

KENNON CRAVER

kennon, craver, belo, craig & mckee, pllc

ATTORNEYS AT LAW

16

ATTACHMENT 2

*William A Anderson, III
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Gwendolyn C Brooks
J Alan Campbell
Joel M Craig
G Rhodes Craver
James R Easthom
William T Hutchins, Jr
A William Kennon
Erin M Locklear
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E-Mail: wanderson@kennoncraver.com

November 19, 2004

VIA TELEFAX and U.S. MAIL
969-2063

Ralph D. Karpinos, Esq.
Town of Chapel Hill
306 N. Columbia Street
Chapel Hill, NC 27516

Re: UNC Faculty-Staff Recreation Association

Dear Mr. Karpinos:

To follow up on our phone conversation on November 11, 2004, I talked further with my client and learned that the lease provided to the Town by the UNC Property Office has been superseded by a lease made by and between the State of North Carolina and the University of North Carolina Faculty-Staff Recreation Association on July 8, 1976, as amended by that certain Amendment to Lease dated December 4, 1978 and that certain Second Amendment to Lease dated October 27, 1986 (collectively, the "Lease"). A complete copy of the Lease follows for your reference.

It is my understanding from my conversation with you, and from my review of the memorandum from Cal Horton dated November 15, 2004, that the Town is relying on language contained in the old lease for the authority to assess ad valorem taxes against the leased premises (the "Property"). The 1986 Second Amendment amends the language at issue at paragraph 1(e) which reads in relevant part ". . . Lessee agrees to maintain and keep the Premises and the Improvements in good repair and tenantable condition and to pay ad valorem taxes and the assessments for any municipal improvements, if any, that may be lawfully assessed against the Premises and/or the Improvements." This amendment clearly shows an intent among the parties that Lessee would pay ad valorem taxes "if any" were "lawfully assessed." The 1986 change to the language at issue logically follows the holding of *In re Appeal of University of North Carolina*, 300 N.C. 563 (1980), the Carolina Inn case, that, based on the North Carolina Constitution, property owned by the State

KCB: 208687.1

17

Ralph D. Karpinos, Esq.
19 November 2004
Page 2

was exempt from ad valorem taxation "*regardless of the purpose* for which the property is held."

In light of the foregoing, I look forward to hearing from you that the Town will no longer condition the issuance of the Faculty Club's special use permit, and the compliance therewith, on the payment of ad valorem taxes. There is nothing in the Lease from which the Town can derive the authority to assess ad valorem taxes against the Property. Thank you for your consideration of this matter and please let me know if you have any questions or need additional information.

Sincerely,



William A. Anderson, III
FOR THE FIRM

c: Ben Allred via mail with enclosures

KCB: 208687.1

kennon, craver, belo, craig & mckee, pllc

4011 university drive, suite 300, durham, nc 27707 • post office box 51579, durham, nc 27717-1579
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(18)

BOOK 1322 PAGE 726

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

STATE OF NORTH CAROLINA

TO

UNIVERSITY OF NORTH CAROLINA
FACULTY STAFF RECREATION ASSOCIATION, INC.

SECOND AMENDMENT TO LEASE

68-7D15

(19)

STATE OF NORTH CAROLINA

LEASE

COUNTY OF DURHAM

93

THIS LEASE made and entered into this the 8 day of July, 1976, by and between the STATE OF NORTH CAROLINA, hereinafter referred to as Lessor, and UNIVERSITY OF NORTH CAROLINA FACULTY-STAFF RECREATION ASSOCIATION, INCORPORATED, hereinafter referred to as Lessee,

W I T N E S S E T H:

THAT, WHEREAS, the Lessee is a corporation organized and existing under the laws of the State of North Carolina, with its principal office located in the Town of Chapel Hill, State of North Carolina, and is empowered under its Articles of Incorporation (Charter) to take, receive, hold title to, manage, mortgage, sell, or otherwise deal in and with real property, and improvements situated thereon; and

WHEREAS, the Lessee has previously held this property under an earlier lease, entered into between these same parties on January 14, 1971, and since the time of entering the prior lease a junior mortgage indebtedness has been incurred by the Lessee which makes a new agreement between these parties necessary, and;

WHEREAS, the Lessee has expressed a desire to lease the property hereinafter described, subject to the terms and conditions hereinafter set out, for the purpose of providing recreational and social activities to the members of the University of North Carolina Faculty-Staff Recreation Association, Incorporated, including, but not limited to, facilities for swimming and tennis and playground and clubhouse facilities; and

WHEREAS, The University of North Carolina at Chapel Hill on the 12th day of December, 1975, has requested the Department of Administration of the State of North Carolina to dispose of by lease the real property herein described, as authorized by Chapter 143 and Chapter 146 of the General Statutes of North Carolina, for the purposes herein expressed; and

20

WHEREAS, the execution of this agreement for and on behalf of the State of North Carolina has been duly approved by the Governor and Council of State by resolution adopted at a meeting held in the City of Raleigh, on the 6th day of April, 1976.

NOW, THEREFORE, for and in consideration of the terms and conditions hereinafter set forth, the Lessor hereby leases unto the Lessee and the Lessee does hereby accept as tenant of the Lessor, a certain lot or parcel of land located Southeast of the Town of Chapel Hill, in Durham County, North Carolina, and more particularly described as follows:

BEING all of that certain tract or parcel of land, situated, lying and being a short distance southeast of the Town of Chapel Hill, North Carolina, lying in Durham County, North Carolina, and BEGINNING at a stake on the South side of the Barbee Chapel Road, a short distance South of its intersection with Mason Farm Road-East, and running thence South 36 degrees 19 minutes East 840.00 feet to a stake; running thence South 18 degrees 30 minutes West 810.00 feet to a stake; running thence North 77 degrees 45 minutes West 525.00 feet to a stake; running thence South 42 degrees 50 minutes West 370.00 feet to a stake; running thence South 82 degrees 10 minutes West 140.00 feet to a stake; running thence North 58 degrees 00 minutes West 190.00 feet to a stake; running thence North 15 degrees 10 minutes West 300.00 feet to a stake; running thence North 43 degrees 55 minutes East 430.00 feet to a stake; running thence North 24 degrees 17 minutes East 387.93 feet to a stake; running thence North 21 degrees 34 minutes East 435.45 feet to a stake; running thence North 59 degrees 50 minutes East 329.18 feet to a stake, the point and place of BEGINNING, containing 28 acres more or less, and being a part of the same property willed to the University of North Carolina by Mary E. Mason.

THE TERMS AND CONDITIONS ABOVE REFERRED TO ARE AS FOLLOWS:

1. The Lease and Agreement shall begin on the 8 day of July, 1976, and, unless sooner terminated as herein provided, shall exist and continue for a term of Ninety-Nine (99) years.
2. Upon termination of this lease and agreement all of the improvements made and constructed on the property covered by this lease shall belong to the Lessor.
3. The Lessee agrees to pay ad valorem taxes to the proper taxing authorities on the real property covered by this lease and agreement and upon the improvements which are constructed thereon or installed therein.

21

The Lessee hereby expressly waives any defense to payment of ad valorem taxes because the fee simple title to the said property remains in the State of North Carolina.

95

4. The Lessee agrees that the property covered by this lease and agreement will not be subleased without written permission of the Lessor, acting through The University of North Carolina at Chapel Hill, North Carolina.

5. The Lessee agrees that the property covered by this lease and agreement, as long as the property remains in the possession of the Lessee, shall be used for recreational and social purposes of The University of North Carolina Faculty-Staff Recreation Association, Incorporated, only.

6. With regard to improvements to be situated on the real property covered by this lease and agreement, the Lessee agrees:

- (a) That all improvements, the location of improvements on the property, and the cost of improvements have the prior approval of the Lessor, acting through the administrative authority of The University of North Carolina at Chapel Hill.
- (b) That all improvements on and to the property conform to the regulations of the Town of Chapel Hill Planning Board.
- (c) That all improvements on and to the property comply with the Building Regulations of the Town of Chapel Hill.
- (d) That all loans for improvements to be constructed on this property have the prior approval of the Lessor, acting through the administrative authority at The University of North Carolina, Chapel Hill, North Carolina.

