading or introduction would be at variance with the written terms of this Guaranty, unless Town has specifically agreed otherwise in writing.

SECTION 5. Demand by Town. In addition to the terms set forth in Section 4, and in no manner imposing any limitation on such terms, if all or any portion of the then outstanding Guaranteed Obligations are declared to be immediately due, then Guarantor shall, upon demand in writing therefor by Town to Guarantor, perform all or such portion of the outstanding Guaranteed Obligations then declared due.

SECTION 6. Waivers. In addition to the waivers contained in Section 4, the Guarantor, to the extent permitted by law, waives and agrees that he shall not at any time insist upon, plead or in any manner whatever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, marshalling of assets or redemption laws, or exemption, whether now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance by Guarantor of his obligations under, or the enforcement by Town of, this Guaranty. The Guarantor further hereby waives, to the extent permitted by applicable laws, diligence, presentment, demand, protest and notice (except as specifically required herein) of whatever kind or nature with respect to any of the Guaranteed Obligations and waives, to the extent permitted by applicable laws, the benefit of all provisions of law which are or might be in conflict with the terms of this Guaranty. The Guarantor represents, warrants and agrees that his obligations under this Guaranty are not and shall not be subject to any counterclaims, offsets or defenses of any kind against Town or Developer whether now existing or which may arise in the future.

SECTION 7. Benefits of Guaranty. The provisions of this Guaranty are for the benefit of Town and its permitted successors, transferees and assigns, and nothing herein contained shall impair, as between Developer and the Town, the obligations of Developer under the Development Agreement.

SECTION 8. Modification of Development Agreement etc. If the Town shall at any time or from time to time, with or without the consent of, or notice to, Guarantor:

- (a) change or extend the manner, place, time or terms of performance or payment of, or renew or alter all or any portion of, the Guaranteed Obligations;
- (b) take any action under or in respect of the Development Agreement in the exercise of any remedy, power or privilege contained therein or available to it at law, in equity or otherwise, or waive or refrain from exercising any such remedies, powers or privileges;

(c) amend or modify, in any manner whatsoever, the Development Agreement to the extent permitted therein;

(d) extend or waive the time for performance by Guarantor, Developer or any other Person of, or compliance with, any term, covenant or agreement on its part to be performed or observed under the Development Agreement, or waive such performance or compliance or consent to a failure of, or departure from, such performance or compliance;

(e) take and hold security or collateral (including payment and performance bonds) for the payment of the Guaranteed Obligations;

(f) release anyone who may be liable in any manner for the payment or performance of any Guaranteed Obligations imposed on the Guarantor, any other guarantor to Town; or

(g) apply any sums by whomever paid or however realized to the Guaranteed Obligations owing by Guarantor, any other guarantor or Developer to Town in such manner as Town shall determine in its reasonable discretion;

then Town shall incur no liability to Guarantor as a result thereof, and no such action shall impair or release the obligations of Guarantor under this Guaranty.

SECTION 9. Reinstatement. Guarantor agrees that, if any payment made by Developer or any other Person applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid or the proceeds of any collateral are required to be refunded by Town to Developer, its estate, trustee, receiver or any other party, including, without limitation, the Guarantor, under any applicable law or equitable cause, then, to the extent of such payment or repayment, the Guarantor's liability hereunder (and any lien securing such liability) shall be and remain in full force and effect, as fully as if such payment had never been made, and, if prior thereto, this Guaranty shall have been canceled or surrendered (and if any lien or collateral securing such Guarantor's liability hereunder shall have been released or terminated by virtue of such cancellation or surrender), this Guaranty (and such lien) shall be reinstated in full force and effect, and such prior cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of Guarantor in respect of the amount of such payment (or any lien securing such obligation).

SECTION 10. Remedies. Upon the occurrence and during the continuance of any Event of Default under the Development Agreement, Town may enforce against Guarantor its obligations and liabilities hereunder and exercise such other rights and remedies as may be available to Town hereunder, under the Development Agreement or otherwise.

