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**PARKING MANAGEMENT SERVICES AGREEMENT**  
**FOR THE NORTH GARAGE**  
**BY AND BETWEEN**  
**THE CITY OF DURHAM**  
**AND**  
**AMERICAN CAMPUS, LLC**

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**THIS PARKING MANAGEMENT SERVICES AGREEMENT FOR THE NORTH GARAGE (the “Agreement”)** is made as of \_\_\_\_\_, 201\_\_ , by and between the **CITY OF DURHAM**, a North Carolina municipal corporation (“City”), and **AMERICAN CAMPUS, LLC**, a limited liability corporation organized and existing under the laws of the State of North Carolina (“Manager”).

**BACKGROUND**

**WHEREAS**, City is the owner of a multi-story parking facility known as the North Garage that is located at 305 Pettigrew St. in the downtown area of the City of Durham (the “Parking Facility”);

**WHEREAS**, the City and Manager entered into a certain “Parking Facility Management Agreement for the North Deck,” dated August 23, 2003 (the “Existing PMA”);

**WHEREAS**, the City and Manager have reached agreement on revised terms to the Existing PMA and desire to enter into this Agreement to provide for the professional management, operation, and maintenance of the Parking Facility.

NOW, THEREFFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I**

**DEFINITIONS**

**Section 1.1 Defined Terms**. Capitalized terms used in this Agreement shall have the following meanings unless the context requires otherwise:

(a) “Affiliate” means any individual, corporation, limited liability corporation, partnership, joint venture, estate, or trust (“Person”) who owns any of American Campus, LLC, who is wholly or partially owned by American Campus, LLC, or who wholly or partially owns or is wholly or partially owned by the Persons who own any of American Campus, LLC.

(b) “American Tobacco Complex” or “Complex” means that group of buildings, other improvements and that land formerly used by the American Tobacco Company for the manufacture, distribution and sale of various tobacco products and other products located in Durham, North Carolina, including buildings known as the Fowler, Crowe, Strickland, Reed, Washington, Old Bull, Lucky Strike, Noell and Hill buildings and as the Power Plant and Coal Shed which complex is bounded by Julian Carr (or the former public right-of-way known as Julian Carr Street), Pettigrew, Blackwell and Willard Streets, including the land which is contiguous to such buildings. The American Tobacco Complex also includes a 1.48 acre tract of land bordered on three sides by Jackson, Carr and Pettigrew Streets.

(c) “Business Day” is a day other than Saturday, Sunday, or a day designated as a “legal holiday” by or pursuant to Durham City Code Sections 14-16 (a) and 14-16 (b)

206 (d) “CPI” or “Consumer Price Index” means the average change in the prices paid  
207 by urban consumers in the South Region for all items for 1982 to 1984=100 as released by the  
208 United State Department of Labor, Bureau of Statistics.

209 (e) “Effective Date” shall be the first day of the first full month following the date  
210 upon which the parties have fully executed this Agreement.

211 (f) “Laws” mean all present and future federal, State, and local statutes,  
212 regulations, ordinances, orders, permits, licenses, and requirements, as they may be amended,  
213 changed, or adopted from time to time.

214 (g) “Leased Spaces” means those parking spaces in the Parking Facility that are  
215 leased pursuant to the Parking Lease.

216 (h) “Operating Hours” shall have the meaning set forth in Section 5.3 hereof.

217 (i) “Parking Lease” means that certain agreement entitled “Parking Lease  
218 Agreement for Parking in the North Parking Garage between the City of Durham and  
219 \_\_\_\_\_, dated on or about \_\_\_\_\_, 20\_\_.”

220 (j) “Parking Rates” means the rate, fee, charge, interest, penalty, and other amount  
221 charged for or arising out of the use of the Parking Facility.

222 (k) “Parking Revenues” or “Parking Revenue” means all revenue collected by  
223 Manager in its capacity as Manager of the Parking Facility.

224 (l) “Rent” means the monthly basic rent paid by Tenant under the Parking Lease.

225 (m) “Residential Hours” means from 6:30 p.m. through 7:00 a.m., Monday  
226 through Thursday and beginning at 6:30 p.m. on Friday through Monday at 7:00 a.m.

227 (n) “Residential Permits” means permits that allow residents to use the Parking  
228 Facility during the Residential Hours.

229 (o) “Residential Spaces” means parking spaces available during the Residential  
230 Hours.

231 (p) “Special Events” means events occurring in the vicinity of the Parking Facility  
232 where attendance is expected to exceed 1,000 people.

233 (q) “Tenant” means the tenant under the Parking Lease.

234 (r) “TTA Spaces” means those parking spaces in the Parking Facility that are the  
235 subject of the agreement dated September 26, 2003, between the City and Research Triangle  
236 Regional Public Transportation Authority or the Triangle Transit Authority (either or both  
237 referred to as “TTA”), in which City grants TTA the right to use no more than 150 parking  
238 spaces in the Parking Facility, as amended from time to time.

239 (s) “Visitor Parking Charges” means the Parking Rates charged to users of the  
240 Visitor Spaces.

241 (t) “Visitor Spaces” means the spaces located on the first level of the Parking  
242 Facility, which are made available for general public, visitor parking.

243 **ARTICLE II**

244 **GRANT OF RIGHTS**

245 **Section 2.1 Agreement.** Manager agrees to supervise, direct, control, manage,  
246 and operate the Parking Facility during the Term in accordance with this Agreement.

247 **Section 2.2 Exhibits.** The following Exhibits are attached and form a part of this  
248 Agreement.

- 249 1. Exhibit A - Housekeeping and Maintenance Schedule
- 250 2. Exhibit B – North Garage Monthly Parking Revenue Report Form
- 251
- 252 3. Exhibit C – Parking Garage Maintenance Manual – Fourth Edition (“NPA  
253 Manual”)

254

255 **ARTICLE III**

256 **TERM**

257 **Section 3.1 Term and Termination of 2003 PMA.** Unless earlier terminated in  
258 accordance with this Agreement, the term of this Agreement shall commence on the Effective  
259 Date and shall run for ten (10) years, but shall include the period of renewals described in  
260 Section 3.2 below (the “Term”). Upon execution of this Agreement, the City and Manager agree  
261 to simultaneously terminate the “Parking Facility Management Agreement for the North Garage  
262 by and Between the City of Durham and American Campus, LLC” dated August 22, 2003.

263 **Section 3.2 Renewal.** This Agreement shall automatically renew for six (6)  
264 additional five (5) year terms unless (i) an Event of Default has occurred that has not been cured  
265 at the time of such renewal, or (ii) Manager provides to Landlord written notice that it desires not  
266 to renew this Agreement, which notice Manager shall provide at least 180 days prior to the  
267 expiration of the current Term. Unless otherwise specified herein, such renewal shall be on the  
268 same terms and conditions as this Agreement.

269 **Section 3.3 Effect of Termination.** Any termination of the Term shall have no  
270 effect on any monies owing or obligations accrued or incurred by either party prior to the

271 Effective Date of the termination. Unless the context requires otherwise, “termination” of the  
272 Term includes expiration by passage of time as well as the premature ending of the Term.

273 **ARTICLE IV**

274 **USE OF PARKING FACILITY**

275 Manager acknowledges that the Parking Facility will contain Leased Spaces, TTA  
276 Spaces, and Visitor Spaces. Manager shall operate and manage the Parking Facility in a manner  
277 that is consistent with the character of each of these types of spaces.

278 **Section 4.1 Leased Spaces.** Manager will operate the Parking Facility in a  
279 manner consistent with the City’s obligations under the Parking Lease. Manager will make the  
280 Leased Spaces available to Tenant, or Tenant’s licensees, permittees, or sublessees, on an  
281 exclusive basis, and will issue parking permits to Tenant or to Tenant’s licensees, permittees, or  
282 sublessees pursuant to the terms of the Parking Lease for use of the Leased Spaces during the  
283 times and periods set forth in the Parking Lease.

284 **Section 4.2 Visitor Spaces.**

285 (a) The Manager will operate the Visitor Spaces as free public parking  
286 available to the general public on a first-come, first-served basis. In addition, Manager will not  
287 grant licenses, permits, or leases to the Visitor Spaces on a monthly or longer basis.

288 (b) Notwithstanding the foregoing, the City grants to Manager the right to  
289 install, at its sole cost and expense, the necessary parking equipment that would be needed to  
290 allow the Manager to track the time when vehicles park in the Visitor Spaces and to charge for  
291 the Visitor Spaces, which equipment is subject to the City’s reasonable approval. If Manager  
292 exercises this right and installs the necessary parking infrastructure and parking equipment, then  
293 Manager will:

294 (i) assess Visitor Parking Charges on vehicles parking in the  
295 Visitor Spaces using the short-term parking rates established by the City for the  
296 Parking Facility, which rates will be consistent with other City-owned parking  
297 facilities;

298 (ii) Retain any Visitor Parking Charges collected from the Visitor  
299 Spaces for management of the Visitor Spaces, which will be in addition to the  
300 Management Fee;

301 (iii) pay for any and all additional operating expenses arising out of  
302 operating the Visitor Spaces in such a manner; and

303 (iv) Pay Rent on a monthly basis to the City for each of the Visitor  
304 Spaces that is equipped to track the time when a vehicle parks in the Visitor Space  
305 and to charge for the Visitor Space.

306                   Manager acknowledges and agrees that the City retains the right to establish both  
307 (i) the hours of operation of the charged Visitor Spaces, and (ii) the rate or fee to be charged for  
308 the Visitor Parking Charges; which rates will be consistent with other City-owned parking  
309 facilities.

310                   **Section 4.3 Marking of Parking Spaces.** Manager shall keep all parking spaces  
311 adequately marked and identified at all times to distinguish the availability of the parking spaces  
312 for hourly, daily, reserved, handicapped, or other use, as the case may be, and shall comply with  
313 directions from the City regarding marking and identifying the parking spaces.

314                   **Section 4.3 Enforcement of Parking Space Restrictions.** Manager shall enforce  
315 the restrictions against the improper or unauthorized use of parking spaces, including, without  
316 limitation, arranging for the prompt towing or booting of any vehicle improperly or  
317 impermissibly parked in a parking space. Manager shall provide and install all signs that are  
318 necessary or appropriate for the enforcement of parking restrictions.

## 319                   ARTICLE V

### 320                   OPERATION AND MANAGEMENT OF PARKING FACILITY

#### 321                   **Section 5.1 Standard of Operation.**

322                   (a) Manager shall operate and manage the Parking Facility in first-class, efficient,  
323 and proper businesslike manner consistent with industry standards for the operation of  
324 comparable parking facilities in the Raleigh-Durham area that are operated as monthly parking  
325 facilities. Manager will maintain an office within the City of Durham. Manager will publish its  
326 telephone number to the general public and to the City, and Manager's phone system should be  
327 capable of recording messages.