7. The Lessee agrees to keep and maintain the property covered by this lease and agreement, as well as improvements placed thereon, in accordance with minimum standards of excellence prescribed by the administrative authority at The University of North Carolina at Chapel Hill, North Carolina.

22

96

8. It is understood and agreed by and between the parties that the Lessor, acting through The University of North Carolina at Chapel Hill, North Carolina, shall have the right to cancel this lease at any time during the term thereof, by paying the total of any first and second mortgage indebtedness or by the payment to the Lessee or to the legal entities which hold bona fide legally enforceable liens on the property according to priorities established by law, the fair market value of the improvements located upon the property, whichever amount is larger; should the parties hereto be unable to agree upon the fair market value of said improvements, then the parties shall select two disinterested persons, who shall be qualified real estate appraisers, one to be selected by the Lessor and one to be selected by the Lessee, and the two shall select a third such appraiser; the three appraisers shall go upon the premises, inspect the improvements and determine their fair market value, and report their findings to both the Lessor and Lessee; such findings by the appraisers shall constitute the fair market value of the improvements for the purpose of this section.

In the event that the Lessor shall pay the mortgage indebtednesses on the improvements located on the property, the rights of the mortgagees shall be assigned to the Lessor and the Lessor may exercise all rights and privileges therein provided.

9. In the event foreclosure proceedings are instituted under the laws of the State of North Carolina under any mortgage or deed of trust covering the premises herein leased or any improvements located thereon, the Lessor shall have the option to pay the foreclosing mortgage(s) and take an assignment of all rights of the mortgage(s) thereunder; in such event, the Lessor shall have the further right to cancel this lease by paying to the Lessee or to the legal entity which holds bona fide legally enforceable liens on the property according to priorities established by law, the fair market value of the improvements located upon the property, plus payment of mortgage indebtedness owed under a mortgage or deed of trust other than the one(s) being foreclosed, less any amounts paid to the foreclosing mortgage(s) as heretofore set forth; should the parties hereto be unable to agree upon the fair market value of said improvements, then the parties shall select two

(23)

disinterested persons, who shall be qualified real estate appraisers, one to be selected by the Lessor and one to be selected by the Lessee, and the two shall select a third such appraiser; the three appraisers shall go upon the premises, inspect the improvements and determine their fair market value, and report their findings to both the Lessor and Lessee; such findings by the appraisers shall constitute the fair market value of the improvements for the purpose of this section.

Should the lease be cancelled as herein provided, the Lessor, acting through the University of North Carolina at Chapel Hill, North Carolina, shall have the immediate right of re-entry upon the premises for all purposes.

IN TESTIMONY WHEREOF, the State of North Carolina has caused this instrument to be executed in its name by James E. Holshouser, Governor, attested by Thad Eurs, Secretary of State, and the Great Seal of the State of North Carolina hereto affixed, by virtue of the power and authority aforesaid; and University of North Carolina Faculty-Staff Recreation Association, Incorporated, has caused this instrument to be executed in its name by its President, attested by its Secretary, and its corporate seal hereto affixed by authority duly given, all as of the day and year first above written.

STATE OF NORTH CAROLINA

James E. Holshouser
Governor

Thad Eurs
Secretary of State

UNIVERSITY OF NORTH CAROLINA FACULTY-STAFF RECREATION ASSOCIATION, INCORPORATED

Charles G. Fosberg
President

ATTEST:

Charles Hindale
Secretary

UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
FACULTY-STAFF RECREATION ASSOCIATION, INC.

APPROVED FOR DISPOSITION:

Bonnie A. Long
Secretary of Administration

SEAL
1967

APPROVED AS TO FORM:
CHAPEL HILL, N. C.

Rufus B. Edmisten
Attorney General
Ray A. Belk
Assistant Attorney General

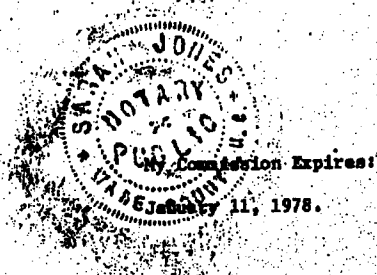
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STATE OF NORTH CAROLINA

98 COUNTY OF WAKE

I, SARAH JONES, a Notary Public in and for said County and State, do hereby certify that JAMES E. HOLSHOUSER, JR., Governor of the State of North Carolina, and THAD EURE, Secretary of State of North Carolina, personally came before me this day and being by me duly sworn says each for himself that he knows the Great Seal of the State of North Carolina and that the seal affixed to the foregoing instrument is the Great Seal of the State; that JAMES E. HOLSHOUSER, JR., Governor of Said State, and THAD EURE, Secretary of State, subscribed their names thereto, all by virtue of a resolution of the Council of State; and that said instrument is the act and deed of the State of North Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the 7th day of June, 1976.



Sarah Jones

 Notary Public

(25)

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

99

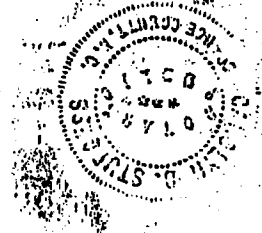
I, Carolyn B. Sturgeon, a Notary Public in and for the County and State aforesaid, do hereby certify that Charles E. Hinsdale personally came before me this day and acknowledged that he is Secretary of UNIVERSITY OF NORTH CAROLINA FACULTY-STAFF RECREATION ASSOCIATION, INCORPORATED and that by authority duly given and as an act of UNIVERSITY OF NORTH CAROLINA FACULTY-STAFF RECREATION ASSOCIATION, INCORPORATED the foregoing instrument was signed by Charles S. Teskey, its President, attested by himself as Secretary, and sealed with the common seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this 7th day of May, 1976.

Carolyn B. Sturgeon
Notary Public

My commission expires:

October 11, 1980



FILED
BOOK 139 PAGE 93-99

JUL 8 11 22 AM '76

A. J. GRESHAM
REGISTER OF DEEDS
DURHAM COUNTY, N. C.

NORTH CAROLINA - DURHAM COUNTY

The foregoing certificate of Sarah Jones & Carolyn B. Sturgeon Notary Public, of Duke & Orange Counties attested by his Notarial seal is Certified to be correct. Let this instrument with all certificates be registered.

WITNESS my hand this 7 day of July 1976

A. J. Gresham
Register of Deeds

By: Cynthia A. Dennis, Deputy

Return to: Graham, Manning, Cheshire & Jackson, P. O. Box 578
Chapel Hill, NC 27514

RETURN TO: *Pipard b.*
University Property Office
134 East Franklin Street, 165A
Chapel Hill, North Carolina 27514

26

BOOK 1317 PAGE 922

*Second Amendment
to 1332
8/20/78*

STATE OF NORTH CAROLINA

AMENDMENT TO LEASE

COUNTY OF DURHAM

This Amendment to Lease made and entered into this 4th day of December, 1978, by and between the STATE OF NORTH CAROLINA, hereinafter referred to as Lessor, and UNIVERSITY OF NORTH CAROLINA FACULTY STAFF RECREATION ASSOCIATION, INCORPORATED, hereinafter referred to as Lessee;

W I T N E S S E T H :

THAT, WHEREAS, the parties hereto entered into a lease agreement dated July 8, 1976, recorded in Book 439, page 93, Durham County Registry; and

WHEREAS, the first paragraph under Paragraph 9 in said lease does not correctly reflect the intentions of the parties thereto, and said parties now desire to amend said paragraph;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained therein, the parties do hereby agree that the lease dated July 8, 1976, recorded in Book 439, page 93, Durham County Registry, shall be and the same is hereby amended as follows:

The first paragraph under Paragraph 9 of said lease is hereby rewritten to read as follows:

"9. In the event foreclosure proceedings are instituted under the laws of the State of North Carolina under any mortgage or deed of trust covering the premises herein leased or any improvements located thereon, the Lessor shall have the option to pay the foreclosing mortgagee(s) and take an assignment of all rights of the mortgagee(s) thereunder; in such event the Lessor shall have the further right to cancel this Lease by paying to the Lessee or to the legal entity which holds bona fide legally enforceable liens on the property

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BOOK 1317 PAGE 923

according to priorities established by law, the fair market value of the improvements located upon the property less any mortgage indebtedness owed under a mortgage or deed of trust other than the one(s) being foreclosed and less any amounts paid to the foreclosing mortgagee(s) as heretofore set forth; should the parties hereto be unable to agree upon the fair market value of said improvements, then the parties shall select two disinterested persons who shall be qualified real estate appraisers, one to be selected by the Lessor and one to be selected by the Lessee, and the two shall select a third such appraiser; the three appraisers shall go upon the premises, inspect the improvements and determine their fair market value, and report their findings to both the Lessor and Lessee; such findings by the appraisers shall constitute the fair market value of the improvements for the purpose of this section."

Except as herein amended, all other terms and conditions of the Lease recorded in Book 439, page 93, Durham County Registry, shall remain in full force and effect.

IN TESTIMONY WHEREOF, this instrument has been duly executed by the parties hereto as of the date first above written.

STATE OF NORTH CAROLINA

[Signature]
Governor

[Seal of the State of North Carolina]
[Signature]
Secretary of State

UNIVERSITY OF NORTH CAROLINA FACULTY-STAFF RECREATION ASSOCIATION, INCORPORATED

UNIVERSITY OF NORTH CAROLINA FACULTY-STAFF RECREATION ASSOCIATION, INCORPORATED

[Signature]
Frank Thomas McSherry

ATTEST: 1967

CHARLES H. L. C.
[Signature]
Secretary

APPROVED AS TO FORM:

RUFUS L. EDMISTEN
Attorney General

[Signature]
Assistant Attorney General

28

BOOK 1317 PAGE 924

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, SHIRLEY S. BARBEE FOWLER, a Notary Public in and for the County and State aforesaid, do hereby certify that JAMES B. HUNT, JR., Governor of the State of North Carolina, and THAD EURE, Secretary of State of North Carolina, personally came before me this day and being by me duly sworn says each for himself that he knows the Great Seal of the State of North Carolina and that the seal affixed to the foregoing instrument is the Great Seal of the State; that JAMES B. HUNT, JR., Governor of said State, and THAD EURE, Secretary of State, subscribed their names thereto, all by virtue of a resolution of the Council of State; and that said instrument is the act and deed of the State of North Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the 4 day of Dec, 1978.

Shirley S. Barbree Fowler
Notary Public

My Commission Expires:

9-26-79



STATE OF NORTH CAROLINA
COUNTY OF ~~CHATHAM~~ CHATHAM

I, DON P. BOLEJACK, a Notary Public in and for the County and State aforesaid, do hereby certify that CHARLES E HINSDALE personally came before me this day and acknowledged that he is Secretary of University of North Carolina Faculty-Staff Recreation Association, Incorporated and that by authority duly given and as an act of University of North Carolina Faculty-Staff Recreation Association, Incorporated the foregoing instrument was signed by FRANK THOMAS M^S IVEE, its President, attested by himself as Secretary, and sealed with the common seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary seal this 30th day of OCTOBER, 1978.