SECTION 11. No Subrogation. Notwithstanding any payment or payments by Guarantor hereunder, or any set-off or application of funds of Guarantor by Town, or the receipt of any amounts by Town with respect to any of the Guaranteed Obligations, Guarantor shall not be

entitled to be subrogated to any of the rights of Town against Developer or against any collateral security held by Town for the payment or performance of the Guaranteed Obligations nor shall Guarantor seek any reimbursement from Developer in respect of any performance made by Guarantor in connection with the Guaranteed Obligations, until the performance owing to Town on account of the Guaranteed Obligations are completed. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations shall not have been completed, such amount shall be held by Guarantor in trust for Town, segregated from other funds of Guarantor, and shall, forthwith upon receipt by Guarantor, be turned over to Town in the exact form received by Guarantor (duly endorsed by Guarantor to Town, if required) to be applied against the Guaranteed Obligations.

SECTION 12. Expenses. Guarantor agrees to fully indemnify and save Town harmless from any and all costs and expenses (including reasonable attorneys' fees, legal expenses and court costs) incurred by Town as a result of the failure of the Developer or Guarantor to complete the Guaranteed Obligations in accordance with the terms of the Development Agreement and this Guaranty ("Expenses") and to pay said Expenses upon demand by the Town, which Expenses shall be additional Guaranteed Obligations hereunder.

SECTION 13. Notices. All notices and communications hereunder shall be given to the addresses and otherwise made in accordance with the Development Agreement.

SECTION 14. Successors and Assigns. This Agreement is for the benefit of Town and its permitted successors, transferees and assigns, and in the event of an assignment of all or any of the Guaranteed Obligations, the rights hereunder may be transferred therewith. This Agreement shall be binding on Guarantor and his heirs, personal representatives, successors and assigns; provided that Guarantor may not assign or transfer any of his rights or obligations hereunder without the prior written consent of Town. Notwithstanding the foregoing, the Guarantor shall be permitted to substitute an affiliated entity as Guarantor for the Guaranteed Obligation provided that the Town Manager and the Chief Financial Officer of the Town shall determine that said substituted entity (i) has a minimum audited net worth of Fifty Million and No/100 Dollars (\$50,000,000), (ii) such entity is controlled by the Guarantor (and proper assurances as to such ongoing control shall be provided by such entity), and (iii) such entity (for this purpose includes its partners, members, principal stockholders and any other constituent entities (A) has not been designated as a "specifically designated national or blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website <http://www.treas.gov/efac/t11_sdn.pdf> or at any replacement website or other replacement official publication of such list; and (B) is currently in compliance with and will at all times during the term of this Agreement (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Assets Control of the Department of the Treasury and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

SECTION 15. Amendments, Waivers and Consents. No term, covenant, agreement or condition of this Agreement may be amended or waived, nor may any consent be given, except in the manner set forth in the Development Agreement.

SECTION 16. Powers Coupled with an Interest. All authorizations and agencies herein contained with respect to the Collateral are irrevocable and powers coupled with an interest.

SECTION 17. Governing Law. **THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REFERENCE TO THE CONFLICTS OR CHOICE OF LAW PRINCIPLES THEREOF.**

SECTION 18. Consent To Jurisdiction. GUARANTOR HEREBY IRREVOCABLY CONSENT TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN ORANGE COUNTY, NORTH CAROLINA, IN ANY ACTION, CLAIM OR OTHER PROCEEDING ARISING OUT OF OR ANY DISPUTE IN CONNECTION WITH THIS GUARANTY, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS. GUARANTOR HEREBY IRREVOCABLY CONSENT TO THE SERVICE OF A SUMMONS AND COMPLAINT AND OTHER PROCESS IN ANY ACTION, CLAIM OR PROCEEDING BROUGHT BY TOWN IN CONNECTION WITH THIS GUARANTY, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS, ON BEHALF OF ITSELF OR ITS PROPERTY. NOTHING IN THIS SECTION 18 SHALL AFFECT THE RIGHT OF TOWN TO SERVE LEGAL PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW OR AFFECT THE RIGHT OF TOWN TO BRING ANY ACTION OR PROCEEDING AGAINST GUARANTOR IN THE COURTS OF ANY OTHER JURISDICTIONS.

SECTION 19. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, TOWN AND GUARANTOR, BY THEIR ACCEPTANCE OF THIS AGREEMENT OR THE BENEFITS HEREOF, HEREBY IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY ACTION, CLAIM OR OTHER PROCEEDING ARISING OUT OF OR ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

SECTION 20. Severability. If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of Town in order to carry out the intentions of the parties hereto as nearly as may be possible; and (b) the invalidity or unenforceability of any provisions hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

SECTION 21. Headings. The various headings of this Guaranty are inserted for convenience only and shall not affect the meaning or interpretation of this Guaranty or any provisions hereof.