328                   (b) Manager will use the Parking Facility for the operation of parking functions  
329 only and will not use the Parking Facility for any other activity, including but not limited to  
330 advertisement, assembly, or storage without written approval from the City.

331                   **Section 5.2 Independent Contractor.** Manager shall operate and manage the  
332 Parking Facility as an independent contractor and shall, subject to Section 5.11, employ a staff of  
333 efficient, skilled, and prudent employees in sufficient numbers to perform Manager's duties and  
334 obligations under this Agreement. In operating and managing the Parking Facility, Manager shall  
335 be solely responsible for the costs and expenses of operations, including, but not limited to,  
336 labor, supplies, computer hardware and software, utilities, all consumables, revenue collection  
337 supplies, insurance (as required in Section 8.1), and postage. Nothing contained in this  
338 Agreement shall be construed to create or form a partnership or joint venture between the parties  
339 or render either party liable for the debts or obligations of the other.

#### 340                   **Section 5.3 Hours of Operation and Regulations.**

341                   (a) City, in consultation with Manager, will have the right but not the  
342 obligation to establish from time to time the hours of operation for the Parking Facility and  
343 written regulations and policies concerning the use of the Parking Facility. Notwithstanding the

344 foregoing, the City will establish hours of operation and written regulations and policies that (i)  
345 are consistent with the use of the Parking Facility described in this Agreement and the Parking  
346 Lease (including any existing or proposed long term parking lease agreement(s) referenced in the  
347 Parking Lease), and (ii) that do not materially increase Manager’s duties and obligations under  
348 this Agreement.

349 (b) The “Operating Hours” shall be the following times:

350 (i) From 7:00 a.m. through 6:30 p.m., Monday through  
351 Friday, for all of the parking spaces in the Parking Facility;

352 (ii) During Special Events between the hours 6:30 p.m.  
353 through 7:00 a.m., Monday through Thursday, and from 6:30 p.m.  
354 Friday through 7:00 a.m. Monday; and,

355 (iii) 24 hours per day, 7 days per week for up to 360 of  
356 the Leased Spaces if such spaces are to be used for either hotel or  
357 residential purposes.

358 **Section 5.4 Parking Rates.** Manager shall operate the Parking Facility using the  
359 parking rates established by the City.

360 **Section 5.5 Collection of Parking Revenue.** With the exception of long term  
361 lease agreements entered into directly between the City and a tenant (e.g., the Parking Lease),  
362 pursuant to which tenants will pay the City directly, Manager shall be responsible for collecting  
363 all Parking Revenue.

364 **Section 5.6 Payments and Reporting.**

365 (a) Manager shall, within twenty-five (25) calendar days after the end of each  
366 month during any part of which is in the Term, provide to City a report that provides to City  
367 information concerning any amounts Manager may owe City pursuant to Section 4.2(b)(iv)  
368 (“Visitor Parking”), Section 5.15(c) (“Special Events Parking”), and Section 5.16(d)  
369 (“Residential Parking”), using the form attached hereto as Exhibit B. The report shall also  
370 include a count of the vehicles charged for Special Event’s Parking and the number of vouchers  
371 redeemed for Special Events Parking; the number of Visitor Spaces made subject to Visitor  
372 Parking Charges; and number of Residential Permits issued in excess of the first 300 issued to  
373 Tenant. Manager shall submit, with the monthly report, payment to City any amounts Manager  
374 owes pursuant to Section 4.2(b) (iv), Section 5.15(c), and Section 5.16(d) for the monthly period  
375 that is the subject of the report.

376 (b). By each October 1 during the Term, and within 110 calendar days after the  
377 end of the Term, Manager shall provide City with a report that provides to City the amount paid  
378 by Manager for maintenance and repairs during the previous fiscal year (July 1 – June 30), or in  
379 the case of the final report, of the period less than a year in length that begins on July 1 and ends  
380 on the last day of the Term.

381 (c) An authorized representative of Manager will sign each report required by this  
382 Section, which signature will serve as Manager’s certification as to the accuracy of the  
383 information contained in the report.

384 (d) If Manager fails to make any payment to City required by this Agreement in a  
385 timely manner, Manager shall also be required to pay interest at the rate of two percent (2%) plus  
386 the rate announced by Bank of America (or its successor) from time to time as its prime rate (but  
387 in no event higher than the maximum rate allowed by law), until paid in full, which interest shall  
388 be deemed a late fee. If there is no prime rate announced by Bank of America or its successor  
389 that can be reasonably used to derive the interest rate for purpose of this section, then the interest  
390 rate on said late payments shall be ten percent (10%) per year but not exceeding the maximum  
391 rate allowed by law.

392 **Section 5.7 Books and Records.**

393 (a) Manager shall maintain at an office in Durham, North Carolina, complete and  
394 accurate books and records of account in accordance with generally accepted business and  
395 accounting practices with respect to the operation, management, and maintenance of the Parking  
396 Facility and shall record in these books and records the information reported by Manager  
397 pursuant to Section 5.6, including the Parking Rates Manager charged for Visitor Parking,  
398 Special Events Parking, and Residential Parking. The books and records of account shall be  
399 retained by Manager for four (4) years, and, upon request by City, Manager shall deliver  
400 possession of the books and records, or accurate copies thereof, to City. In addition, upon  
401 expiration or termination of this Agreement, and for four (4) years thereafter, Manager shall  
402 make available to City for inspection and copying (at no expense to City) the books and records  
403 of the four (4) years preceding the expiration or termination of this Agreement..

404 (b) Audits. City and its authorized representatives may conduct at any time with  
405 reasonable notice an audit or inspection of the books and records of Manager relating to the  
406 operations, management and maintenance of the Parking Facility.

407 (c) Accounting Discrepancies. If any audit or inspection made by or on behalf of  
408 City discloses any discrepancy in any statement(s) submitted by Manager pursuant to Section 5.6  
409 and/or in the amount of any sums of money actually paid to the City, Manager immediately shall  
410 pay the sum of money owed to City, plus interest equal to an amount determined using the prime  
411 rate plus two percent (2%) on an annualized basis, from the date the sum should have been paid  
412 to City to the date payment is made to City. In addition, if an audit or inspection discloses a  
413 single cumulative discrepancy in excess of ten percent (10%) of the amount previously paid by  
414 Manager to City for the monthly period in question, Manager immediately shall pay to City the  
415 cost of the audit and/or inspection. The cost of the audit and/or inspection shall include all  
416 reasonable out of pocket costs incurred by City to do the audit and inspection. The “prime rate”  
417 for purposes of this section is the rate announced by Bank of America (or its successor) from  
418 time to time as its prime rate (but in no event higher than the maximum rate allowed by law). If  
419 there is no prime rate announced by Bank of America or its successor that can reasonably be  
420 used to derive the interest rate for purpose of this section, then the interest rate on said late  
421 installments shall be ten percent (10%) per year but not exceeding the maximum rate allowed by  
422 law.

423 (d) Penalties. Notwithstanding anything to the contrary contained in this  
424 Agreement, City shall have the unilateral right to terminate the Term immediately if any audit or  
425 inspection discloses (i) there was an intentional discrepancy on the part of an officer or manager  
426 of Manager or a shareholder of Manager or (ii) there was an intentional discrepancy made by a  
427 person other than those set forth in (i) of which Manager or a shareholder of Manager had actual  
428 knowledge but said person with knowledge did not disclose the discrepancy in writing to City, or  
429 did not take such corrective action as Manager should have taken in the exercise of reasonable  
430 care to avoid any further discrepancy. If any audit or inspection discloses an intentional  
431 discrepancy of which an officer or manager of Manager did not have knowledge, City shall  
432 inform Manager, and Manager shall (i) make such monetary adjustments including payment to  
433 City as may be required because of such discrepancy and (ii) take actions as necessary to avoid  
434 any further intentional discrepancy. The references in this subsection (d) to reasonable care are  
435 not to be construed as lessening the standard to which Manager is required to adhere to in  
436 carrying out its duties under this Agreement.

437 (e) Survival. The obligations of Manager under this Section 5.7 shall survive the  
438 termination of the Term.

439 **Section 5.8 Compensation.**

440 (a) In consideration of the Manager’s services rendered pursuant to this  
441 agreement, the City shall pay the Manager a monthly management fee (the “Management Fee”)  
442 that will be calculated based upon the Management Fee Rate (as defined below) times the total  
443 number of parking spaces in the Parking Facility. Parking spaces that are not usable in a  
444 commercially reasonable manner for parking motor vehicles during a majority of the number of  
445 the days in a given month shall not be counted for purposes of calculating the Management Fee  
446 for that month, and if the Management Fee with respect to those spaces is paid in advance, that  
447 portion of the Management Fee shall be deducted from the next payment. The City shall pay the  
448 Management Fee in advance on a monthly basis within fifteen (15) days after Manager provides  
449 an invoice to the City.

450 (b) As of the Effective Date, the Management Fee Rate will be equal to \$20.00  
451 per space per month. The Management Fee Rate shall be subject to increase or decrease on July  
452 1 of each year through July 1, 2024 (the “Adjustment Date”), which increase or decrease will be  
453 effective for the ensuing twelve-month period. On each Adjustment Date, the Management Fee  
454 Rate shall increase by an amount equal to the lesser of (i) the percentage interest in the CPI for  
455 the immediately preceding twelve (12) month period or (ii) three percent (3%). Alternatively, if  
456 the CPI decreases in the preceding twelve (12) month period, then the Management Fee Rate  
457 shall decrease by the CPI, provided that such decrease shall not be greater than three percent  
458 (3%) in any given year. If the CPI information is not available as of an Adjustment Date, the  
459 Management Fee Rate shall be equal to the previous rate until the CPI information is available,  
460 at which City or Manager, as the case may be, shall pay the other party the amount necessary to  
461 reflect the adjustment that should have been made as of the Adjustment Date.

462 (c) As of July 1, 2025, the Management Fee Rate will be equal to the rate  
463 determined by multiplying \$17.20 times CPI each year on the Adjustment Date beginning on  
464 July 1, 2012 and continuing through July 1, 2025 (the “Reset Management Fee Rate”). The

465 Reset Management Fee Rate will be subject to increase or decrease on the Adjustment Date  
466 beginning on July 1, 2026, which increase or decrease will be effective for the ensuing twelve-  
467 month period. Notwithstanding the foregoing adjustment to the Reset Management Fee Rate, the  
468 rate of increase in any one year shall not exceed three percent (3%).

469 **Section 5.9 Subcontracts and Assignment.** Manager may enter into subcontracts  
470 with third parties to perform some or all of Manager’s responsibilities as described in this  
471 Agreement, provided (i) each such subcontract shall be subject to and consistent with this  
472 Agreement and (ii) Manager shall remain fully obligated and responsible under this Agreement  
473 to the same extent as if Manager had not entered into the subcontract.

