

**MEMORANDUM OF UNDERSTANDING FOR THE NORTH PARKING GARAGE AT
AMERICAN TOBACCO CAMPUS**

The City of Durham (herein referred to as the "City" or the "Landlord") and Capitol Broadcasting Company, Inc. (herein referred to as "CBC") and a CBC-subsi-diary, American Campus, LLC (herein referred to as "American Campus") entered into a public-private partnership for the purpose of facilitating the redevelopment of the American Tobacco property located in downtown Durham. The City, CBC, and American Campus executed several agreements necessary to implement that public-private partnership, including but not limited to a Development Agreement, a Parking Lease Agreement, and a Parking Management Agreement.

With the objective of building on and extending the success of the American Tobacco Project, the parties have reached agreement related to the extension and modifications of these agreements as outlined below.

The City, CBC and American Campus have agreed to enter into new agreements that will replace and modify the existing agreements as follows:

Landlord or City: The City of Durham.

Tenant: American Campus, LLC or assigns. *Note: Tenant shall be a wholly-owned subsidiary of CBC, subject to the assignment provisions in the existing Parking Lease Agreement.*

Parking Garage Manager ("Manager"): American Campus, LLC or other entity or assigns. *Note 1: Manager shall be a wholly owned subsidiary of CBC, subject to the assignment provisions in the existing Parking Management Agreement. Note 2: for the purposes of this Memorandum of Understanding ("MOU"), the term "Manager" and "Tenant" may be at times interchanged unintentionally since they are currently proposed to be the same entity; however, any final negotiated lease and management agreement(s) shall clearly delineate the legal rights and obligations of the Tenant and Manager vis-à-vis the City.*

Commencement Date: The Commencement Date shall be the first (1st) of the month following City Council approval and execution of the appropriate documents and agreements.

Term for Agreement(s): Ten (10) years from the Commencement Date with six (6) options to extend for five (5) years each. The parties agree that a separate Parking Lease Agreement and Parking Management Agreement similar to the ones currently in effect shall be executed, with necessary details, to effectuate the general intent of the parties pursuant to this MOU. The parties further acknowledge that they will have to execute an amendment to the Development Agreement to conform the Development Agreement to the revised terms contemplated by this MOU.

Parking Garage: The North Parking Garage @ American Tobacco (herein referred to as the "Garage").

Leasehold Interest: Tenant's Leasehold Interest shall be per the following points:

1. Tenant shall lease 100% of the parking spaces in the Garage exclusive of the TTA spaces (150), the Visitor Spaces (155), and the SBER Lucky Strike (Duke University) spaces (30), (the "Leased Spaces").
2. Manager shall have the option to lease out the Visitor Spaces as provided below (see "Visitor Spaces" below).
3. The lease will provide that the Leased Spaces will be available on a twenty-four (24) hours per day, seven (7) days per week basis. Notwithstanding the foregoing, Tenant's use of the Leased Spaces shall be subject to the Special Events need uses of the Garage as required by the City during any hours other than Monday through Friday, 7:00 a.m. to 6:30 p.m.
4. Tenant shall sublease one hundred, fifteen (115) of the Leased Spaces to the owner of the Old Bull and Noell buildings ("Old Bull/Noell Owner") on the same terms and conditions of Tenant's lease with the City during the hours Monday through Friday, 7:00 a.m. to 6:30 p.m. (the "Old Bull/Noell Commercial Spaces") (this number of spaces is inclusive of the ninety (90) parking spaces that have previously been assigned by the Tenant to the owner of the Old Bull and Noell buildings). In addition, after either the City or the Old Bull/Noell Owner first installs in the Garage and makes available for the Manager's use in managing the Garage the necessary equipment, hardware and software that allows the Manager to control access to the Garage and to track the time when vehicles enter and exit the Garage, which equipment, hardware and software shall be subject to Tenant's reasonable approval, Tenant shall sublease to the Old Bull/Noell Owner one hundred, sixty-six (166) of the Leased Spaces on the same terms and conditions of Tenant's lease with the City for use by the Old Bull/Noell Owner during the hours of 6:30 p.m. through 7:00 a.m., Monday through Thursday and beginning at 6:30 p.m. on Friday through Monday at 7:00 a.m. (the "Old Bull/Noell Residential Spaces"). Tenant shall also have the right to voluntarily install the same equipment and controls. If installed by the City, Tenant, or others, such equipment and controls shall be used by the Manager to monitor all night time parking during the hours of 6:30 p.m. through 7:00 a.m., Monday through Thursday and beginning at 6:30 p.m. on Friday through Monday at 7:00 a.m. (generally referred to as "Residential Spaces"). The Tenant shall charge the Old Bull/Noell Owner for the Old Bull/Noell Commercial Spaces the same rate that Tenant pays to the City pursuant to the Lease; the Tenant shall charge the Old Bull/Noell Owner for the Old Bull/Noell Residential Spaces the lesser of the same rate as for the Old Bull/Noell Commercial Spaces or the rate the City of Durham may adopt for residential users of other City-owned parking garages during similar hours as provided herein for the Old Bull/Noell Residential Spaces (i.e. nighttime hours).
5. Tenant shall, upon request, sublease one hundred, twenty (120) of the Leased Spaces to the owner of the Lucky Strike building (the "Lucky Strike