SECTION 22. Counterparts. This Guaranty may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Guarantor has executed and delivered this Guaranty under seal as of the date first above written.

KEITH L. ("CASEY") CUMMINGS

Address:

Phone: _____

Email: _____

Fax: _____

STATE OF _____

COUNTY OF _____

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

Date: _____

Notary Public

Name of Notary Printed: _____

My commission expires: _____

(Notary Seal)

Exhibit E
Page 7

EXHIBIT F
Ownership Interests in the Developer

Keith L. “Casey” Cummings - 50%
Peter D. Cummings - 50%

EXHIBIT G
Designation of Project Coordinators

Developer Project Coordinator

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

Town Project Coordinator

Roger L. Stancil
Town Manager
405 Martin Luther King Jr., Blvd.
Chapel Hill, NC 27514
Fax: (919) 968-2744

EXHIBIT H
Residential Unit Use Restrictions

Proposed sections of the Lot 5 Condominium Declaration

ARTICLE I
Residential Use Restrictions Applicable to Condominium Units

Each Condominium Unit is hereby restricted to single-family residential use. No Owner of any Condominium Unit shall permit the use of such Unit for transient, hotel or commercial purposes. In no event shall any Condominium Unit be occupied as a permanent residence by more than four persons.

No Condominium Unit shall be used except for single-family residential purposes, and such use and occupancy shall be limited to the following persons:

- A. The Owner, if the Condominium Unit is owned by one or more individuals, and;
- B. The Owner's spouse or domestic partner and members of the Owner's immediate family or members of the immediate family of the Owner's spouse or domestic partner. For purposes of this Declaration, "immediate family" shall mean lineal ancestors and descendants (including adopted children) and brothers or sisters of the Owner or the Owner's spouse or domestic partner;
- C. Individuals who are shareholders, members, officers, directors, partners, limited partners or trust beneficiaries of an entity (e.g., a corporation, partnership, limited partnership, limited liability company, unincorporated association, trust or estate) which holds legal title to the Unit being occupied;
- D. A "single tenant" (as hereinafter defined) of an Owner holding a leasehold estate of at least ninety (90) days under a written lease agreement, which lease shall incorporate by reference this Declaration and any rules and regulations promulgated from time to time by the Condominium Association; provided, however, no Owner may enter into more than one (1) lease agreement (whether for ninety (90) days or longer) in any calendar year. For purposes of this subsection D, the term "single tenant" shall include: (i) two (ii) or more individuals, related by blood, marriage or adoption, or that are domestic partners; and (ii) one (1) person who is a friend or associate of the single tenant. Prior to taking occupancy, the Owner shall furnish to the Executive Board of the Association a copy of the lease agreement meeting the requirements set forth herein;
- E. Such other occupancies as may be required by law and approved from time to time by the Executive Board and the Ground Lessor (the Town of Chapel Hill) upon prior written application therefore by the Owner. Such application shall set forth the type, nature and duration of the proposed occupancy arrangement, the name and relationship of the proposed occupant and such other pertinent information as the Executive Board and the Ground Lessor may require; and

F. Temporary use of a Unit or Units by Declarant or its designees as a sales office and/or model unit.

Enforcement of the use and occupancy restrictions set forth in this Article I shall be by proceedings at law or in equity against any person or persons and or entities violating or attempting to violate any of these requirements, either to restrain violation or to recover damages. Any Condominium Unit Owner, the Association, the Declarant and the Ground Lessor (the Town of Chapel Hill) shall be entitled to bring enforcement proceedings under this Article I. Failure by any Owner, the Association, the Declarant or the Ground Lessor to enforce any covenant or restriction contained in this Article I shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE II

The Condominium To Be Used For Lawful Purposes; Restriction Against Nuisances

The Condominium Declaration shall also include a section containing essentially the following language: No immoral, improper, offensive or unlawful use shall be made of any Condominium Unit or of the Common Elements, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Condominium Unit shall permit or suffer anything to be done or kept in such Owner's Condominium Unit or on the Common Elements which will increase the rate of insurance on the Condominium or which will obstruct or interfere with the rights of other occupants of the Condominium or annoy them by unreasonable noises, nor shall any such Owner undertake any use or practice which shall create and constitute a nuisance to any other Owner of a Condominium Unit, or which shall interfere with the peaceful possession and proper use of any other Condominium Unit or the Common Elements.