474 **Section 5.10 Claims and Demands.** Manager shall notify City of any claim,  
475 demand, or charge asserted or proposed to be asserted against or upon the Parking Facility or the  
476 Parking Revenues within five (5) calendar days of receiving notification thereof.

477 **Section 5.11 Compliance with Laws and Contracts.** Throughout the Term,  
478 Manager shall comply with all Laws relating to Manager’s duties and obligations under this  
479 Agreement and shall observe and comply with the requirements of all policies of insurance with  
480 respect to the Parking Facility and any machinery or equipment used in connection with the  
481 Parking Facility. Without limiting the foregoing sentences, Manager will comply with all  
482 applicable laws and regulations for the cleanup of any hazardous materials or liquids that may  
483 spill as a result of accidents, fires, or other events.

484 **Section 5.12 Access to the Parking Facility.** The Parking Facility is property of  
485 City. Nothing in this Agreement is intended to reduce City’s right to enter it at any time for any  
486 purpose. Without limiting the preceding sentence, City has the right to enter the Parking Facility  
487 in accordance with Article IX, Default and Remedies of this Agreement.

488 **Section 5.13 Customer Relations.** Manager shall provide a high level of  
489 customer service by employing friendly, helpful, customer-oriented personnel. Manager shall  
490 handle all complaints from the general public regarding parking in a courteous and professional  
491 manner. Except to the extent City may choose from time to time to vary from this procedure,  
492 Manager shall receive and handle all communications and complaint from customers. To the  
493 extent a communication relates to a matter solely in the discretion or authority of City, such as  
494 the amount of Parking Rates set by the City, Manager shall direct the person to City.

495 **Section 5.14 Security.**

497 (a) Manager shall cause security personnel to patrol the Parking Facilities.  
498 Manager will enter into an agreement with another party (subcontractor) or parties to provide  
499 such security. In the event the Manager contracts with another party to provide security, the  
500 Manager shall name in such an agreement the City as an Indemnitee and shall name the City as  
501 an additional insured and shall consult with the City regarding the level and type of insurance  
502 required. 24 hours per day, 7 days a week, Manager will provide one patrolling guard for the  
503 Parking which patrolling guard will also have responsibility for patrolling the perimeter of the  
504 American Tobacco Complex. In addition to such patrolling guard, Manager shall provide for at  
505 least one guard stationed at the American Tobacco Complex to monitor the security cameras at

506 the Parking Facility. City acknowledges that (i) the security patrols may not be as frequent  
507 during those times that are not within the operating hours, and (ii) the guards that patrol the  
508 Parking Facility may also be the same guards that have responsibility to patrol the American  
509 Tobacco Complex. Manager shall report to City any change in its security services if such  
510 change represents a material and substantial reassignment of security personnel. Manager shall  
511 promptly report to Durham Police Department any incidents involving criminal activity in or  
512 adjacent to the Parking Facility. The Manager shall make a report of all significant incidents and  
513 forward such a report to the attention of the City’s Director of Transportation or his designee by  
514 hand-delivery or fax (919) 560-4561 instead of to the person designated in Section 10.4 and  
515 instead of in the manner described in that section.

516  
517 (b) City expressly acknowledges that the Manager is not a security firm and  
518 that Manager will subcontract the security services required pursuant to this contract.  
519

520 (c) Nothing in this Agreement shall create any liability to third parties for  
521 Third Party Acts. A “Third Party Act” is a criminal or other act or omission by a party or entity  
522 other than Manager.

523 **Section 5.15 Special Events.**

524 (a) Manager will manage the Parking Facility for Special Events at its own cost  
525 and expense. Manager will operate the Parking Facility in a first-class, efficient and proper  
526 business-like manner consistent with industry standards for the operation of comparable parking  
527 garages for comparable events. In staffing the Parking Facility for Special Events, Manager will  
528 provide sufficient staff to accommodate the expected number of attendees that are likely to use  
529 the Parking Facility; provided that, for Special Events in the Durham Performing Arts Center  
530 (“DPAC”) that has sold fewer than 1,000 tickets or Special Events in Durham Bulls Athletic  
531 Park (“DBAP”) that is expected to sell fewer than 3,000 tickets, Manager will open the Parking  
532 Facility for general public use, but need not provide any personnel to operate the Parking  
533 Facility.

534 (b) Manager will use the Parking Rates established by City for Special Events.  
535 Unless modified by City, Manager will assess a Parking Rate established by the City but not less  
536 than \$4.00 per vehicle for Special Events.

537 (c) Manager will pay to City thirty-five percent (35%) of the Gross Revenues  
538 collected by Manager from parking for Special Events, and Manager will retain 65%. For the  
539 purpose of this subparagraph, the term “Gross Revenues” means all revenues collected by  
540 Manager for Special Event parking in the Parking Facility less any applicable taxes or  
541 assessments on sales or revenues. Manager will be solely responsible for any and all operating  
542 costs incurred for operating and managing the Parking Facility during Special Events or for the  
543 payment of any applicable taxes or assessments on sales or revenues.

544 (d) Manager acknowledges City has a special parking arrangement with the  
545 operator of the DPAC pursuant to which City charges the DPAC operator a reduced price for  
546 parking by season ticket holders of the DPAC Broadway Series Stage Productions who present a  
547 parking voucher when using the Parking Facility for a DPAC Broadway Series Special Event.

548 Manager will honor these parking vouchers and allow the vehicle that presents the parking  
549 voucher to park for free. Upon conclusion of the run of each Broadway show, Manager will  
550 present all vouchers it has collected to the DPAC operator, and Manager will be responsible for  
551 collecting payment from the DPAC operator for each voucher presented and will include in  
552 Gross Revenues the amount collected from the DPAC operator for vouchers from the Broadway  
553 show. Manager will have no obligation to honor any parking vouchers for Special Events other  
554 than the DPAC Broadway Series.

555 (e) During any year of the Term, Manager may elect to terminate its management  
556 and operational responsibility for Special Events by providing to City six (6) months' written  
557 notice of termination. If Manager provides such notice of termination, City shall have the right  
558 to engage a third party to operate the Parking Facility for Special Events.

559 **Section 5.16 Residential Parking.**

560 (a) If equipment, hardware and software is installed in the Parking Facility  
561 allowing Manager to control access to the Parking Facility and to track the time when vehicles  
562 enter and exit the Parking Facility, which equipment, hardware and software are subject to City's  
563 reasonable approval (the "Parking Control Equipment"), Manager will manage the Parking  
564 Facility to allow residents of downtown Durham to use Residential Spaces within the Parking  
565 Facility during the Residential Hours and will issue parking permits to downtown Durham  
566 residents for such use (the "Residential Permits").

567 (b) City will be entitled to establish the rules and regulations and the Parking  
568 Rates for the Residential Spaces, provided that Manager shall have the authority to enforce  
569 strictly the use restriction that limits the Residential Permits to the Residential Hours and that  
570 limits use of the Residential Permits that may be issued to the Old Bull/Noell Owner pursuant to  
571 the Parking Lease to residents of Old Bull/Noell only. In addition, City's rules and regulations  
572 for use of Residential Spaces will require that any use of the Residential Permits shall be  
573 consistent with the Special Events requirements described in Section 5.15.

574 (c) Notwithstanding subparagraph (b), Manager will manage the Residential  
575 Permits in a manner that complies with City's obligations under the Parking Lease, which  
576 provides to Tenant the right without the payment of any additional rent up to 300 Residential  
577 Permits subject to the terms and conditions of the Parking Lease.

578 (d) Manager will be entitled to no additional Management Fee for managing the  
579 Parking Facility with Residential Spaces. Further, if Manager issues Residential Permits in  
580 excess of the 300 Residential Permits required to be issued to the Tenant under the Parking  
581 Lease, Manager will be required to pay the City for any such additional Residential Permits (i.e.,  
582 in excess of Tenant's 300 Residential Permits) at the Parking Rates established by the City for  
583 Residential Permits pursuant to subparagraph (b).

584 **Section 5.17 Abandoned Vehicles, Overdue Accounts, and Violation of Rules**  
585 **and Regulations.**

586 (a) Manager may issue rules and regulations for use of the Parking Facility, which  
587 rules and regulations are subject to the City's approval (the "Rules and Regulations"). In issuing

588 parking cards to third parties, Manager may require such third parties to execute a parking  
589 agreement that, among other things, requires the third party to abide by the Rules and  
590 Regulations and that further provides that Manager may terminate parking privileges and  
591 deactivate parking cards in the event the third party fails to pay any Parking Rate Revenues that  
592 are owed or fails to comply with the Rules and Regulations.

593 (b) Manager shall have discretion as to whether to charge third parties a  
594 reasonable amount for parking cards or for the replacement of lost, stolen, or damaged parking  
595 cards.

596 (c) Manager may tow without notice any vehicles that are illegally stored or  
597 abandoned in the Parking Facility. Manager will notify the City if it removes any illegally stored  
598 or abandoned vehicles.

## 599 ARTICLE VI

### 600 MAINTENANCE OF PARKING FACILITY

601 **Section 6.1 Maintenance and Repair.** (a) Except as otherwise provided, the  
602 Manager shall maintain the Parking Facility in a good and clean condition and working order.  
603 Manager shall comply with the maintenance and cleaning responsibilities and frequencies as set  
604 forth in Exhibit A (the “Housekeeping and Maintenance Schedule”). City shall be responsible  
605 for the cost of maintaining the Parking Facility in good order and repair except to the extent that  
606 this Agreement expressly imposes upon Manager any maintenance or repair responsibilities.

607 (b) The Manager shall follow the guidelines for housekeeping and preventative  
608 maintenance as set forth in Chapters 1-4 of the Parking Garage Maintenance Manual, Fourth  
609 Edition (NPA Manual), which is attached hereto as Exhibit C, except as modified herein. The  
610 parties agree that any references in Chapters 1-4 to other chapters within the NPA Manual shall  
611 be excluded from the guidelines and shall not be a part of Manager’s responsibilities.

612 (c) In cases of conflict between the maintenance and cleaning responsibilities and  
613 frequencies described in Exhibit A (Housekeeping and Maintenance Schedule and the NPA  
614 Manual, the frequencies as described in Exhibit A (the Housekeeping and Maintenance  
615 Schedule) shall prevail.

616 **Section 6.2 Meaning of “described” in NPA; Manufacturer’s**  
617 **Recommendations.** Where this Agreement refers to a service that is described in the NPA  
618 Manual, it shall mean described, suggested, or recommended in the NPA Manual. Where, City  
619 or Manager is required to perform any service on any part of the Parking Facility, including  
620 equipment installed therein, that party shall do so in compliance with applicable manufacturers’  
621 recommendations.