Don P. Bolejack
Notary Public



My commission expires:
April 19, 1979

FILED
PAGE 1317 PAGE 922-925
OCT 15 2 49 PM '78
RUTH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, NC

State of North Carolina-Durham County
The foregoing certificate of Don P. Bolejack
A Notary (Notarial) Public for the State of North Carolina
unit is (are) certified to be correct.
This the 15 day of Oct. A.D. 1978
Ruth C. Garrett
Register of Deeds
James B. [Signature]
Assistant, Notary
Register of Deeds

Prepared By and Return to:
University Property Office
134 East Franklin Street, 165A
Chapel Hill, North Carolina 27514

(30)

STATE OF NORTH CAROLINA BOOK 1322 PAGE 716

SECOND AMENDMENT TO LEASE

COUNTY OF DURHAM

Pool Notes

This Amendment to Lease made and entered into this 22nd
day of October, 1986, by and between the STATE OF NORTH
CAROLINA, hereinafter referred to as Lessor, and UNIVERSITY OF
NORTH CAROLINA FACULTY STAFF RECREATION ASSOCIATION,
INCORPORATED, hereinafter referred to as Lessee;

W I T N E S S E T H :

THAT, WHEREAS, the parties hereto entered into a lease
agreement dated July 8, 1976, recorded in Book 439, Page 93,
Durham County Registry; and

WHEREAS, the parties hereto entered into an amendment to
said lease dated December 1, 1978, recorded in Book 1317, Page 922,
Durham County Registry; and

WHEREAS, the Lessee wishes to make further improvements
(Improvements) to the property, and said parties now desire to
amend said lease;

NOW, THEREFORE, in consideration of the premises and the
mutual covenants contained therein, the parties do hereby agree
that the lease dated July 8, 1976, recorded in Book 439, Page 93,
as amended by agreement recorded in Book 1317, Page 922, Durham

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alc

County Registry, shall be and the same is hereby amended as follows:

1. The following provisions shall be added and made part of the lease agreement:

(a) All costs of constructing the Improvements shall be borne by the Lessee, including utilities during construction. From the effective date of this Lease, Lessee shall maintain at its own cost and expense property insurance upon the Premises and the Improvements to the full insurable value thereof. This insurance shall include as named insured the interest of the Lessor and the Lessee in the Improvements and shall include "all-risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. Such insurance may name the lender under the Secured Loan (as defined below) as a loss payee, as its interest may appear. In addition, Lessee shall maintain at its own cost and expense comprehensive general liability insurance on an occurrence basis with minimum limits of liability in the amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for bodily injury, personal injury or death to any one person and FOUR MILLION AND NO/100 DOLLARS (\$4,000,000.00) for bodily injury, personal injury or death to more than one person and ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) with respect to damage to property including water damage and sprinkler leakage. The lender under the Secured Loan shall be named as an additional insured in such comprehensive general liability policy. The Lessee shall furnish certificates of

insurance acceptable to the Lessor prior to the commencement of construction of the Improvements and annually each year thereafter for the term of this Lease. The above mentioned insurance coverage shall be obtained from a company duly licensed to do business in North Carolina. These certificates shall contain a provision that the coverage as afforded under the policies will not be modified or canceled until at least thirty (30) days prior written notice has been given to the Lessor and Lessee.

(b) After the Improvements have been erected, they shall not be taken down, removed or substantially altered by Lessee without the prior written consent of Lessor. Lessee may remove all personal property not permanently attached; however, all property not removed within sixty (60) days after termination of this agreement shall become the property of the Lessor, at its option, or be removed by the Lessor at Lessee's expense.

(c) Upon the termination of this Lease, the Improvements shall become a part of the freehold and the sole and absolute property of the Lessor in fee simple absolute.

(d) Should Lessee cease to use the Premises and Improvements for the purposes herein described, this Land Lease shall terminate immediately and Lessor shall have the right of re-entry upon the Premises for all purposes.

(e) Lessee shall, at its own cost and expense, operate and maintain the Improvements and all related improvements and systems whenever constructed. Lessee further agrees that it will provide and pay for all appropriate services, including security,

electricity, heat, water, sewer, telephone and/or other utilities for the Premises and the Improvements. Further, Lessee agrees to maintain and keep the Premises and the Improvements in good repair and tenantable condition and to pay to the appropriate taxing authorities ad valorem taxes and the assessment for any municipal improvements, if any, that may be lawfully assessed against the Premises and/or the Improvements.

(f) In the event the demised premises and improvements or a substantial part thereof, shall be damaged by fire or other casualty, the Lessee may terminate this agreement or may repair the damage as it determines. If Lessee determines to make the necessary repairs or renovations, any proceeds from fire or casualty insurance shall belong to the Lessee. If Lessee determines not to make the necessary repairs or renovations, then any proceeds from fire or other casualty insurance after the payment for any indebtedness thereon shall belong to the Lessor, except for any proceeds paid Lessee from insurance for its personal property located on the premise. Lessee's determination concerning repair as stated in this paragraph shall be given to the Lessor in writing within ninety (90) days of the fire or casualty causing the damage.

(g) To the extent not covered by insurance, Lessee agrees to indemnify and hold harmless the Lessor against any claims, damages, obligations or suits connected with the use of the Premises and the Improvements and arising out of or caused by acts of bad faith or negligence by Lessee, its assigns or invitees, lessees, servants, employees or agents, or any of them,

except any claims, damages, obligations or suits arising out of acts by the Lessor or the University, their assigns, servants, employees or agents, or any of them.

2. Paragraph 9 of said lease and amendment shall be deleted and the following provisions submitted therefore:

Lessee intends to obtain a \$ 275,000. loan from North Carolina National Bank ~~(Bank)~~ for the construction of the Improvements, to be repaid in monthly installments and to be secured by a first deed of trust on Lessee's leasehold interest created herein and the Improvements on the Premises (the "Secured Loan").

(a) In the event of a default under the Secured Loan, Lessor shall have the option to cure such default by making the required payment or rendering the required performance to the secured lender. Any such default by Lessee and its cure by Lessor shall constitute an assignment to Lessor of all of Lessee's interest under this Lease Agreement. Such assignment shall not cause a merger of the Lessor's and Lessee's interest under this Agreement so long as any portion of the Secured Loan remains unpaid. In the event Lessor cures any Lessee default in the Secured Loan, Lessor may further elect to make subsequent installment payments called for in the note and to render to the secured lender the performance required under the Secured Loan documents. In the event Lessor elects to exercise this right to make subsequent installment payments, it shall be entitled, upon full satisfaction of the Secured Loan, to take an assignment of all the secured lender's rights under the Secured Loan and shall have the further right to terminate this Lease.

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(b) The leasehold deed of trust shall contain language to the effect that, in the event foreclosure proceedings are instituted under such deed of trust and the laws of the State of North Carolina, the Lessor shall have the option to pay and satisfy the Secured Loan in full and take an assignment of all of the secured lender's rights under the note and the deed of trust. If Lessor, after the institution of foreclosure proceedings, elects to satisfy the Secured Loan in full and take an assignment of the secured lender's rights thereunder, then Lessor shall have the further right, by written notice to Lessee, to terminate this Lease.

(c) In the event of a default under the Secured Loan and if the Lessor elects not to cure such default as provided in this paragraph 9(a) and 5(b), then the lender upon written notice to Lessor may take an assignment of the Lessee's interest in this Lease, for the term of this Lease or for the remaining term of this Lease or until the Secured Loan is paid in full, whichever is shorter. It is understood that the lender may wish to sublease the Improvements during the term of the assignment. Said sub-tenant shall be approved by the Lessor, which approval shall not be unreasonably withheld and shall be subject to all other pertinent provisions of this Lease. Any termination of this Land Lease pursuant to this paragraph 9 shall be effective the date the Secured Loan is canceled of record in the Office of the Register of Deeds of Orange County, North Carolina.

(d) Lessor hereby consents to Lessee obtaining the Secured Loan. Other than the Secured Loan, Lessee shall not

mortgage or encumber the Premises or the Improvements without the prior written consent of the Lessor. Lessee represents and warrants that it will apply the proceeds of the Secured Loan first against all previous loans made to Lessee encumbering the Property, thus cancelling any Deeds of Trust, and second to construct the improvements.