Proposed Restriction to be included in each Condominium Unit Deed from the Developer (Declarant) to the first purchaser thereof:

In the event the Grantee is exempt from the requirement to pay ad valorem property taxes, the Grantee shall make payments to the Town of Chapel Hill on an annual basis which are equal to the amount of ad valorem real property taxes that would be payable if the Grantee were not exempt from property taxes. In the event the property hereinabove described is conveyed to any entity exempt from ad valorem real property taxes, a covenant will be placed in the deed of conveyance requiring the tax exempt purchaser to make payments to the Town of Chapel Hill on an annual basis which are equal to the amount of ad valorem real property taxes that would be payable if the entity were not exempt from ad valorem real property taxes. This covenant may be enforced in equity through injunction, specific performance or otherwise, and at law, with the damaged party receiving its damages plus attorney's fees. By acceptance and recording of this deed, the Grantee hereby covenants and agrees that it and its successors and assigns and the property hereinabove described are and shall be encumbered by the covenant described above.

EXHIBIT I
Architect's Certification Form

DRAFT AIA® Document G704™ - 2000

Certificate of Substantial Completion

PROJECT:
(Name and address):

PROJECT NUMBER: /
CONTRACT FOR: General Construction
CONTRACT DATE:

TO OWNER:
(Name and address):

TO CONTRACTOR:
(Name and address):

OWNER: ☐
ARCHITECT: ☐
CONTRACTOR: ☐
FIELD: ☐
OTHER: ☐

PROJECT OR PORTION OF THE PROJECT DESIGNATED FOR PARTIAL OCCUPANCY OR USE SHALL INCLUDE:

The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated above is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

Warranty

Date of Commencement

ARCHITECT

BY

DATE OF ISSUANCE

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

Cost estimate of Work that is incomplete or defective: \$ 0.00

The Contractor will complete or correct the Work on the list of items attached hereto within Zero (0) days from the above date of Substantial Completion.

CONTRACTOR

BY

DATE

The Owner accepts the Work or designated portion as substantially complete and will assume full possession at _____ (time) on _____ (date).

OWNER

BY

DATE

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

(Note: Owner's and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage.)

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DRAFT AIA® Document G702™ - 1992

Application and Certificate for Payment

TO OWNER: PROJECT: FROM CONTRACTOR: VIA ARCHITECT:

APPLICATION NO: 001 PERIOD TO: CONTRACT FOR: General Construction CONTRACT DATE: PROJECT NOS: / /

Distribution to: OWNER: ☐ ARCHITECT: ☐ CONTRACTOR: ☐ FIELD: ☐ OTHER: ☐

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM..... \$ 0.00
2. Net change by Change Orders \$ 0.00
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 0.00
5. RETAINAGE:
 - a. 0 % of Completed Work (Column D + E on G703) \$ 0.00
 - b. 0 % of Stored Material (Column F on G703) \$ 0.00Total Retainage (Lines 5a + 5b or Total in Column I of G703)..... \$ 0.00

6. TOTAL EARNED LESS RETAINAGE \$ 0.00 (Line 4 Less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 0.00 (Line 6 from prior Certificate)
8. CURRENT PAYMENT DUE \$ 0.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ 0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 0.00	\$ 0.00
Total approved this Month	\$ 0.00	\$ 0.00
TOTALS	\$ 0.00	\$ 0.00
NET CHANGES by Change Order	\$ 0.00	\$ 0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: Date:

State of:

County of:

Subscribed and sworn to before me this day of

Notary Public:

My Commission expires:

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 0.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

EXHIBIT J
Description of “Shell Finish”

Storefront: Straight in line aluminum frame with tempered glass. Doors to match storefront frame, with surface mounted closers and accessible thresholds provided.

Ceiling: Cast-in-place concrete unpainted.

Floor: Cast-in-place concrete

Rear Door: Same as Storefront Condition where rear doors are provided and open to pedestrian spaces. Hollow metal doors where open to interior corridors.

Plumbing: 3/4" water supply stubbed to typical retail future tenant spaces. 1 1/2" water supply stubbed in predetermined restaurant spaces.

Electric: One (1) 2" diameter conduit to typical tenant bay, one (1) 3" diameter conduit to predetermined restaurant bays.

HVAC: Accommodations made to provide openings and chases for future tenant HVAC systems.

Grease Trap: Communal grease trap sized by code to service potential restaurant spaces with stubs into the predetermined restaurant spaces.

Exhaust Chase: Access to exhaust chases included in the base building design will be incorporated into each of the predetermined restaurant spaces.

Fire Sprinklers: Sprinkler trunk lines sized to carry code required load for restaurant/retail spaces and installed with minimum number of heads for current shell condition.

EXHIBIT K

Expedited Dispute Resolution

Any dispute that occurs between the Developer and the Town prior to Substantial Completion of the Project that relates to those aspects of the construction of the same that involve the preparation, review and approval of the Architectural Drawings including the Schematic Plans, Design Development Plans, Construction Plans and Specifications, Town Project Budget, Schedule, Substantial Completion of the Project or any other similar design and construction matters described in this Agreement (a “Construction Dispute”) shall be submitted to the following expedited dispute arbitration process:

(a) Not later than thirty (30) days after the execution of this Agreement, the Developer and the Town shall agree upon a single Person to serve as the initial arbitrator (the “Construction Arbitrator”) of any Construction Dispute, as well as the individual who initially shall serve as the secondary arbitrator (the “Secondary Arbitrator”). If the Parties cannot agree on the selection of any such individuals within thirty (30) day period, the Parties shall jointly request the AAA (or such other organization as the Parties may agree upon) to submit to the parties a list of seven (7) potential Arbitrators, each of whom shall have significant experience in the design or construction of projects having an aggregate cost of at least \$25 million (not more than three (3) of whom shall be practicing attorneys, and none of whom shall currently be or at any time have been an employee of, or engaged or otherwise contracted by any party hereto or their respective Affiliates). If the Parties cannot, within seven (7) days from the receipt of such list, agree to the identity of the successor Arbitrator from among the names on such list, they shall meet and alternate striking one (1) name at a time from the list until one (1) name remains on the list. The remaining name shall be the Construction Arbitrator and the second to last shall be the Secondary Arbitrator.

(b) If the Town and the Developer are unable to resolve a Construction Dispute, either the Town or the Developer may invoke the provisions of this Exhibit K by notice (the “Initial Notice”) to the Construction Arbitrator and the other Party. The Initial Notice may be by facsimile, hand delivery, telephone or other means providing actual notice and shall identify the subject matter of the Construction Dispute.

(c) Authorized representatives of the Parties and the Construction Arbitrator shall convene in person within forty-eight (48) hours of the Initial Notice at such time and place in Chapel Hill, North Carolina as established by the Construction Arbitrator. At or before such time, each Party shall present such information to the Construction Arbitrator (with copies to the other Party) as deemed necessary or appropriate to substantiate such Party’s position. The Construction Arbitrator shall be entitled to request additional information in order to render its award with respect to the Construction Dispute, but in no event shall the providing of or failure to provide such information delay the rendering of the Construction Arbitrator’s award without the consent of both Parties. Absent agreement by the Parties to extend the time for a decision, the Construction Arbitrator shall render its decision with respect to the Construction Dispute within forty-eight (48) hours after the Parties and the Construction Arbitrator first convened. Any award rendered in any Arbitration pursuant to this Exhibit K shall be final and binding upon

the parties and non-appealable, and a judgment of any court having jurisdiction may be entered on any such award.

(d) If the Construction Arbitrator is unavailable or unable to serve with respect to any given Construction Dispute, then the Secondary Arbitrator shall serve as the Construction Arbitrator. The Construction Arbitrator shall serve as such until he or she resigns or is replaced by written agreement of the Parties. Absent other agreement by the Parties, in the event of the resignation of the Construction Arbitrator, the Secondary Arbitrator shall be deemed the Construction Arbitrator, and the Parties shall agree as soon as possible thereafter on the identity of a person to assume the role of Secondary Arbitrator. Costs of any Arbitrator, if any, shall be borne equally by the Parties.

(e) The provisions of this Exhibit K shall not be applicable to any disputes that may arise between the Developer and the Municipality.