622 **Section 6.3 Inspections and Reports.** Manager acknowledges that it is not the  
623 City’s intent to post City personnel in the Parking Facility to conduct periodic inspections of the  
624 Parking Facility, but to rely upon the inspections that Manager is to perform as described in  
625 Exhibit A. Manager shall develop forms, reasonably acceptable to City, upon which the results  
626 of any daily, weekly, monthly, or other regular inspections shall be recorded. Manager shall

627 provide a copy of any such forms to City. In addition, Manager shall document and photograph,  
628 if requested, any condition that it believes requires City to repair and provide a copy of the  
629 documentation and photographs to City. As soon as Manager has actual knowledge of an unsafe  
630 condition in the Parking Facility or of damage to the Parking Facility, including any structural  
631 problems of the structure, light poles and light globes (not including the bulbs and tubes),  
632 Manager shall immediately report such conditions to City; provided, however, that Manager  
633 shall in no event be responsible for the identification of latent defects relating to the Parking  
634 Facility. City shall be obligated, at its sole cost and expense, to make all repairs and capital  
635 improvements required by applicable law or that are necessary to correct any unsafe conditions  
636 at the Parking Facility. Upon request, Manager will assist the City with the oversight of any  
637 repairs the City intends to perform or to contract for, including making the arrangements for the  
638 repairs.

639 **Section 6.4 Cleaning.** Manager shall provide cleaning services throughout the  
640 Parking Facility, including stairwells, elevators, all parking and driveway areas, and storage  
641 areas and all other areas described in Exhibit A. Manager shall follow the guidelines described  
642 in the NPA Manual, pages 8-9 and 20-21, and shall perform these cleaning services on a  
643 schedule consistent with Exhibit A. Manager shall clean and attempt to remove any graffiti and  
644 clean up after any vandalism.

645 **Section 6.5 Doors and Hardware.** Manager shall perform the services regarding  
646 the doors and hardware in accordance with the guidelines described in the NPA Manual, pages 9  
647 and 21, and in a manner consistent with Exhibit A.

648 **Section 6.6 Electrical and Lighting.** Manager shall perform the electrical  
649 systems services described in Exhibit A as a Manager responsibility in a manner consistent with  
650 the guidelines described in the NPA Manual, pages 10 and 21-22. Manager shall perform these  
651 electrical systems services on a schedule consistent with Exhibit A. City shall perform all other  
652 maintenance services required for the electrical systems, including those services described in  
653 the NPA Manual, pages 10 and 21-22 that are assigned to City. Although Manager shall replace  
654 burned-out lamps, the City shall be responsible for group relamping of the Parking Facility.

655 **Section 6.7 Elevators.** Manager shall perform the elevator services described in  
656 Exhibit A as a Manager responsibility. After consulting with City, Manager shall secure and pay  
657 for a maintenance agreement for the elevators with a reputable and responsible elevator  
658 maintenance company. City shall be made a third-party beneficiary of that agreement. To the  
659 extent that agreement does not require the maintenance contract to perform any services that are  
660 described on pages 10-11, 22-23 and 33 of the NPA Manual or to the extent Exhibit A assigns  
661 responsibilities to City, the City shall perform those services. With respect to any water leakage  
662 into the elevator shaft or elevator equipment room (as described on page 22 of the NPA Manual),  
663 Manager's responsibility will be limited to inspecting the elevator shaft and equipment room for  
664 any evidence of leakage, cleaning the elevator shaft and equipment room regularly, and cleaning  
665 up any water that may be discovered. City will be responsible for any repairs that may be  
666 necessary to stop any such water leakage. Manager shall provide a copy of any written reports  
667 that Manager creates or receives related to the elevators.

668                   **Section 6.8 Landscaping.** Manager shall perform the landscaping services  
669 described in the NPA Manual, pages 17-18 and 28. The City shall perform the landscaping  
670 services described in the NPA Manual, page 35.

671                   **Section 6.9 Painting.** Manager shall perform the painting services described in  
672 Exhibit A as a Manager responsibility in a manner consistent with the guidelines described in the  
673 NPA Manual, pages 8, 17, 20, and 27. Manager shall perform the painting services on a schedule  
674 consistent with Exhibit A. City shall be responsible only for repainting the walls, ceilings, and  
675 stairs as specified in Exhibit A. In addition, the City is responsible for a one-time repainting of  
676 all handrails and painted metal surfaces throughout the Parking Facility within sixty (60) days  
677 from the Effective Date.

678                   **Section 6.10 Parking Control Equipment.** Manager shall perform all the  
679 parking control equipment services described in the NPA Manual at pages 12 and 24-25 and 33,  
680 and shall provide supplies, such as security cards, that are needed to make the equipment  
681 function as designed. Manager shall also be responsible for replacing and repairing all Visitor  
682 Parking related metering equipment and devices that are installed by Manager. The City shall be  
683 responsible to replace motors, parts, and the entire parking control unit when a reasonable person  
684 who owns the equipment would choose to replace rather than repair the motor, any parts, or the  
685 entire parking control unit. In addition, City and the Manager shall cooperate with each other in  
686 pursuing any remedies that may exist under any manufacturer's warranties that may be  
687 applicable.

688                   **Section 6.11 Plumbing Systems.** Manager shall perform the housekeeping and  
689 preventative maintenance services for plumbing systems described in Exhibit A as a Manager  
690 responsibility in a manner consistent with the guidelines described in the NPA Manual, pages  
691 12-13 and 27-29. Manager shall perform the painting services on a schedule consistent with  
692 Exhibit A. City shall perform all other maintenance and repair services required for the  
693 plumbing system, including maintaining, repairing, and replacing, if necessary, the storm  
694 drainage system, the sanitary sewer system, if any, and the fire protection system.

695                   **Section 6.12 Roofing and Waterproofing.** Manager shall perform the services  
696 for the roofing and waterproofing described in the Housekeeping and Preventive Maintenance  
697 sections of the NPA Manual, pages 7-8 and 19-20. City shall perform the maintenance and  
698 repair services required for the roofing and waterproofing systems, including those services  
699 described in Exhibit A.

700                   **Section 6.13 Safety Checks.** Manager shall perform the housekeeping and  
701 preventative maintenance services described on pages 13-14 and 26 of the NPA Manual, except  
702 that, if holes or pockets in the concrete develop and such holes or pockets are safety hazards,  
703 Manager's responsibility will be to take appropriate steps to erect signage or barriers or to warn  
704 or detour persons in the Parking Garage, and to inform City of the existence of the safety hazards  
705 first by telephone followed by a written report stating the perceived hazard or other dangerous  
706 condition as soon as commercially reasonable given the severity of the hazard. City will be  
707 responsible for repairing any holes or pockets in the concrete as described in Exhibit A. City has  
708 the right to perform random safety checks.

709                   **Section 6.14 Signage and Graphics.** Manager shall maintain and post signage  
710 (a) that is required by any Laws, (b) that is prudent, or appropriate to facilitate vehicular and  
711 pedestrian circulation throughout the Parking Facility, or (c) that is necessary or advisable to  
712 allow for enforcement of parking space restrictions and any applicable regulations. Manager  
713 shall post temporary signage that is required by any Laws or that is reasonably needed to warn  
714 patrons of malfunctioning equipment and hazards, including hazards caused by weather and  
715 accidents. City shall have the right to approve any such signage. Manager will perform the  
716 housekeeping and preventative maintenance services described in the NPA Manual for signs and  
717 graphics, pages 15, 26 and 34, in accordance with Exhibit A. Manager will maintain, repair, and  
718 replace the signage and graphics as necessary.

719                   **Section 6.15 Structural Systems.** Manager shall perform the housekeeping  
720 services for structural systems described in the NPA Manual, pages 6, and the inspection services  
721 for structural systems described within the preventative maintenance section of the NPA Manual  
722 on page 19 in a manner consistent with Exhibit A. Notwithstanding the foregoing, Manager’s  
723 inspection responsibilities shall be limited to performing a walk-through appraisal as described  
724 on page 19 of the NPA Manual, and reporting to City any conditions that are observed, and the  
725 City will be responsible for performing any inspections to be performed by licensed engineers or  
726 for performing the condition appraisal described in Chapter 5 of the NPA Manual.

727                   **Section 6.16 Snow and Ice Removal.** Manager will be responsible for the  
728 removal of snow and ice wherever it may accumulate on the Parking Facility including but not  
729 limited to driveways, parking areas, sidewalks, or any other location where it may pose a threat  
730 to the safe operation of the Parking Facility, users thereof, surrounding areas, and pedestrians.  
731 Manager’s means and methods of snow and ice removal shall be subject to the reasonable  
732 approval of the City.

733                   **Section 6.17 Equipment and Supplies.** Each party shall be responsible for  
734 obtaining, providing, and replacing all equipment, inventory, and supplies that each may require  
735 in the performance of its duties under this Agreement.

736

737

738

## ARTICLE VII

739

### INDEMNIFICATION

740                   **Section 7.1 Indemnity.** (a) To the maximum extent allowed by law, Manager  
741 shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise  
742 in any manner from, in connection with, or out of this Agreement as a result of acts or omissions  
743 of Manager or subcontractors or anyone directly or indirectly employed by Manager or anyone  
744 for whose acts Manager may be liable. Notwithstanding the foregoing, Manager shall not be  
745 required to defend, indemnify, and save harmless Indemnitees against liability for Charges that  
746 are proximately caused by or resulting from the negligence or intentional or willful acts, in whole  
747 or in part, of Indemnitees.

748

749 (b) To the maximum extent allowed by law, City shall defend, indemnify, and save  
750 harmless Manager Indemnitees from and against all Charges that arise in any manner from, in  
751 connection with, or out of this Agreement as a result of acts or omissions of City or  
752 subcontractors or anyone directly or indirectly employed by City or anyone for whose acts City  
753 may be liable. Notwithstanding the foregoing, City shall not be required to defend, indemnify,  
754 and save harmless Indemnitees against liability for Charges that are proximately caused by or  
755 resulting from the negligence or intentional or willful acts, in whole or in part, of Manager  
756 Indemnitees.