Owner”) on the same terms and conditions of Tenant’s lease with the City during the hours Monday through Friday, 7:00 a.m. to 6:30 p.m. (“the Lucky Strike Spaces”). These spaces include the ninety (90) parking spaces the Tenant already subleases to the Lucky Strike Owner and the thirty (30) spaces the City leases to the Lucky Strike Owner directly, which lease will either be assigned to Tenant or will be replaced by a new sublease between Tenant and the Lucky Strike Owner. The Tenant shall charge the Lucky Strike Owner the same rate that Tenant pays to the City.

Parking Rate: Tenant’s Parking Rate will be the lesser of (i) the Maximum Parking Rate (herein defined) or (ii) Fair Market Value. The definition of “Fair Market Value” shall be the same as exists in the current Lease Agreement.

Maximum Parking Rate: The Maximum Parking Rate that Landlord can charge Tenant, will be those rates stated in the schedule attached hereto as Exhibit A.

Parking Garage Management: The Management Agreement shall be extended to be coterminous with the extended Parking Lease Agreement and its renewal option(s) and shall be substantively consistent with the current terms and conditions of the existing agreement.

Parking Management Fee: Through December 31st, 2024 (the term of the existing Parking Management Agreement, including renewal periods), the Parking Management Fee will be the fee stated in the existing Parking Management Agreement (which is adjusted annually according to the CPI). Beginning on July 1st, 2025, the Parking Management Fee will be re-set at a rate calculated by using \$17.20 as the rate in 2011 and adjusting that rate by CPI each year from 2012 through 2024. The Parking Management Fee will then be adjusted annually thereafter according to the CPI, subject to a cap on the amount of the annual increase of 3% per annum.

Parking Garage Maintenance and Repairs: There will be no substantive modifications to the existing parking garage management agreement regarding maintenance and repair responsibilities, although the parties agree the new agreement will be updated to be more consistent with the most current, citywide parking geck management agreement.

Special Events: Manager will manage the Garage for any Special Events occurring in the vicinity of the Garage where event attendance is expected to exceed 1,000 people, and pursuant to the following requirements:

1. Manager will pay to the City 35% of gross revenues from Special Events parking per quarter, for the right to manage the Garage for Special Events. The Manager will retain the balance of revenues it collects (i.e., 65% of gross) and will be solely responsible for any operating costs associated with operating the Garage for Special Events.
2. Manager will honor the existing agreement between the City and the operators of the Durham Performing Arts Center (herein referred to as “DPAC”) as described in the Fourth Amendment to DPAC Operating Agreement dated October 7, 2009.

3. Manager will provide sufficient staff for each Special Event that is expected to sell greater than 1,000 tickets and for each Special Event in the Durham Bulls Athletic Park ("DBAP") that is expected to sell greater than 3,000 tickets to operate the Garage in a first-class, efficient and proper business-like manner consistent with industry standards for the operation of comparable parking facilities that are operated as parking facilities for Special Events. For any event that is expected to have fewer than 1,000 attendees or any event in the DBAP that is expected to sell fewer than 3,000 tickets, Manager shall be required to open the Garage but need not provide parking attendants for the event (but still must provide security through the same security personnel that provide security for the American Tobacco campus).
4. During any year of the term of the Management Agreement, the Manager may elect to terminate its management and operation of the Garage for Special Events by providing to the City six (6) months' written notice of termination. If Manager's right to manage and operate the Garage for Special Events is terminated, the Manager and Tenant shall allow a 3rd party selected by the City to manage the City's Special Events at the Garage as required by the City.

Parking Subleases: For the Leased Spaces, Tenant shall have the right to sublease the spaces to third (3rd) parties at a rate and term to be determined by Tenant. Tenant will retain any revenues collected as a result thereof, if any. If Tenant enters into one or more subleases for Residential Spaces, Tenant shall retain the revenues for such Residential Spaces up to the first 300 Residential Spaces, and Tenant shall pay the City all revenues charged for Residential Spaces over the first 300 Residential Spaces. Tenant will have the right to oversubscribe the Leased Spaces. Notwithstanding the foregoing, Tenant will not sublease the spaces to third (3rd) parties for a rate that is more than what Tenant pays to the City. In addition, at least seventy percent (70%) of the Leased Spaces will be used by the Tenant, Tenant's employees, or by residents or tenants of Property Owned by Tenant, or an Affiliate of Tenant. For the purpose of this requirement, the term "Property Owned by Tenant" will be defined in a manner that recognizes that the Tenant may sell or has sold property or may finance or has financed property and will need to assign all or a portion of its parking rights to purchasers, lenders or investors. In addition, the term "Affiliate" will be defined to include any parent or subsidiary, or any subsidiary of a parent.

