

**ASSIGNMENT AGREEMENT FOR THE
DAP OPERATING AGREEMENT**

THIS ASSIGNMENT AGREEMENT (this “Agreement”) is made and entered into as of December __, 2011 (“Effective Date”), by and between the **CITY OF DURHAM**, a North Carolina municipal corporation (the “City”), and **THE DURHAM BULLS BASEBALL CLUB, INC.**, a North Carolina corporation (the “Bulls”).

WITNESSETH:

WHEREAS, the City entered into a certain DAP Operating Agreement, dated December 31, 2007, with MiLB Management, LLC (the “MiLB”), a copy of which is attached hereto as Exhibit A and incorporated by reference (the “DAP Operating Agreement”);

WHEREAS, the DAP Operating Agreement was amended by the City and MiLB with an instrument titled, “Amendment to DAP Operating Agreement by and between the City of Durham, North Carolina and MiLB Management, LLC” dated October 30, 2009, a copy of which is attached hereto as Exhibit B and incorporated by reference (the “Amendment to DAP Operating Agreement”). Reference made herein to the “DAP Operating Agreement shall include the Amendment to DAP Operating Agreement unless otherwise specified;

WHEREAS, pursuant to the DAP Operating Agreement, the City engaged MiLB to be the sole and exclusive manager of events at Durham Athletic Park (the “DAP”), and MiLB has served as the sole and exclusive manager of events at the DAP since the City completed certain renovations of the DAP 2009;

WHEREAS, MiLB has suffered substantial operating losses during each year it has served as the sole and exclusive manager of events at the DAP and therefore has communicated to the City that it desires to be relieved of its responsibilities under the DAP Operating Agreement;

WHEREAS, the City and MiLB has requested that the Bulls accept an assignment of the DAP Operating Agreement for the purpose of performing MiLB’s responsibilities under that agreement through August 31, 2012;

WHEREAS, the Bulls agree to accept an assignment of the DAP Operating Agreement provided that the City agrees that certain provisions of the DAP Operating Agreement, as specified below, are modified.

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this Assignment Agreement and for other good and valuable consideration, the parties agree as follows:

1. Recitals and Undefined Terms. The recitals as set forth above are incorporated herein. All capitalized terms used but not defined in this Assignment Agreement shall have the meaning given to those terms in the DAP Operating Agreement.

2. Assignment. The Bulls hereby accept an assignment of the DAP Operating Agreement from MiLB, subject to the conditions specified below, effective as the later of the date this Assignment Agreement is fully executed by the parties or January 1, 2012 (the “Effective Date”). The City hereby consents to such assignment and agrees to the modifications of the DAP Operating Agreement as described below.

3. Conditions of Acceptance of the Assignment.

a. No Profit Sharing. The Bulls shall not be required to share Operating Profit, if any, with the City. Section 10.6 of the DAP Operating Agreement shall be null and void as of the Effective Date.

b. No Financial Reporting. The Bulls shall not be required to report to the City any information concerning the financial performance of the DAP, including but not limited to information concerning Expenses, Gross Revenues or any component of Gross Revenues, Operating Deficit, or Operating Profit, and the Bulls shall not be required to provide to the City a Certified Financial Statement. Sections 3.9, 3.11, 10.4, 10.5, and 23.1 of the DAP Operating Agreement shall be null and void as of the Effective Date. Further, the Bulls shall not be required to provide to the City the Operating Budget as required by Section 10.3 of the DAP Operating Agreement. Notwithstanding the foregoing, the Bulls shall report the following information to the City upon request:

- i. an accounting of Capital Expenditures and the costs for Repairs and Maintenance;
- ii. an accounting of the amounts charged users of the DAP for Facility Rental Chargebacks, Facility Rental Fees, Net Service Charge Revenue, and Ticket Fees; and
- iii. the information concerning the schedule of Events required by Section 3.10 and Article 9.0 of the DAP Operating Agreement.

c. No Liability for Expenses or Capital Expenditures Arising Prior to the Effective Date. The Bulls shall not be liable for any Expenses or Capital Expenditures incurred by MiLB or the City prior to the Effective Date.

d. Cap on Liability for Repairs and Maintenance and FF&E. The Bulls' responsibility to pay for Repairs and Maintenance, repairs to FF&E, or for the maintenance of equipment provided in Article 15 of the DAP Operating Agreement shall be limited to a cap of Six Thousand, Six Hundred, Sixty-Seven and No/100 Dollars (\$6,667.00) (the "Repairs and Maintenance Cap"). The City shall reimburse the Bulls for any amounts greater than the Repairs and Maintenance Cap incurred by the Bulls during the Term.

e. FF&E. The parties acknowledge that in several sections the DAP Operating Agreement anticipates that the Operator will or has provided certain equipment or FF&E. The City acknowledges that the Bulls will not provide any equipment or FFE other than the equipment necessary to keep and maintain the playing field in a good, first-class condition suitable for baseball games as provided in Section 15.1.1 of the DAP Operating Agreement. The City will provide all other required equipment or FF&E, including a suitable covering for the playing field during inclement weather.

5. Term. The term of this Assignment Agreement, and the Bulls responsibilities under the DAP Operating Agreement, will expire on August 31, 2012. . Notwithstanding the foregoing, the City acknowledges that the Durham Athletic Parking License Agreement between NCCU and MiLB ("NCCU License Agreement") anticipates requires that NCCU will make one installment of its license fee payment on October 1, 2012, and the City acknowledges that the Bulls will be entitled to receive that payment pursuant to the terms of the NCCU License Agreement after the Term of this Assignment Agreement has expired.

6. Operating Fee. The City shall prorate the annual Operating Fee payment to the Bulls pursuant to Section 10.1 of the DAP Operating Agreement so that eight (8) equal monthly payments shall be made

to the Bulls in the amount of \$2,916.67 for a total payment of \$23,333.36 for the Term of this Assignment Agreement.

7. Notices. The City shall provide notices to the Bulls as specified in the DAP Operating Agreement, addressed as follows:

To the Operator:
Mike Birling, General Manager
Durham Bulls
409 Blackwell Street
Durham, NC 27701
Fax (919) 687-6560

With a copy to:
Teresa Artis
Vice President and General Counsel
Capitol Broadcasting Company, Incorporated
2619 Western Blvd.
Raleigh, NC 27606
Fax (919) 821-8733

8. Except as provided herein, the terms, conditions and covenants of the DAP Operating Agreement will be unchanged and are hereby ratified and confirmed. In accepting this assignment of the DAP Operating Agreement, the Bulls shall, commencing on the Effective Date, abide by the terms, conditions and covenants of the DAP Operating Agreement, as modified by this Assignment Agreement.

IN WITNESS WHEREOF, the parties have caused this Assignment Agreement to be duly executed under seal as of the day and year indicated below.

ATTEST:

CITY OF DURHAM

_____ By: _____

preaudit certificate, if applicable _____

THE DURHAM BULLS BASEBALL CLUB, INC.

By: George W. Habel
Its: Vice President

State of _____
County of _____

ACKNOWLEDGMENT BY THE DURHAM BULLS
BASEBALL CLUB, INC

I, a Notary Public in and for the aforesaid County and state certify that _____ personally (1) appeared before me this day, (2) stated that he or she is a vice president of THE DURHAM BULLS BASEBALL CLUB, INC., a corporation organized and existing under the laws of the State of North Carolina, (3) acknowledged that the foregoing contract or agreement with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution of the contract on behalf of the company. This the _____ day of _____, 20_____.

Notary Public

My commission expires:
