

**A RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE A LEASE FOR  
PARKING SPACES AT THE 300 EAST MAIN SHOPPING CENTER**

Draft Resolution No. 88/2010-11

WHEREAS, Main Street Properties has offered to lease certain undesignated parking spaces in the parking deck and surface lots to be constructed on and within the 300 East Main Shopping Center, for use as free public parking; and

WHEREAS, The initial term of this lease will be for a period of five (5) years, commencing on the date on which Certificates of Occupancy have been secured for the hotel building within the 300 East Main Shopping Center and for the first phase of the parking deck; and

WHEREAS, the Town agrees to pay annual rent to Main Street Properties in an amount equivalent to 3% of the gross receipts of the Hampton Inn & Suites Hotel to be constructed within the 300 East Main Shopping Center, however, that the rent due from the Town to Main Street Properties shall be capped at \$90,000 per year during the term of this lease; and

WHEREAS, If at any time during the term of this lease Main Street Properties does not make the required minimum number of parking spaces available for public parking within the time periods established by the lease, then the rent due from the Town to Main Street Properties shall be reduced pro rata to reflect the lesser number of parking spaces made available for public parking. Such reduction in rent shall persist unless or until Main Street Properties is able to provide the required minimum number of parking spaces established by the lease for use as free public parking.

NOW THEREFORE, THE CARRBORO MAYOR AND BOARD OF ALDERMEN  
RESOLVES THAT:

Section 1. The Town Manager is authorized to execute a lease agreement with Main Street Properties for parking spaces at the 300 East Main Shopping Center.

Section 2. This resolution shall become effective upon adoption.

**PARKING LEASE AND AGREEMENT**

THIS PARKING LEASE AND AGREEMENT (this "Lease"), is made as of this \_\_\_\_ day of March, 2011, by and between MAIN STREET PROPERTIES OF CHAPEL HILL, LLC, a North Carolina limited liability company with its principal place of business in Carrboro, North Carolina ("Main Street"), and the TOWN OF CARRBORO (the "Town").

**WITNESSETH:**

WHEREAS, the Town desires to lease certain parking spaces and access rights thereto from Main Street, and Main Street desires to lease such parking spaces and access rights to the Town for use as free public parking, all as more specifically set forth herein.

NOW, THEREFORE, for and in consideration of the above recitals, the rentals hereinafter reserved and the mutual covenants and agreements herein contained, the Town and Main Street agree as follows:

1. **Premises.** Main Street hereby leases to the Town for free public parking, in accordance with the terms hereof, certain otherwise undesignated parking spaces located in the parking deck and surface lots (the parking deck and surface lots together will contain over 500 parking spaces) to be constructed on and within the 300 East Main Shopping Center (the "Premises") consistent with the Conditional Use Permit issued to Main Street. While all undesignated parking spaces within the Premises will be made available for free public parking during the Term of this Lease, the parties agree that the number of undesignated parking spaces available for use as public parking pursuant to this Lease shall not be less than 250 parking spaces between the hours of 5:30 p.m. and 7:00 a.m. and shall not be less than 150 parking spaces between the daytime hours of 7:00 a.m. and 5:30 p.m. The term "undesignated" as used in this Lease shall mean that the parking space is not restricted in any way that would hinder, prevent, or discourage a member of the general public from using such space on an equal basis with tenants or occupants of the Premises, customers, clients, employees, or invitees of such tenants or occupants, or other members of the public

2. **Term.** The initial Term ("Term") of this Lease shall be for a period of five (5) years commencing on the date on which Certificates of Occupancy have been secured for the hotel building within the Premises and for the first phase of Main Street's parking deck containing approximately 450 parking spaces (the "Commencement Date"). Unless the parties agree in writing to extend this Lease, then this Lease shall expire at the end of the initial Term.

3. **Rental.** Throughout the Term, the Town agrees to pay annual Rent to Main Street in an amount equivalent to 3% of the gross receipts (from the rental of rooms) of the hotel to be constructed on the Premises contemporaneous with the construction of the parking deck that is the subject of this Lease; provided, however, that the Rent due from the Town to Main Street shall be capped at \$90,000 per year during the Term of this Lease.

4. **Payment.** The Town shall pay Rent to Main Street on a quarterly basis throughout each year during the Term of this Lease based on an annual rental amount of \$90,000

(which is based on the reasonable projection that 3% of the gross receipts of the hotel from the rental of rooms will exceed \$90,000 in all years during the Term of this Lease). The parties agree, however, that a reconciliation will be undertaken at the end of each year during the Term of this Lease, and that the Town shall be entitled to a credit against future Rent due, or a refund of like amount, if it is determined at the end of any year during the Term of this Lease that the Rent due should have been less than \$90,000 based on the formula described above in section 3.

5. Self-Parking; No Charge. The parking spaces that are the subject of this Lease shall be used for automobile self-parking at no charge to members of the public using such parking spaces at appropriate times.