Visitor Spaces: Landlord and Manager agree that the first (1st) level of the Garage will be free public parking until such time as Manager may elect, with prior approval from the City, to make the capital investment that would need to be made to add the infrastructure and equipment in the Garage that allows for the Manager to more accurately monitor car counts and to charge for Visitor Spaces ("Charged Visitor Spaces"). If Manager makes the capital investment at its sole cost and expense, then Manager shall have the right to manage the Charged Visitors Spaces at the same Parking Rate as the Leased Spaces. Manager will manage the Charged Visitor Spaces without any increase in the management fee, and Manager will retain any revenues it collects, if any, from the Charged Visitor Spaces. Manager shall pay for all installation and operating expenses of Tenant's capital investment required to manage the Charged Visitor Spaces. The Charged Visitor Spaces shall be made available to the general public on a first-come-first-serve basis and the rate charged to the

public and schedule of operation for the Charged Visitor Spaces shall be set at the short-term parking rates and schedule of operation established by the City. Unless subject to long-term property disposition procedures as required by law, the Visitor Spaces and/or Charged Visitor Spaces shall be maintained for short term use only and shall not be subject to long term leases or month to month leases.

Existing Leases: The Lease will be subject to existing parking lease agreements between the City and Duke University, the City and TTA, and the City and American Campus, LLC unless the tenant(s) under those parking lease agreements agree to terminate or assign the existing parking lease agreements.

Upset Bid Requirements: The long term lease agreement with the Tenant shall be subject to the legal requirements for disposition of municipal property. Any upset bid process will require that competing bidders submit bids under the same lease conditions as that of the Tenant pursuant to the General Statute procedures.

Deferred Maintenance Items: Landlord and Tenant agree that the list of deferred maintenance items, attached hereto as Exhibit B, will be completed by Landlord as soon as commercially practicable. Landlord and Tenant further agree that the responsibility for the deferred maintenance costs shown in Exhibit B is dictated by the Parking Management Agreement and not by this MOU. The costs shown in Exhibit B are estimates only and some of the work identified may be performed by the City's own forces.

Disclaimer: This MOU is not intended to be a legally binding document, does not constitute a binding agreement between the parties and imposes no obligation on either party (including any obligation to negotiate in good faith). Neither party shall have any liability or obligation to the other arising out of this Proposal or Letter of Intent. Both Parties acknowledge that this MOU does not contain all of the material terms to be contained in the agreement(s), that this MOU is not a contract or lease, and that it is intended only as the basis for the preparation of a definitive agreements. The provisions of this grammatical paragraph control over any conflicting provision set forth in this MOU or over any other oral or written agreements between the parties and shall be superseded only by a definitive written agreement(s) executed and delivered by both parties.

WHEREFORE, the parties have caused this Memorandum of Understanding to be executed as of this the ____ day of _____, 2011.

CITY OF DURHAM

By: Thomas J. Bonfield
Its: City Manager

AMERICAN CAMPUS, LLC

By: Michael J. Goodman
Its: Vice President

EXHIBIT A – MAXIMUM PARKING RATE

(Increased by 3.0% on January 1st of each calendar year)

<u>Calendar Year</u>	<u>Maximum Parking Rate (per space)</u>
2011	\$45.00
2012	\$45.40
2013	\$46.12
2014	\$46.87
2015	\$61.90
2016	\$63.76
2017	\$65.67
2018	\$67.64
2019	\$69.67
2020	\$71.76
2021	\$73.92
2022	\$76.13
2023	\$78.42
2024	\$80.77
2025	\$83.19
2026	\$85.69
2027	\$88.26
2028	\$90.91
2029	\$93.63
2030	\$96.44
2031	\$99.34
2032	\$102.32
2033	\$105.39
2034	\$108.55
2035	\$111.80
2036	\$115.16
2037	\$118.61
2038	\$122.17
2039	\$125.84
2040	\$129.61
2041	\$133.50
2042	\$137.50
2043	\$141.63
2044	\$145.88
2045	\$150.25
2046	\$154.76
2047	\$159.41
2048	\$164.19
2049	\$169.11
2050	\$174.19
2051	\$179.41
2052	\$184.79
2053	\$190.34
2054	\$196.05
2055	\$201.93
2056	\$207.99

2057	\$214.23
2058	\$220.65
2059	\$227.27
2060	\$234.09

EXHIBIT B – LIST OF DEFERRED MAINTENANCE ITEMS

Exhibit 3.1

The North Parking Deck at The American Tobacco Historic District

Durham, North Carolina

Table 1.2 - Items requiring immediate correction with projected approximate cost

This report was prepared by Belk Architecture. Please note that all costs are estimated based on Architect's professional experience and do not represent guarantees. All costs include both projected material and labor involved.