(e) If, for any reason, the Lessor shall seek to terminate or cancel this Lease Agreement by reason of Lessee's default under any provision, covenant, promise or condition thereof, no such termination or cancellation shall be effective as against lender unless and until Lessor shall have given lender sixty (60) days prior written notice of Lessee's default, which notice shall state with particularity the nature of Lessee's default and what acts or events are necessary to cure same. From and after the date of receiving such notice, lender shall have sixty days in which to either:

(i) cure or cause to be cured such default in conjunction with whatever remedies it may have under its deed of trust on the leasehold or at law or in equity, including taking possession of the leasehold as a mortgagee-in-possession, or


(ii) serve notice upon Lessor of Lessee's breach and, after giving Lessor a thirty (30) day opportunity to exercise its rights under paragraph 9(a) above, may, if Lessor does not exercise those rights, serve written notice of lender's taking of an assignment of Lessee's interest as provided in paragraph 9(c).

In either event, such action by lender shall abate Lessor's right to terminate or cancel the Land Lease.

(f) Once the lender records its deed of trust, Lessor and Lessee shall not amend or modify the Land Lease without lender's written consent. Such lender is a third party beneficiary of this covenant as well as those in paragraph 9(c) and (e).

3. Except as herein amended, all other terms and conditions of the Lease recorded in Book 439, Page 93, and Book _____, Page _____ Durham County Registry, shall remain in full force and effect.

IN TESTIMONY WHEREOF, this instrument has been duly executed by the parties hereto as of the date first above written.

ATTEST:

[Signature]
Secretary of State

STATE OF NORTH CAROLINA

James D. Martin
Governor

UNIVERSITY OF NORTH CAROLINA
FACULTY-STAFF RECREATION
ASSOCIATION, INCORPORATED

[Signature]
President

ATTEST:

Bonnie K. Knoles
Secretary

UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
FACULTY-STAFF RECREATION ASSOCIATION, INC.

SEAL
1967
CHAPEL HILL, N. C.

APPROVED AS TO FORM:

LACY THORNBURG
Attorney General
D. David Stembrod

STATE OF NORTH CAROLINA

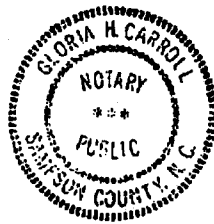
COUNTY OF ~~WARE~~ *Sampson*

I, *Gloria H. Carroll*, a Notary Public in and for the County and State aforesaid, do hereby certify that JAMES MARTIN, Governor of the State of North Carolina, and THAD EURE, Secretary of State of North Carolina, personally came before me this day and being by me duly sworn each for himself that he knows the Great Seal of the State of North Carolina and that the seal affixed to the foregoing instrument is the Great Seal of the State; that JAMES MARTIN, Governor of said State, and THAD EURE, Secretary of State, subscribed their names thereto, all by virtue of a resolution of the Council of State; and that said instrument is the act and deed of the State of North Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the *27* day of *October*, 1986.

Gloria H. Carroll
Notary PUBLIC

My Commission Expires:
10-29-90



STATE OF NORTH CAROLINA

COUNTY OF Orange

I, Grace H. Hagan a Notary Public, do hereby certify that Bennie Lake personally appeared before me this day and acknowledged that he is the Secretary of THE UNIVERSITY OF NORTH CAROLINA FACULTY STAFF RECREATION ASSOCIATION, INCORPORATED, a corporation, and that by authority duly given, and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by her as its Secretary.

WITNESS my hand and official seal this the 2nd day of October, 1986.

Grace H. Hagan
Notary Public

My Commission Expires:
December 10, 1987

FILED
BOOK 1322 PAGE 716-726
Nov 4 3 30 PM '86

State of North Carolina-Durham County
The foregoing certificate of Grace H. Hagan
A Notary (Notarial) Public for the State of North Carolina
with its (seal) certified to be correct.
This the 4 day of November 1986
Ruth C. Garrett
Register of Deeds
By: Monica J. Taylor
Deputy Register of Deeds

RUTH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, NC