757 (c) Definitions. As used in this Article -- "Charges" means claims, judgments, costs,  
758 damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements,  
759 and expenses (included without limitation within "Charges" are (1) interest and reasonable  
760 attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of  
761 sedimentation pollution, erosion control, pollution, or other environmental Laws). "Indemnitees"  
762 means City and its officers, officials, independent contractors (excluding Manager), agents, and  
763 employees, including its City Manager. "Manager Indemnitees" means Manager, its members,  
764 employees, officers, directors, independent contractors, and agents.  
765

766 (d) Other Provisions Separate. Nothing in this section shall affect any warranties in favor  
767 of City or Manager that are otherwise provided in or arise out of this Agreement. This section is  
768 in addition to and shall be construed separately from any other indemnification provisions that  
769 may be in this Agreement.  
770

771 (e) Survival. This section shall remain in force despite termination of the Term.  
772

773 (f) Other. In performing the parties' respective duties under subsection 7.1(a) and (b)  
774 above, City and Manager, as applicable, shall each at their sole expense defend Indemnitees or  
775 Manager Indemnitees, as the case may be, with legal counsel of its choice reasonably acceptable  
776 to the other. Manager or City, as applicable, shall deliver to the other copies of documents  
777 served in any legal proceeding arising in connection with the Parking Facility. Whenever  
778 requested by City or Manager, as applicable, the requested party shall advise the other party as to  
779 the status of such legal proceeding; provided, however, that any such consultation shall not cause  
780 City or Manager to waive any claim of privilege, including, without limitation, attorney-client  
781 privilege. If Manager or City, as applicable, fails to defend any such legal proceeding, then the  
782 indemnified party shall have the right (but not the obligation) to defend the proceeding at the  
783 indemnifying party's expense. Neither Manager nor City shall settle any such legal proceeding  
784 without the other party's prior written consent unless the effect of such settlement shall be to  
785 release all Indemnitees from all liability with respect to such legal proceeding (and all claims and  
786 liabilities asserted therein).  
787

## 788 ARTICLE VIII

### 789 INSURANCE AND CASUALTY

790 **Section 8.1 Minimum Requirements of Manager's Insurance.** Manager, at its  
791 own expense, shall purchase and continuously maintain in effect during the Term an insurance

792 policy with such limits as are customarily maintained by facilities of like-kind in North Carolina,  
793 provided that such insurance policy shall contain, at a minimum, the following coverage:  
794

795 (a)

796 **Commercial General Liability**, covering

- 797 • premises/operations;
- 798 • products/completed operations;
- 799 • broad form property damage;
- 800 • personal injury;
- 801 • contractual liability;
- 802 • independent contractors, if any are used in the performance of this contract;
- 803 • City of Durham must be named additional insured, and an original of the endorsement to  
804 effect the coverage must be attached to the certificate (if by blanket endorsement, then agent  
805 may so indicate in the GL section of the certificate, in lieu of an original endorsement);  
806 additional insured coverage shall be primary and non-contributing
- 807 • combined single limit not less than \$1,000,000 per occurrence;

808  
809 **Workers' Compensation Insurance**, covering

- 810 • statutory benefits;
- 811 • covering employees required to be covered under the laws of the State of North Carolina;

812  
813 **Automobile Liability Insurance**, covering

- 814 • vehicles owned, hired, leased, rented or borrowed by Manager;
- 815 • property damage, bodily injury or death and medical expenses from the use of Manager  
816 owned, hired, leased, rented or borrowed vehicles;
- 817 • combined single limit not less than \$1,000,000 per claim applicable to this contract;
- 818 • City of Durham must be named designated insured;

819  
820 **Insurance shall be provided by:**

- 821 • companies authorized to do business in the State of North Carolina
- 822 • companies with Best rating of A- (VII) or better.

823  
824 **Insurance shall be evidenced by a certificate:**

- 825 • Manager will provide a new certificate each time a policy is renewed or replaced with a new  
826 policy
- 827 • certificates shall be addressed to:  
828 City of Durham, North Carolina  
829 Attention: Finance Director  
830 101 City Hall Plaza  
831 Durham, North Carolina 27701

832  
833 **Excess/Umbrella Policy**

- 834 • required limits of coverage amounts may be reached by a combination of primary and  
835 excess/umbrella insurance policies

836

837 (b) City shall purchase and continuously maintain, at its own expense, insurance covering  
838 the Premises in an amount that shall not be less than one hundred percent (100%) of the full  
839 replacement cost, subject to customary deductibles, and the City's personal property contained  
840 therein. The insurance policy shall be broad in terms of perils covered, and shall in all events  
841 cover losses from fire, vandalism, malicious mischief, and loss or damage from lighting,  
842 windstorm, hail, explosion, riot, riot attending a strike, civil commotion, weight of snow and ice,  
843 aircraft, vehicles, and smoke. The City's insurance policy must identify Manager as a named  
844 additional insured, and an original of the endorsement to effect the coverage must be attached to  
845 the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the  
846 certificate, in lieu of an original endorsement). City does hereby waive all rights of recovery, if  
847 any, against Manager for damage to, or destruction of, the Parking Garages in the event such  
848 damage or destruction is caused by fire or other casualty only to the extent and in the amount  
849 such damage or destruction or casualty is covered under the City's fire and extended coverage  
850 insurance policy.

851  
852 **Section 8.2 Failure to Maintain Insurance.** If, after fifteen (15) calendar days'  
853 written notice and failure to cure, either City or Manager, as applicable, shall fail to obtain or  
854 maintain insurance as required in this Agreement, the other party may, at its option, obtain and  
855 maintain such insurance and shall be entitled to prompt reimbursement by the other party for all  
856 amounts expended in connection with obtaining and maintaining such insurance. If either City  
857 or Manager, as applicable, does not exercise this option, nothing in this Section shall relieve the  
858 other party of the duty to provide insurance or restrict either City or Manager, as applicable, in  
859 the remedy it may obtain as a result of the other party's failure to obtain or maintain insurance.

860 **Section 8.3 Adjustment of Losses.** City and Manager shall adjust losses under  
861 their respective insurance policies related to the Parking Facility as promptly as practicable and  
862 with due regard to the interests of the other party.

863 **Section 8.4 No Release of Liability.** No acceptance or approval of any  
864 insurance policy by Manager or City shall relieve or release the other party from any liability,  
865 duty, or obligation under the provisions of this Agreement.

866 **Section 8.5 Casualty.** If the Parking Facility is damaged by fire or other  
867 casualty, then the provisions of this Section 8.5 shall determine whether this Agreement is  
868 terminated and the duration of any suspension of the obligations of the parties hereunder. If the  
869 fire or casualty results in only a portion of the Parking Facility being usable for its intended  
870 purpose, then this Agreement shall remain in full force and effect with respect to the portion of  
871 the Parking Facility that is still usable and the payments and obligations of the parties hereunder  
872 shall be equitably adjusted based upon the portion of the Parking Facility that is in operation. If  
873 the fire or other casualty results in the Parking Garage being unusable for its intended purpose,  
874 then the rights and obligations of City and Manager hereunder shall be suspended until such time  
875 as the Parking Facility is rebuilt or restored. Upon substantial completion of such restoration,  
876 Manager shall manage the Parking Facility in accordance with the provisions of this Agreement;  
877 provided, however, that if any such reconstruction requires materially more or less services of  
878 Manager than those described herein, then the Management Fee shall be equitably adjusted as a  
879 result of Manager providing materially more or fewer services. If the fire or casualty results in  
880 the Parking Facility being unusable for its intended purpose and it is not rebuilt, restored or

881 repaired prior to the expiration of the Term, then this Agreement shall be deemed terminated as  
882 of the date of such casualty. Nothing in this Section 8.5 or elsewhere in this Agreement shall, or  
883 shall be construed as, excusing City from any of its rebuilding or reconstruction obligations set  
884 forth in the Parking Lease.

## 885 **ARTICLE IX**

### 886 **DEFAULT AND REMEDIES**

887 **Section 9.1 Defaults.** The following events shall be deemed a default by  
888 Manager under this Agreement:

889 a) Manager's failure to make any payment when it shall become due to City under  
890 this Agreement;

891 b) The failure or refusal of Manager to perform fully and promptly any act or  
892 obligation required under this Agreement or to comply otherwise with any term or provision of  
893 this Agreement;

894 c) The entry of an order of relief for Manager by a court of competent jurisdiction  
895 under any bankruptcy or insolvency laws;

896 d) The entry of an order of appointment by any court or under any Law of a receiver,  
897 trustee, or other custodian of the property, assets, or business of Manager;

898 e) The assignment by Manager of all or any part of its property or assets for the  
899 benefit of creditors other than its stock or other equity interest in an unregulated subsidiary or  
900 joint venture; or

901 f) The levy of execution, attachment, or other taking of property (other than  
902 Manager's stock or other equity interest in an unregulated subsidiary or joint venture), assets, or  
903 interest under this Agreement of Manager by process of law or otherwise in satisfaction of any  
904 judgment, debt, or claim, unless postponed by appeal, furnishing of bond, or other contest by  
905 Manager as permitted by law.

906 g) If Manager is an Affiliate of the Tenant under the Parking Lease, the occurrence  
907 of an Event of Default of the Parking Lease as such term is defined in the Parking Lease.

908 **Section 9.2 Opportunity to Cure.** Upon the occurrence of any of the defaults  
909 contained in Section 9.1(a), City shall provide to Manager written notice of such default, and  
910 Manager shall have fifteen (15) calendar days after the date of receipt of such written notice to  
911 cure such default; provided, however, that City shall not be obligated to provide Manager with a  
912 notice of default under Section 9.1(a) more frequently than two (2) times in any twelve month  
913 period. Upon the occurrence of a default contained in Section 9.1(b), City shall provide to  
914 Manager written notice of such default and Manager shall have thirty (30) days after the date of  
915 receipt of such written notice to cure such default. If the nature of the default contained in  
916 Section 9.1(b) is such that Manager reasonably cannot cure the default within that thirty (30) day  
917 period (and such default is not in the payment of money), then Manager shall have an additional

918 reasonable amount of time to cure the default, provided that Manager has begun its efforts to  
919 cure the default within that thirty (30) day period and Manager continues its efforts to cure the  
920 default in a commercially reasonable manner. There is no notice requirement or cure period for  
921 the other defaults listed in Section 9.1. Manager’s failure to cure a default within the applicable  
922 time period, if any, shall be an “Event of Default”. In addition, City’s rights to exercise remedies  
923 are limited by Section 10.20, including Section 10.20(i).

924 **Section 9.3 Remedies for Default by Manager.** This Agreement shall be  
925 enforceable by actions for specific performance or injunction in addition to any other remedies  
926 available at law or in equity, including recovery of all attorneys’ fees and court costs. If an Event  
927 of Default has occurred, City may, without further notice or demand, terminate the Term, in  
928 which event, Manager immediately shall surrender the Parking Facility to City; and, if Manager  
929 fails to do so, City shall have the right, without waiving any other remedy for possession or  
930 arrears in payments, to enter upon and take control of the Parking Facility and to expel or remove  
931 Manager and any other person who may be occupying the Parking Facility or any part of the  
932 Parking Facility. Pursuit of any remedy under this Agreement shall not preclude the pursuit of  
933 any other remedy provided for in this Agreement or any other remedy provided in law or equity,  
934 nor shall pursuit of any remedy provided in this Agreement constitute a forfeiture or waiver of  
935 any amounts due to City under this Agreement or of any damages accruing to City by reason of  
936 the violation this Agreement. Notwithstanding any contrary provision contained in this  
937 Agreement, neither City no any person claiming through City shall be entitled to recover from  
938 Manager any consequential, special, or punitive damages.

939 **Section 9.4 Default by City.** City’s failure to perform any act or obligation  
940 required under this Agreement or to comply otherwise with any term or provision of this  
941 Agreement shall be deemed a default by the City.

942 **Section 9.5 City’s Opportunity to Cure and Manager’s Remedies.** (a) Upon  
943 the failure of City to perform any of its obligations under this Agreement, Manager shall provide  
944 written notice of default to City, and City shall have thirty (30) calendar days after the date of  
945 receipt of such written notice to cure such default. If the nature of the default is such that City  
946 reasonably cannot cure the default within that thirty (30) day period (and such default is not in  
947 the payment of money), then City shall have an additional reasonable amount of time to cure the  
948 default, provided that City has begun its efforts to cure the default within that thirty (30) day  
949 period and City continues its efforts to cure the default in a commercially reasonable manner.  
950 City’s failure to cure a default within the applicable time period, if any, shall be an “Event of  
951 Default”.

952 (b) If City commits an Event of Default, then Manager may pursue all remedies  
953 available to Manager, at law or in equity. Notwithstanding any contrary provision contained in  
954 this Agreement, neither Manager nor any person claiming through Manager shall be entitled to  
955 recover from City any consequential, special, or punitive damages.

956 **Section 9.6 Failure to Perform and Self Help.** (a) In addition to other remedies  
957 provided in this Agreement, if either party fails to perform its obligations under this Agreement  
958 and such failure arises to an Event of Default, then, unless otherwise agreed, the other party may

959 perform whatever action is reasonably necessary to cure the problem at the expense of the party  
960 that committed the Event of Default, provided that:

961 (i) the other party provides written notice to the non-performing party specifying  
962 the action requested and the non-performing party fails to start the requested work  
963 within ten (10) business days following the giving of such notice; or

964 (ii) the other party provides written notice to the non-performing party specifying  
965 the action requested and the non-performing party fails to complete the requested  
966 work within thirty (30) business days following the giving of such notice by the  
967 other party; provided, in the event that the requested work requires more than  
968 thirty (30) business days to complete, the non-performing party shall have a  
969 reasonable amount of time to complete the work so long as such work is pursued  
970 in a diligent manner.

971 This Section is not to be construed to restrict either party's rights or remedies under other  
972 Sections of this Agreement.

973 (b) Before either party shall be required to reimburse the other party for actions  
974 done or expenses made arising out of the failure of the non-performing party to comply with this  
975 Agreement, the other party shall provide the non-performing party an itemized invoice with  
976 reasonable supporting documentation. The non-performing party shall reimburse the other party  
977 within ten (10) business days following its receipt of such invoice. Notwithstanding the  
978 foregoing, the Manager acknowledges that its right to receive reimbursement from the City for  
979 any such costs and expenses incurred may be limited unless Manager abides by any procurement  
980 or contracting requirements that the City is required by law to abide.

981 **Section 9.7 Emergency.** In the event of an emergency, either party may initiate  
982 corrective measures to prevent or mitigate any impending damage to or catastrophic effect on the  
983 Parking Facility or danger to natural persons resulting from the destruction or failure of any  
984 facility or component of the Parking Facility after (a) making reasonable efforts under the  
985 circumstances to notify the other party of the emergency and (b) giving the other party a  
986 reasonable amount of time under the circumstances to take corrective action. The parties shall  
987 share the costs of such action in proportion to their responsibilities under this Agreement.

988 **Section 9.8 Force Majeure.** If either party shall be delayed or hindered in or  
989 prevented from the performance of any act required to be performed by such party by reason of  
990 an event beyond the party's control and to which event the party made no substantial  
991 contribution in causing, then the time for performance of such act shall be extended for a period  
992 equivalent to the period of such delay, provided that such party has taken steps that are  
993 reasonable under the circumstances to mitigate the effects of such force majeure and further  
994 provided that such party shall notify the other party of such delay, hindrance, or prevention  
995 within three (3) business days after the commencement thereof and within three (3) business  
996 days after the expiration thereof. Lack of adequate funds or financial inability to perform shall  
997 not be deemed to be a cause beyond the control of such party.

998                    **Section 9.9 Non-Waiver.** No delay or omission of either party in the exercise of  
999 any right or remedy accruing upon any default on the part of the other party shall impair such  
1000 right or remedy or be construed to be a waiver thereof, nor shall such delay or omission  
1001 constitute approval of or acquiescence in a breach under this Agreement.

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1003 **ARTICLE X**

1004 **MISCELLANEOUS**

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1006 **Section 10.1 Survival.** It is understood and agreed that whether or not  
1007 specifically provided herein, any provision of this Agreement that by its nature and effect is  
1008 required to be kept, observed, or performed after the termination of the Term shall survive the  
1009 Term, whether the Term ends prematurely or by the passage of time, and shall remain binding  
1010 upon and for the benefit of the parties until fully observed, kept, or performed. Provisions in this  
1011 Agreement requiring specific rights, duties, or obligations to survive the Term are not to be  
1012 construed to limit this Section.

1013 **Section 10.2 Good Faith.** The parties to this Agreement agree to cooperate and  
1014 otherwise act in good faith with respect to the promises and duties contemplated by this  
1015 Agreement and the efficient and safe operation, management, and maintenance of the Parking  
1016 Facility.

1017 **Section 10.3 Assignment.** Except as permitted in this Section, Manager shall not  
1018 assign this Agreement or any benefit accruing under this Agreement to any party without first  
1019 obtaining the prior written consent of the City. (a) Manager may assign this Agreement or any  
1020 portion there or any benefit accruing under this Agreement to any party who is not a Prohibited  
1021 Person (hereinafter defined) without first obtaining the prior written consent of City, provided  
1022 that no such assignment shall relieve Manager of its duties and obligations of this Agreement. In  
1023 addition, Manager shall be permitted to assign all or a portion of this Agreement to (x) an entity  
1024 that is wholly owned or controlled by Manager, CBC Real Estate Company, Inc., or Capitol  
1025 Broadcasting Company, Incorporated, (y) the first mortgage holder of the American Tobacco  
1026 Complex, or (z) any other lender holding a security interest in the American Tobacco Complex.  
1027 No assignment shall relieve Manager of responsibility for the Manager’s duties and obligations  
1028 under this Agreement, except under the following circumstance: (i) the City consents (in the  
1029 exercise of its sole and absolute discretion) to an assignment of this Agreement by executing an  
1030 instrument other than this Agreement and such written instrument expressly relieves Manager of  
1031 any further liability for obligations accruing after the effective date of the assignment, (ii)  
1032 Manager assigns all or part of this Agreement to a permitted assignee who is not a Prohibited  
1033 Person, and (iii) the assignee expressly assumes in writing (by an instrument in form and  
1034 substance reasonably satisfactory to the City) all of the obligations under this Agreement  
1035 accruing after the date of the assignment. Any unauthorized assignment of this Agreement shall  
1036 be null and void and shall constitute a default under this Agreement.

1037 (b) Manager shall have the right, without the consent of City, to delegate its  
1038 duties and responsibilities to a third party provided that no such delegation results in Manager  
1039 being released from its obligations under this Agreement.

1040 (c) “Prohibited Person” shall mean any of the following:

1041 (i) Any Person (A) that is in default or in breach of its  
1042 obligations under any written agreement (including, but not limited  
1043 to, any ground lease, any loan agreement or mortgage, or

1044 regulatory agreement) with Landlord, or (B) that directly or  
1045 indirectly controls, is controlled by, or is under common control  
1046 with a Person that is in default or in breach of its obligations under  
1047 any written agreement with Landlord, unless this default or breach  
1048 has been waived in writing by Landlord.

1049 (ii) Any Person (A) that has been convicted in a  
1050 criminal proceeding of a felony for any crime involving moral  
1051 turpitude or that is an organized crime figure or is reputed (as  
1052 determined according to the criteria specified in the next  
1053 paragraph) to have substantial business or other affiliations with an  
1054 organized crime figure, or (B) that directly or indirectly controls, is  
1055 controlled by, or is under common control with a Person that has  
1056 been convicted in a criminal proceeding of a felony for any crime  
1057 involving moral turpitude or that is an organized crime figure or is  
1058 reputed to have substantial business or other affiliations with an  
1059 organized crime figure.

1060 The determination as to whether any Person is an organized crime  
1061 figure or is reputed to have substantial business or other affiliations  
1062 with an organized crime figure or directly or indirectly controls, is  
1063 controlled by, or is under common control with a Person that is an  
1064 organized crime figure or is reputed to have substantial business or  
1065 other affiliations with an organized crime figure shall be within the  
1066 sole discretion of Landlord.

1067 (iii) Any “enemy” or “ally of enemy” with which  
1068 trading is prohibited by the Trading with the Enemy Act, codified  
1069 at 50 USCS Appendix Section 3, as amended.

1070 **Section 10.4 Notices.** All notices, demands, and requests required or permitted  
1071 under this Agreement shall, unless otherwise specified, be in writing, sent to the following  
1072 addresses or to such other address as the party to whom the notice is sent shall have designated in  
1073 writing in accordance with the provisions of this Section:

1074 (a) As to City: Mailing Address Delivery Address

Transportation Department	Department of Transportation
Attn: Director	Attn: Director
City of Durham	City of Durham
101 City Hall Plaza	101 City Hall Plaza
Durham, NC 27701	Durham, NC 27701
Durham, NC 27704	The fax number is (919) 560-4561.

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(b) As to Manager:

With a copy to:

American Campus, LLC	American Campus, LLC
c/o Blackwell Street Management Co, LLC	Attn: General Counsel
318 Blackwell Street, Suite 150	2619 Western Blvd.
Durham, NC 27701	Raleigh, NC 27606
Attn: Vice President of Real Estate	
The fax number is (919) 433-4279	The fax number is (919) 821-8733

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Notices, demands, or requests delivered pursuant to this Section shall be deemed to have been properly given if delivered by one of the following methods:

(i) Delivered as evidenced by a written receipt of delivery,

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(ii) Delivered by express, registered, or certified mail of the United States Postal Service, return receipt requested, postage prepaid, or

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(iii) Delivered by United Parcel Service or Federal Express.

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As an alternative, they shall be deemed to have been properly given if both delivered by fax and also delivered by a method described in (ii) or (iii).

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Each such notice, demand, or request shall be deemed to have been received upon the earlier of

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(iv) The actual receipt (including the receipt by fax for which there is a written confirmation), or

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(v) Refusal by the addressee;

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(vi) or three (3) Business Days after deposit in the custody of the United States Postal Service if sent in accordance with (ii), or the next Business Day after deposit with the courier if sent pursuant to (iii).

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(c) Notice of Address Change. A party shall give the other party notice of any change in address, which notice shall not be effective until five (5) business days after it is given. If an address is no longer valid so that a notice is not delivered when sent by a method described above, but the party has not given notice of the new address, then that notice sent to that address is deemed delivered by that method three days after it is sent.

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**Section 10.5 Successors.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and its respective successors and assigns.

