NORTH CAROLINA
DURHAM COUNTY

MANAGEMENT AGREEMENT BETWEEN THE
CITY OF DURHAM AND
DURHAM CENTRAL PARK, INC. FOR
DURHAM CENTRAL PARK

THIS AGREEMENT is made as of the _____ day of _____, 2011 between the **City of Durham** ("**Owner**") and **Durham Central Park, Inc.** ("**Manager**").

1. **GRANT**. Owner and Manager agree that Manager shall manage and operate a portion of Durham Central Park, consisting of three parcels with tax identification numbers of 104935, 104946, and a portion of parcel 104933 ("**the Premises**"). For the purpose of this Agreement only, that portion of parcel 104933 that is designated in Attachment A as the "skateboard facility" is not a part of the Premises. The Premises are located in the City of Durham. The Manager takes the Premises "as is."

2. **TERM**. This Agreement shall run concurrently with the existing agreement between the City and Durham Central Park, Inc, signed on March 21, 2006, and it expires when that existing Agreement expires on March 26, 2016 (the "Term").

3. **MANAGEMENT and USE FEES.** The Manager shall not pay the Owner any rent or deposit for the use of the Premises, and Owner shall not pay any management fee to Manager. Manager agrees that the Owner may use the property eight (8) times per year without paying any fee for that use.

4. **EXTENSION OF AGREEMENT TERM**. Provided that the Manager has met all obligations of this Agreement during the Agreement Term, at the end of the Agreement Term the Owner shall negotiate in good faith with the Manager for an extension of the Agreement under similar terms and conditions as this Agreement, subject to applicable state law procedural provisions and approval of the City Council.

5. **TERMINATION OF AGREEMENT TERM**. Part "a" of Section 21 (TERMINATION, CASUALTY, and EMINENT DOMAIN) applies.

6. **USE AND CARE OF PREMISES**.

(a) The Manager having inspected the Premises, it is agreed that they are in good repair and are fit as of the beginning of the Term.

(b)The Manager shall immediately notify the Owner of all damage to the Premises and situations that might reasonably be expected to result in damage.

(c) This Agreement does not give Manager any authority either to obligate the Owner to pay any third party for any labor or materials or to suffer liens to be placed on the Premises.

(d) The Manager shall notify and compensate the Owner for damage to the Premises

caused by acts and omissions by the Manager and any of Manager's agents, invitees, licensees, and contractors.

(e)The Manager shall not allow any "Environmental Contamination," as defined below in Section 19, entitled "INDEMNIFICATION, to be brought onto the Premises by itself or its agents, contractors, invitees, or licensees, and the Manager shall immediately remove or remediate said contamination if it occurs.

(f) Provided there is compliance with applicable laws and regulations of governmental authorities and upon prior written approval of the City Manager or the City Manager's designee, the Manager shall have the right to make minor additions, modifications, and improvements to the Premises, provided that the costs of these additions, modifications, and improvements shall be paid for by the Manager, shall cost less than $5,000.00, and shall, when made, become a part of the Premises. Any additions, modifications, and improvements that cost more than $5,000.00 or that add a permanent structure to the Premises shall require written approval of the City Manager, and may require approval by the City Council, at the discretion of the City Manager. Installations of works of art are subject to all applicable laws, regulations and policies of the City.

(g) The Manager agrees to provide appropriate signage in the Premises so that users and the general public will have the necessary information to contact the Manager with questions about the Premises.

7. **MANAGER'S RESPONSIBILITIES**.

During the term of this Agreement, the Manager shall:

(a) not use the property for any purpose other than activities conducted for a public purpose such that the City itself would be legally authorized to conduct on the Premises and agrees that such activities will be those appropriate for an outdoor public facility;

(b) make the Premises available for use by the general public in accordance with the requirements of this Agreement and consistent with all legal and constitutional requirements for equal access to public park facilities. Rentals of the spaces within the Premises shall not discriminate against any potential renter because of race, color, religion, gender, sexual orientation, national origin, political affiliation, belief, age, or disability.

(c) establish a process, with written approval by the City Manager or designee, for recording, responding to, and resolving any complaints received from vendors or users about the Premises, and make information received through that process available to the City upon request;

(d) ensure that the greenway trail through the Premises is always open to the general public during hours the Premises are open to the public and provide a clearly marked and safe detour route for the greenway trail during any hours the Premises are rented to a private party;

(e) establish rules and regulations for use of the portion of the Premises located on the east side of Foster St. that are consistent with those for the parcels on the west side of Foster St. and consistent with rules and regulations established for rental agreements by the City of Durham, except that no vehicles shall be allowed to use the greenway trail on the east side of Foster St. to access any portion of that part of the Premises;

(f) require anyone renting the Premises for an event to ensure that restrooms are available if that event either lasts more than ninety (90) minutes or involves more than 150 persons. This requirement can be satisfied with either use of the restrooms in the park or rented portable toilets installed at a pre-approved location.

(g) secure trash containers and make arrangements for trash removal if additional service

is desired above the City's standard level of service, as provided in Section 8.a;

(h) ensure that any rental or other use of the Premises does not interfere with the City's mowing service, as provided in Section 8.d;

(i) ensure that the Premises are open to use by the general public, without charge,from dawn until the park's closing at dark or at a scheduled closing time and when the Premises are not reserved or rented for a private function. The park may remain open for a scheduled function, public or private, no later than 11:00 PM.