This is a companion to the report dated January 7, 2010 - Refer to photos in base document for example images and additional description of the items listed below.

Item #:	Description:	Location:	Approximate Extent (unit indicated):	Cost:
1	Strip (remove all paint and rust) and Paint (prime, then 2 coats finish paint) all spandrel tube guardrails	around perimeter of deck, all levels above 1	Approximately 8,000 linear feet of railing	\$10,000
2	Strip (remove all paint and rust) and Paint (prime, then 2 coats finish paint) all miscellaneous "red" steel elements	throughout deck		\$2,000
3	Strip (remove all paint and rust) and Paint (prime, then 2 coats finish paint) all stair metal guardrails and handrails	all levels in stairs #1, 2 & 3.	Approximately 4,000 linear feet of railing	\$5,000
4	Remove/chip rust areas from and repaint internal Steel weld plates "grey"	throughout deck, including inside stairs		\$3,000
5	Remove/chip rust areas from and repaint steel double-tee supports throughout parking deck "grey"	throughout deck, on either sides of internal ramps	approximately 50 locations	\$2,000
12	Repair damaged brick jamb at pedestrian entry on north side	north side		\$200
13	Repaint damaged Steel Lintels	level 1, perimeter		\$400
14	Replace electrical outlet protective cover	throughout deck		\$50
15	Clean studor vent and nearby piping	level 1, east side		\$100
18	Repaint damaged overhead pipe support	level 1, west bay		\$100
19	Remove organic growth from masonry joint and recaulk horizontal joint	level 1, northwest corner		\$200
21	Re-grout and secure loose corner brick at north side of opening at Northeast corner of deck.	level 2, northwest corner		\$400
22	Stabilize crack from spandrel down through brick - fill openings with caulk to match mortar caulk.	level 2, east and south faces		\$400
24	Hole in caulking between concrete structural column and concrete brick "cap". Fill this gap with matching caulk.	level 2, south and west faces	approximately 10 linear feet of caulking & backer rod	\$400
26	Replace electrical outlet protective cover	level 2, northwest corner	1 location	\$50
27	Repaint door frame where paint has been damaged.	level 2, northwest corner inside stair	1 location	\$200
28	Fill gap in caulking between concrete elements with caulk to match 0 use backer rod where gap exceeds 1/4.	level 2, south and west faces	approximately 10 linear feet of caulking & backer rod	\$800
31	Fill crack between outer wythe of brick and concrete with caulk, continuous between level 3 and 4	northeast corner	approximately 10 linear feet of caulking & backer rod	\$800
54	Replace damaged or missing bolt cover sleeve.	level 5	1 location	\$50
55	Correct and secure gaps in concrete coping and caulk all open joints.	level 5, northeast corner	approximately 30 linear feet of caulking	\$1,000
56	Reinstall falling backer rod between panels.	level 5, west side	approximately 4 linear feet of backing rod	\$50
57	Seal with caulking and backer rod the intersection between double tee and wall panel over arch	level 5, northwest corner	approximately 12 linear feet of caulking and backer rod	\$400
58	Strip areas of peeling paint and rust from existing steel portions of stairs #3 and repaint (prime & paint)	stair #3		\$1,000
59	Strip areas of peeling paint and rust from existing steel plates on underside of double tees	underside of deck below stair #3	2 locations	\$200
61	Replace damaged or missing bolt cover sleeve.	level 6	3 locations	\$100

63	Correct and secure gaps in concrete coping and caulk all open joints.	level 6, northwest corner	approximately 12 linear feet of caulking and backer rod	\$1,000
65	Remove existing failing caulk at separation between concrete panels and re-install new caulk	level 6, east side, top of ramp	approximately 6 linear feet of caulking and backer rod	\$300
66	Clean excess caulking from side of south elevator	level 6, southeast corner	1 location	\$100

Optional to repair at this time (see report - not all "F" items noted below, see full report)

Total \$30,300

F4	Damaged Brick. This is currently an aesthetic issue only.	north side, driveway entrance at level 1		\$1,200
F5	Damaged Brick. This is currently an aesthetic issue only.	opening in northeast corner of level 2		\$1,200
F7	Replace rusting floor drain covers	throughout parking deck, especially prevalent on levels 5 and 6		\$4,000
F9	Strip and repaint rusting pipe hangers			\$1,000
F10	Seal and caulk & backer rod between levels where drainage is occurring			\$800

Total, alternates only \$8,200

Grand Total \$38,500