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**Section 10.6 Severability.** If any provision of this Agreement is unenforceable, the remainder of this Agreement shall remain enforceable to the extent permitted by law.

1107                   **Section 10.7 Execution in Counterparts.** This Agreement may be executed in  
1108 multiple counterparts, each of which shall be deemed an original, but all of which shall constitute  
1109 one and the same instrument.

1110                   **Section 10.8 Applicable Law; Forum.** This Agreement shall be governed by  
1111 and construed in accordance with the laws of the State of North Carolina. The exclusive forum  
1112 and venue for all actions arising out of this Agreement shall be the North Carolina General Court  
1113 of Justice in Durham County. Such actions shall not be commenced in nor removed to federal  
1114 court. This Section shall not apply to subsequent actions to enforce a judgment entered in actions  
1115 heard pursuant to this Section.

1116                   **Section 10.9 Covenants of City Not Covenants of Officials Individually.** No  
1117 covenant, stipulation, obligation, or agreement contained in this Agreement shall be deemed to  
1118 be a covenant, stipulation, obligation, agreement, or personal liability of any present or future  
1119 member, officer, agent, or employee of City in such person's individual capacity.

1120                   **Section 10.10 Entire Agreement.** This Agreement constitutes the entire  
1121 agreement between the parties, and all prior or contemporaneous oral or written agreements or  
1122 instruments on the subject matter of this Agreement are merged in this Agreement.

1123                   **Section 10.11 Performance of Government Functions.** Nothing contained in  
1124 this Agreement shall be deemed or construed to stop, limit, or impair City from exercising or  
1125 performing any regulatory, policing, legislative, governmental, or other powers or functions.

1126                   **Section 10.12 City Policy.** The City opposes discrimination on the basis of race  
1127 and sex, and urges all of its contractors to provide a fair opportunity for minorities and women to  
1128 participate in their work force and as subcontractors and vendors under City contracts.

1129                   **Section 10.13 EEO Provisions.** During the performance of this Agreement the  
1130 Manager agrees as follows: (1) Manager shall not discriminate against any employee or applicant  
1131 for employment because of race, color, religion, sex, national origin, political affiliation or  
1132 belief, age, or handicap. The Manager shall take affirmative action to insure that applicants are  
1133 employed and that employees are treated equally during employment, without regard to race,  
1134 color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action  
1135 shall include but not be limited to the following: employment, upgrading, demotion, transfer,  
1136 recruitment or advertising, layoff or termination, rates of pay or other forms of compensation,  
1137 and selection for training, including apprenticeship. The Manager shall post in conspicuous  
1138 places, available to employees and applicants for employment, notices setting forth these EEO  
1139 provisions. (2) The Manager shall in all solicitations or advertisement for employees placed by  
1140 or on behalf of the Manager; state that all qualified applicants will receive consideration for  
1141 employment without regard to race, color, religion, sex, national origin, political affiliation or  
1142 belief, age, or handicap. (3) The Manager shall send a copy of the EEO provisions to each labor  
1143 union or representative of workers with which it has a collective bargaining agreement or other  
1144 contract or understanding. (4) In the event of the Manager's noncompliance with these EEO  
1145 provisions, City may cancel, terminate, or suspend this Agreement, in whole or in part, and City  
1146 may declare the Manager ineligible for further City contracts. (5) Unless exempted by City  
1147 Council of City of Durham, the Manager shall include these EEO provisions in every purchase

1148 order for goods to be used in performing this Agreement and in every subcontract related to this  
1149 Agreement so that these EEO provisions will be binding upon such subcontractors and vendors.

1150 **Section 10.14 SDBE.** The Manager shall comply with all applicable provisions  
1151 of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance),  
1152 as amended from time to time. The failure of the Manager to comply with that chapter shall be a  
1153 material breach of contract which may result in the rescission or termination of this contract  
1154 and/or other appropriate remedies in accordance with the provisions of that chapter, this contract,  
1155 and State law. Section 18-59(f) of that article of that chapter provides, in part, “If the City  
1156 Manager determines that the Manager has failed to comply with the provisions of the Contract,  
1157 the City Manager shall notify the Manager in writing of the deficiencies. The Manager shall  
1158 have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that  
1159 there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only  
1160 to the Manager’s alleged violations of its obligations under Article III of Chapter 18 and not to  
1161 the Manager’s alleged violations of other obligations.

1162  
1163 **Section 10.15 ADA Requirements.** The Manager shall be responsible for  
1164 monitoring and managing the Parking Facility for compliance with the provisions of accessible  
1165 parking accommodations at all times as required by Title III of the Americans with Disabilities  
1166 Act and the North Carolina State Building Code. The Manager shall notify the City in writing of  
1167 any modifications to the Parking Facility needed to meet such requirements. The Manager shall  
1168 endeavor to promptly comply with all requests and complaints’ regarding accessibility to the  
1169 City’s parking facilities in accordance with Title III of the American Disabilities Act of 1990.  
1170 The Manager shall advise, cooperate with, and assist the City in correcting any circumstance  
1171 regarding provisions of the ADA. The Manager will record and promptly report to the City in  
1172 writing any request, comment, or complaint regarding accessibility to the parking facilities.  
1173 Manager shall have no obligation to make any capital improvements to the Parking Facility that  
1174 is required by applicable law, including the ADA.

1175  
1176 **Section 10.16 No Third Party Rights Created.** This Agreement is intended for  
1177 the benefit of City and Manager and not any other person.

1178 **Section 10.17 Modifications.** A modification of this Agreement is not valid  
1179 unless signed by both parties and otherwise in accordance with requirements of law.

1180 **Section 10.18 Livable Wage.** (a) In the event of a finding by the City Manager  
1181 of City or a judicial officer that any Service Worker has been paid less than the compensation to  
1182 which the Service Worker is entitled under the City’s Livable wage ordinance, the Manager shall  
1183 make restitution to the Service Worker for the amount due. The Manager shall also pay  
1184 liquidated damages to the City in the amount of Fifty Dollars (\$50.00) per day for each employee  
1185 so underpaid, provided, however, that these damages shall not be assessed for wage  
1186 underpayment violations to any individual which amount to a total of less than One Dollar  
1187 (\$1.00) in any payroll period. Should a Service Worker be found to have been discriminated  
1188 against for seeking to enforce the provisions of the City’s Livable wage ordinance, and if the  
1189 Service Worker has been terminated from employment, he or she shall be reinstated upon an  
1190 order to do so from the City Manager or a judicial officer. A flyer stating the City of Durham’s  
1191 Livable Wage amount shall be posted at the workplace of every Service Contractor in a location

1192 easily seen by all employees. The Manager agrees to comply with applicable provisions of the  
1193 ordinance, including but not limited to its sever ability provisions. Definitions of terms in this  
1194 paragraph are stated in the ordinance. "Service Contractor" includes the Manager and all of its  
1195 subcontractors.

1196 (b) The terms and provisions of Section 18.19 shall be null and void if the  
1197 Durham Livable Wage ordinance is terminated or repealed and the obligations of Manager under  
1198 the above section shall be modified if and to the extent that the Durham Livable Wage ordinance  
1199 is modified.

1200 **Section 10.19 Bearing of Costs.** Where this Agreement provides for an action to  
1201 be taken or an expenditure to be made, it shall be construed, unless the context requires  
1202 otherwise, to require Manager at its own expense, not City, to take that action or make that  
1203 expenditure, including but not limited to costs of utilities, services, equipment, inventory,  
1204 supplies, and other personal property required or convenient to comply with its duties and  
1205 obligations under this Agreement.

1206 **Section 10.20 Lender Provisions.** Manager and City agree to the following  
1207 provisions for the benefit of any lender:

1208 (i) If Manager defaults in performing any of its obligations under this Agreement,  
1209 City shall promptly give Manager's lender written notice thereof, provided Manager (or lender)  
1210 had delivered to City the name and address of such lender. City's notice shall specify the  
1211 default. City will not exercise any remedy available under this Agreement or at law or in equity  
1212 arising from such default by Manager until such lender shall have had the same amount of time  
1213 running from the date of delivery of the lender's notice to cure such default to which Manager is  
1214 entitled or thirty (30) days, whichever period is longer, provided that such lender shall have no  
1215 obligation to cure any default by Manager. Any curative act done by a lender shall be as  
1216 effective as if done or performed by Manager.

1217 (ii) City shall provide to such lender copies of all notices of default given to  
1218 Manager by City pursuant to this Agreement.

1219 (iii) If required by the provisions of Manager's or its Affiliates' agreements with  
1220 its lender of which City have been given written notice, no modification or amendment of this  
1221 Agreement shall be effective without the prior written consent of such lender, which consent  
1222 shall not be unreasonably withheld and shall be considered in a timely manner by such lender  
1223 upon request by Manager or City.

1224 (iv) In connection with the financing of all or any portion of the Complex,  
1225 Manager shall have the right to assign to its lender(s), without consent of City, all or any portion  
1226 of its rights and interests under this Agreement, including the right to receive payments  
1227 otherwise due and payable to Manager from City under this Agreement; provided that lender  
1228 shall have the right and authority to assign in the context of a foreclosure or deed in lieu of  
1229 foreclosure process any rights or interests or authority to perform under this Agreement to any  
1230 other third party which is not an Affiliate of Manager, CBC or Capitol Broadcasting Company,  
1231 Incorporated or owned in any way by Manager or any Affiliate of Manager, provided that such

1232 third party expressly assumes the obligations of Manager under this Agreement in a written  
1233 instrument reasonably satisfactory in form and substance to City. No assignment allowed  
1234 pursuant to this subpart (iv) shall relieve Manager of its duties and obligations under this  
1235 Agreement.

1236 (v) If Manager's lender exercises its right to cure Manager's default under this  
1237 Section, takes possession of the Parking Facility, or otherwise assumes responsibility for  
1238 Manager's duties and obligations under this Agreement, (i) Manager shall not be released or  
1239 otherwise excused for its default or from its duties and obligations under this Agreement, and (ii)  
1240 such lender shall be authorized to perform under this Agreement as Manager's assignee until  
1241 such lender's performance under this Agreement expires or terminates. Lender shall not be  
1242 liable for any acts or omissions of Manager under this Agreement occurring prior to the lender  
1243 assuming Manager's obligations under this Agreement or for any events occurring prior to the  
1244 lender assuming Manager's obligations under this Agreement, except to the extent that such acts  
1245 or omissions represent continuing defaults under this Agreement.

1246 (vi) Upon the request of either Manager or its lender, City shall provide an  
1247 estoppel certificate to the applicable party certifying as to the existence or non-existence of  
1248 defaults by Manager under the Agreement, whether or not the Agreement remains in effect, and  
1249 any other matter reasonably requested by such party. Upon the request of City, Manager shall  
1250 provide an estoppel certificate to City certifying as to the existence or non-existence of defaults  
1251 by Manager under its loan from its lender (the "Loan") or this Agreement. Upon request of City,  
1252 Manager shall use best efforts to obtain from its lender an estoppel certificate to City certifying  
1253 as to the existence or non-existence of defaults by Manager under the Loan.