6. Time Limits on Continuous Use. Upon the reasonable request of either the Town or Main Street, time limits may be imposed to restrict the continuous use of the free public parking spaces that are the subject of this Lease, provided that any time limits imposed should be consistent with the time limits imposed by the Town in other parking lots owned or leased by the Town for public parking in the downtown Carrboro area.

7. Conditions for Reduction of Rent. If at any time during the term of this Lease Main Street does not make the minimum number of parking spaces (as established in section 1, above) available for public parking with the time periods established herein in section 1, above, then the rent due from the Town to Main Street shall be reduced pro rata to reflect the lesser number of parking spaces made available for public parking, and such reduction in rent shall persist unless or until Main Street is again able to provide the minimum number of parking spaces set out in section 1, above, for use as free public parking. However, the above reduction in rent shall not apply in the event that a temporary diminution in the number of parking spaces made available for public parking is the result of required maintenance on the parking deck or is the result of a force majeure.

8. Insurance. The Town shall maintain throughout the Term of this Lease, at its expense, Comprehensive General Liability Insurance providing coverage for bodily injury (including death) and property damage arising out of the public's use of the parking spaces made available for public use under this Lease. The policy shall contain a broad form contractual liability endorsement. Such insurance shall have a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. The Town shall cause Main Street to be named as an additional insured on any liability insurance coverage procured and maintained during the Term of this Lease and to provide to Main Street on an annual basis reasonable evidence of such insurance.

9. Costs and Expenses. Main Street shall be responsible for and shall pay the cost and expense of the operation, repair and maintenance of the Premises including, without limitation, painting, cleaning, removal of trash and debris, and routine repairs to the parking surface of the Premises.

10. Assignment. Main Street shall have the right to transfer or assign this Lease or Main Street's reversion hereunder and Tenant agrees to attorn to the lawful transferee thereof, provided that any such transfer or assignment shall be at all times subject to this Lease and the

rights of the Town hereunder.

11. Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of the parties hereto, to their respective legal representative, assigns and successors in interest.

12. Entire Agreement. This instrument contains all the agreements and conditions made between the parties hereto. This Lease may not be modified orally or in any other manner than by an agreement in writing, signed by all parties hereto, or their respective successors in interest.

WITNESS the following signatures as of the date first written above:

**LANDLORD:**

MAIN STREET PROPERTIES OF CHAPEL  
HILL, LLC, a North Carolina limited liability  
company

By: \_\_\_\_\_  
Sherman W. Richardson, Manager

**TENANT:**

THE TOWN OF CARRBORO

By: \_\_\_\_\_

A RESOLUTION ESTABLISHING A HOTEL ROOM OCCUPANCY TAX

WHEREAS, the Town of Carrboro was authorized by Chapter 439, Part XIV of the 2001 Session Laws to adopt a resolution levying a tax of up to 3% on the gross receipts derived from the rental of hotel or motel rooms; and

WHEREAS, G.S. § 160A-215 establishes procedures for the adoption, administration and enforcement of such a tax;

NOW THEREFORE, THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO RESOLVES:

Section 1. The Carrboro Town Code is amended by adding a new Chapter 8A as follows:

CHAPTER 8A

HOTEL AND MOTEL ROOM OCCUPANCY TAX

Section 8A-1. Tax Levied.

There is hereby levied a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

Section 8A-2. Payment of Tax.

(a) As provided in G.S. 160A-215(c), a retailer who is required to remit to the Department of Revenue the State sales tax imposed by G.S. 105-164.4(a)(3) on accommodations is required to remit a room occupancy tax to the town on and after the effective date of this Chapter. The room occupancy tax applies to the same gross receipts as the State sales tax on accommodations and is calculated in the same manner as that tax. A rental agent or a facilitator, as defined in G.S. 105-164.4(a)(3), has the same responsibility and liability under the room occupancy tax as the rental agent or facilitator has under the State sales tax on accommodations.

(b) If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 106-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered,, the person offering the package may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business and calculate tax on the allocated price of the taxable accommodation.

(c) A retailer must separately state the room occupancy tax. Room occupancy taxes paid to a retailer are held in trust for and on account of the town.

(d) The town shall design and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the town a discount equal to the discount the State allows the retailer for State sales and use tax.

(e) As provided in G.S. 160A-215(d), the tax levied by this Chapter shall be due and payable to the town finance officer in monthly installments on or before the 20<sup>th</sup> day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20<sup>th</sup> day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the town is not a public record and may not be disclosed except in accordance with G.S. 160A-208.1.

#### Section 8A-3. Penalties.

As provided in G.S. 160A-215(e), a person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by this Chapter shall be subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Board of Aldermen has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

#### Section 8A-4. Distribution and Use of Tax Revenue.

The town shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Carrboro Tourism Development Authority (CTDA). The CTDA shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Carrboro and shall use the remainder for tourism-related expenditures. The following definitions apply in this section:

- (1) Net Proceeds. Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.

- (3) Tourism-related expenditures. Expenditures that, in the judgment of the CTDA, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in the town by attracting tourists or business travelers to the town. The term includes tourism-related capital expenditures.