1254 IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed under seal as  
1255 of the day and year first above written.

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1258 ATTEST:

CITY OF DURHAM

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1265 \_\_\_\_\_ By: \_\_\_\_\_  
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1271 preaudit certificate, if applicable \_\_\_\_\_  
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Parking Manager:

AMERICAN CAMPUS, LLC

By: CBC Real Estate Company,  
Inc., its Sole Manager

ATTEST:

\_\_\_\_\_  
Secretary

[Affix Corporate Seal]

\_\_\_\_\_  
By: Michael J. Goodmon  
Title: Vice President

State of \_\_\_\_\_ ACKNOWLEDGMENT BY AMERICAN CAMPUS, LLC

County of \_\_\_\_\_

I, a notary public in and for said county and state, certify that  
\_\_\_\_\_ personally appeared before me this day, and acknowledged  
that (1) he or she is \_\_\_\_\_ Secretary of CBC Real Estate Company, Inc., a North  
Carolina corporation (the "corporation"), which is an authorized member of American Campus, LLC, a  
North Carolina limited liability company, (2) by authority duly given and as the act of the corporation, the  
foregoing Parking Management Agreement with the City of Durham was signed in the name of the  
corporation by its Vice President, whose name is Michael J. Goodmon, sealed with its corporate seal, and  
attested by him/herself as its said Secretary or Assistant Secretary; and (3) by the aforesaid acts, the  
foregoing Parking Management Agreement was executed on behalf of CBC Real Estate Company, Inc.,  
as the manager of American Campus, LLC. This the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

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**EXHIBIT A**

**HOUSE KEEPING AND MAINTENANCE SCHEDULE**

<b>ACTIVITY</b>	<b>MANAGER RESPONSIBILITY</b>	<b>CITY RESPONSIBILITY</b>	<b>ACTIVITY SCHEDULE/COMMENTS</b>
<b>Electrical/Lighting/Power</b>			
1) Perform any and all motor lubrication, make adjustments, and follow manufacturer's recommendations for scheduled maintenance of parking control equipment.	X		Per manufacturer's specifications or within 24 hours after Contractor notices or is notified by City
2) Replace thermostats and switches	X		Within 24 hours after Contractor notices or is notified by City
3) Repair and/or replace electrical system to include conduit, wiring, and panels with breakers.		X	Within 72 hours of damage or written notice by City.
4) Replace and/or repair malfunctioning, damaged, and missing ballasts and lamps	X		Within 24 hours after Contractor notices or is notified by City
5) Clean light fixtures and lenses.	X		Monthly
6) Replace or repair loose or failing light fixtures and lenses.	X		Within 24 hours after Contractor notices or is notified by City
<b>Cleaning</b>			
1) Sweep and mop all floors in all stairwells, elevators, mechanical rooms, and utility rooms.	X		Daily

<b>ACTIVITY</b>	<b>MANAGER RESPONSIBILITY</b>	<b>CITY RESPONSIBILITY</b>	<b>ACTIVITY SCHEDULE/COMMENTS</b>
2) Clean all glass surfaces: all doors, windows and give special attentions to elevators and stairwells.	X		Weekly
3) Sweep decks and parking areas with power sweeper.	X		Monthly
4) Flush decks and each drain: wet-vac any standing pools of water.	X		Quarterly
5) Clean doors, casings, railings, counters, and door hardware.	X		Monthly
6) Clean plastic, metal, and illuminated signs.	X		Monthly
7) Vacuum floors, cabinets, and all surfaces of mechanical room.	X		Quarterly
8) Clean window grilles.	X		Quarterly
9) Dust walls in stairwells and wet-vac any standing pools of water in stairwells.	X		Biweekly
10) Empty and clean waste receptacles and ash urns.	X		Daily
11) Remove all litter and debris from interior and exterior of garages.	X		Daily
12) Sweep and vacuum sidewalks inside the garages.	X		Biweekly
13) Dust and wash parking control equipment and bike lockers when applicable	X		Dusting: Weekly Washing: Monthly

<b>ACTIVITY</b>	<b>MANAGER RESPONSIBILITY</b>	<b>CITY RESPONSIBILITY</b>	<b>ACTIVITY SCHEDULE/COMMENTS</b>
14) Landscaping	X		Monthly
15) Sweep Main Pedestrian Area	X		Daily
16) Pressure wash floors	X		Annually
17) Exterminate all rodent and pest infestations and clean up after exterminations.	X		Within 24 hours after Contractor notices or is notified by City
<b>Elevators</b>			
1) Check for Normal Operations	X		Daily
2) Check Indicators/Lights	X		Daily
3) Preventative Maintenance Services	X		Annually
4) Replacement of Parts/Repairs related to Preventative Maintenance requirements	X		Within 24 hours after Contractor notices or is notified by City
5) Replacement of Parts/Repairs beyond Preventative Maintenance requirements.		X	Within 24 hours after Contractor notices or is notified by City
<b>Inspections</b>			
1) Inspect lighting	X		Weekly
2) Inspect drainage.	X		Monthly and after major storms

<b>ACTIVITY</b>	<b>MANAGER RESPONSIBILITY</b>	<b>CITY RESPONSIBILITY</b>	<b>ACTIVITY SCHEDULE/COMMENTS</b>
3) Inspect for cleanliness of entire facilities.	X		Daily
4) Inspect curb and beams.	X		Each spring
5) Inspect all mechanical and electronic equipment.	X		Weekly
6) Inspect fire extinguishers.	X		Annually
7) Inspect fire alarm system	X		Annually
8) Inspect standpipe system	X		Annually
<b>Service Agreements</b>			
1) Service agreements will be maintained at all times on elevators, fire extinguishers, security equipment and call boxes.	X		Service agreements on items listed must be maintained at all times. The Contractor must contract with companies acceptable to the City. Copies of all agreements must be submitted to the City prior to the execution of the agreement.
<b>Painting</b>			
1) Paint interior surfaces when peeling or flaking occurs in any area of 900 square feet or less.	X		Within 14 days of Contractor noting deterioration or written notice by the City (weather permitting).
2) All painted surfaces and touch up painting	X		Annually

<b>ACTIVITY</b>	<b>MANAGER RESPONSIBILITY</b>	<b>CITY RESPONSIBILITY</b>	<b>ACTIVITY SCHEDULE/COMMENTS</b>
<b>3) Walls, Ceilings, &amp; stairs</b>		<b>X</b>	<b>Annually</b>
<b>4) Signs</b>	<b>X</b>		<b>Monthly</b>
<b>5) Remove graffiti using proper techniques/equipment.</b>	<b>X</b>		<b>Within 24 hours of damage or failure.</b>
<b>Paving Markings</b>			
<b>1) Repaint all pavement, curb, post, and island markings.</b>	<b>X</b>		<b>As reasonably required</b>
<b>Miscellaneous Repairs</b>			
<b>1) Replace glass.</b>	<b>X</b>		<b>Within 24 hours after Contractor notices broken glass or written notice by the City.</b>
<b>2) Repair gate arms.</b>	<b>X</b>		<b>Within 24 hours after Contractor notices a broken gate arm or written notice by the City.</b>
<b>3) Repair or replace all door glass, door hardware, and door keys.</b>	<b>X</b>		<b>Within 24 hours after Contractor notices need for repair or written notice by the City.</b>
<b>4) Replacement of entire doors</b>		<b>X</b>	<b>As necessary</b>
<b>5) Inspect masonry joints and flashings.</b>	<b>X</b>		<b>Semi-annually</b>
<b>6) Repair masonry joints and flashings</b>		<b>X</b>	<b>As needed</b>
<b>7) Inspect joints.</b>	<b>X</b>		<b>Semi-annually</b>

<b>ACTIVITY</b>	<b>MANAGER RESPONSIBILITY</b>	<b>CITY RESPONSIBILITY</b>	<b>ACTIVITY SCHEDULE/COMMENTS</b>
8) Recaulk joints.		X	As needed
<b>Plumbing</b>			
1) Check and clean interior drains and collection pits.	X		Monthly
2) Check and clean roof drains.	X		Monthly
3) Maintain and repair standpipe system.		X	Within 72 hours of damage or written notice by City.
4) Make minor plumbing repairs such as fixing pipe leaks, replacing washers, and fixing toilets.		X	Within 72 hours of damage or written notice by City.
5) Make major plumbing repairs which are not the result of carelessness or misuse by Contractor or its employees; such repairs include replacement of standpipe system or replacement of hot water tank.		X	Contractor has responsibility for notification.
6) Inspect backflow prevention equipment.	X		Annually
7) Replace broken or missing drain covers.	X		Within five (5) working days after Contractor notices need or written notice by City.
8) Clean drainage system when required.	X		Within 48 hours of problem being notices by Contractor or written notice from City.

<b>ACTIVITY</b>	<b>MANAGER RESPONSIBILITY</b>	<b>CITY RESPONSIBILITY</b>	<b>ACTIVITY SCHEDULE/COMMENTS</b>
<b>Concrete and Asphalt</b>			
1) Patch concrete or asphalt breakups using proper base/sub base procedures.		X	Contractor notifies City of situation.
2) Repair minor damage to curbs and beams.		X	Within 30 days of damage or written notice by City.
3) Repair/replace spalling concrete (structural repairs).		X	
4) Seal decks.		X	
<b>Snow and Ice Removal</b>			
1) All decks and stairways to be kept free of ice. 1) Clear walkways which are otherwise normally maintained by Contractor.	X		
2) Disperse Ice Melt.	X		

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Exhibit B

North Garage Monthly Parking Revenue Report Form  
 Special Events, Residential Permits, Visitor Spaces

For the Month Ended \_\_\_\_\_

**A Special Event Revenue - [Section 5.15(c)]**

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	<u>Vehicle Count</u>	<u>Gross Revenue</u>	<u>Factor</u>	<u>Due to City</u>
Paid Vehicles .....		\$		
DPAC Vouchers .....		\$		
<b>Total Gross Revenue .....</b>		\$	35%	\$

**B Residential Revenue (monitored - Yes\_\_\_/No\_\_\_) - [Section 5.16(d)]**

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	<u>Total Count</u>	<u>Count in Excess of 300</u>	<u>Residential Parking Rate</u>	<u>Due to City</u>
Residential Revenue due to City ...			\$	\$

**C Visitor Revenue (monitored - Yes\_\_\_/No\_\_\_) - [Section 4.2(b)(iv)]**

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	<u>Count of Paid Visitor Spaces</u>	<u>Visitor Space Rental Rate</u>	<u>Due to City</u>
Visitor Space Rent due to City .....		\$	\$
<b>Grand Total Due To City</b>			\$

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