Section 8A-5. Carrboro Tourism Development Authority: Appointment and Membership.

(a) The Carrboro Tourism Development Authority (CTDA) is hereby created, which shall be a public authority under the Local Government Budget and Fiscal Control Act.

(b) The CTDA shall consist of three members appointed by the Board of Aldermen. Members need not reside within the town, but at least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town.

(c) Subject to subsection (d), members shall be appointed for terms of one year. The initial terms of all appointees shall expire on January 31 of the year that follows the initial appointments. Subsequent terms shall run from February 1 of one year to January 31 of the following year. Vacancies shall be filled for the remainder of the unexpired term. Members may be appointed to successive terms without limitation.

(d) Members shall serve at the pleasure of the Board of Aldermen and may be removed by the Board at any time with or without cause.

(e) Members shall serve without compensation.

Section 8A-6. Meetings of CTDA.

(a) The CTDA shall meet as necessary to carry out its powers and duties as specified below. All meetings shall be held in conformity with the Open Meetings Law.

(b) A quorum for the CTDA shall consist of three members, except that if one seat is vacant, a quorum shall consist of two members. All actions of the CTDA shall be taken by majority vote, a quorum being present.

(c) Upon the initial appointment of members to the CTDA and upon the commencement of each new term, the Board of Aldermen shall appoint one member to serve as chair of the CTDA during that term. If a vacancy occurs during a term, the Board shall designate another member to serve as chair for the remainder of that term. The chair may take part in all deliberations and vote on all issues.

Section 8A-7. Powers and Duties of the CTDA.

(a) The CTDA shall expend the net proceeds of the tax levied under this Chapter for the purposes provided in this Section 8A-4. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town. The town's finance officer shall serve ex officio as the finance officer for the CTDA.

(b) The CTDA shall report quarterly and at the close of the fiscal year to the Board of Aldermen on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board may require.

Section 2. This resolution shall become effective on the first day of the second month following its adoption.



**MEMORANDUM**

Memorandum to: Steve Stewart  
From: Mike Brough  
Subject: Hotel Occupancy Tax  
Date: March 1, 2011

Attached is a resolution adding a new Chapter 8A to the Town Code to levy a hotel and motel room occupancy tax. It is in format a resolution rather than an ordinance because G.S. 160A-215, which establishes procedures for the adoption, administration, and enforcement of such a tax, specifies for some reason that this must be done by resolution. I believe the format is irrelevant, i.e. the resolution has the same force as an ordinance.

While the above cited general statute establishes procedural requirements for those municipalities that have the power to levy such a tax, the substantive authority for such a tax is found in local legislation. Many municipalities have such local acts, and apparently all such local acts are essentially identical. In fact, I spoke with Bob Hornik today, and he told me that he was advised by a member of the Legislative Drafting staff in Raleigh that it was a waste of time for Hillsborough to ask for anything different than had been approved for other municipalities. I mention this because some of the provisions of our local act are far from ideal and not what I would have drafted had there been a choice.

In particular, not only are there limitations on the way this tax money can be spent, but the expenditures will actually be made by the Carrboro Tourism Development Authority, not the Board of Aldermen. In other words, the CTDA is not an advisory board but an independent authority. However, the BOA appoints the members of the CTDA and can remove them at the Board's discretion. In addition, this draft establishes one year, non-staggered terms for the entire membership of the CTDA. Hopefully, this will assure that the CTDA is not operating at cross purposes with the Board's policies.

There is one other peculiarity, and that is the local act's requirement that one-third of the members of the CTDA must be "individuals who are affiliated with businesses that collect the tax," and three-fourths of the members must be "individuals who are currently active in the promotion of travel and tourism in the town." I think the latter requirement can be interpreted fairly loosely to include business owners who depend on walk-in traffic, and so it should not be difficult to meet this requirement. But it seems to me the former requirement will require an appointment of someone associated with our one hotel. For that reason, as well as the reason expressed above, this draft provides for only three members on the CTDA. The Board may decide that a larger membership is preferable, and I would be happy to revise the draft accordingly.

Please feel free to let me know if you have any questions or comments.

## 300 East Main tax revenues

	2010	Hotel w/ 5-story deck	Hotel, Phase A, 5-story deck
<b>Hotel Tax</b>	\$0	\$7,932	\$7,932
<b>Carrboro Property Tax (buildings only)</b>	\$551	\$8,504	\$10,339
<b>Total per month:</b>	<b>\$551</b>	<b>\$16,436</b>	<b>\$18,271</b>

## Above calculations based on the following:

	<u>Building Valuations*</u>	<u>Carrboro Property Tax Collection/ Month</u>
2010 actual (tracts 704269, 701786, 705201, 771795):	\$1,122,458	\$551
Hotel building	\$14,696,820	\$7,219
parking deck (1st phase w/ 5 stories)	\$2,615,800	\$1,285
Phase A building	\$3,735,000	\$1,835

\* Assumed \$90/square foot valuation  
for buildings and \$20/square foot for  
parking deck