8. OWNER'S RESPONSIBILITIES.

During the term of this Agreement, the Owner shall:

(a) collect trash from containers on a regular schedule consistent with that provided to other City parks, which at the time of execution of this Agreement is collection no more than three times per week;

(b) through its Urban Forestry Division, maintain the existing trees on the Premises;

(c) police the Premises as is customary for other Durham City parks;

(d) mow the Premises on a regular schedule consistent with mowing at other Durham City parks, which at the time of execution of this Agreement is once every ten (10) days;

(e) respond as possible to a request for a specific date for mowing when that date is provided to DPR no less than fourteen (14) days in advance.

9. ADDITIONAL RESPONSIBILITIES OF OWNER AND MANAGER

(a) During the term of this Agreement, Owner and Manager shall have regular communication between their designated liaisons on events and rentals scheduled in the Premises by either party, and shall also communicate on events in surrounding areas likely to have an impact on the Premises.

(b) The Manager agrees to provide to the Owner a report annually upon the date of the execution of this Agreement, or more often as reasonably requested by the City, listing all parties or persons to whom the Premises were rented and the fee charged for such use, and also listing those who were allowed to use the Premises for no charge.

(c) During the term of this Agreement, the Manager agrees that any procurement of materials or services purchased for use on the Premises shall follow those procedures for procurement which DPR is required to follow by law or by City policy.

(d) The Manager agrees that the structure on the Premises known as "the Leaf" will not be used for any activity that requires electricity, other than security lighting; however this provision will be subject to review by the parties six months after the execution of this Agreement.

(e) Nothing in this Agreement is intended to or shall be considered to create a joint venture or partnership between the Owner and the Manager, or to constitute either the agent of the other or to make the Owner in any way responsible for the duties, responsibilities, obligations, liabilities, debts, or losses of the Manager.

10. **KEYS**. The Manager shall inform the Owner within two business days of any occurrence which causes any lock(s) on the Premises to be changed and shall furnish the City will a copy of any new key)s). At the end of the term, the Manager shall give to the Owner

all keys that Manager has for the Premises.

11. **UTILITIES**. The Manager shall pay all proper charges for utilities provided to the Premises.

12. **USE OF SECURITY DEPOSIT**. **INTENTIONALLY OMITTED**.

13. **POSSESSION**. The Owner shall not be liable for failure to deliver possession due to a cause beyond its reasonable control.

14. **ASSIGNMENT AND SUBLETTING**. The Manager shall have the right to rent the Premises to organizations and individuals that sponsor cultural, athletic, recreational, social, and/or arts related events. During the rental period, the organization shall have exclusive use of that part of the Premises rented to it, which shall include the City greenway trail on the Premises only under the conditions noted in Section 7.d. Rental policies, procedures and fees shall be consistent with the Owner's policies, procedures and fees in effect at the time of such rental. The Manager agrees that no more than 50% of the open hours of the park may be for exclusive and private uses, and that the balance between private uses and those uses open to the public, either free or for a fee, will be evaluated annually and adjusted at the Owner's request. The Manager shall remain liable to the Owner under the terms of this Agreement notwithstanding the subletting of a part of or all of the Premises pursuant to this paragraph.

15. **TAXES AND INSURANCE**.

(a) During the term of this Agreement, the Owner shall pay all taxes and assessments imposed on the Premises.

(b) The Manager shall maintain property damage insurance of $1,000,000 and general liability insurance of $2,000,000 covering properties/operations, naming the Owner as an additional insured and shall furnish proof of that insurance to the Owner annually. The Manager agrees that this amount shall be evaluated annually by the Owner's Risk Manager and may be increased at the Risk Manager's reasonable discretion.

(c) The Manager agrees to require any party renting the facility who intends to bring alcohol, rides and inflatable games, or food vendors onto the Premises to obtain liability insurance and name both the Manager and the Owner as additional insureds.

16. **ACCESS AND USE OF PROPERTY**. The Owner and its agents and contractors may enter the Premises to undertake those responsibilities placed upon it under the terms of this Agreement, as well as in the case of emergency or with the consent of the Manager. In exercising the Owner's rights under this Section, Owner and its agents and contractors, shall exercise such rights in a manner and at such times as to minimize interference with the Manager's use and occupancy of the Premises.

17. **VACATING.** (a) The Manager shall surrender possession of the Premises on or before the end of the Term. Time is of the essence in complying with the preceding sentence. (b) On vacating the Premises, the Manager shall ensure that all utilities are paid in full. So that Owner may provide security to the Premises after the Premises are vacant and may use the Premises for its purposes, Manager shall notify Owner in advance of the expected date that

the Premises will become vacant and shall also notify Owner within one working day after the Premises actually become vacant. This subsection "b" applies even if Manager vacates before the end of the term. (c) If the Manager fails to comply with its obligations under this section, Manager shall be liable for resulting damages suffered by the Owner, including, if applicable, the inability to use the Premises for the purposes for which the Owner has provided notice to the Manager, which notice may be given before or during the term.

18. **DEFAULT**. **WAIVER**.

(a) **Default**. If Manager fails to perform any material obligation under this Agreement, or if a material purported fact in any of the Manager's representations to Owner, including any materials submitted to Owner and upon which this Agreement is based, is substantially false, and such failure, event, or condition continues for thirty (30) days after notice of such failure, event, or condition is sent, then Owner may at any time (i) terminate this Agreement and cause the Manager's estate and any associated rights under this Agreement to end, or (ii) terminate the Manager's right to possession of the Premises without causing the Manager's estate to be ceased or termination this Agreement. In either event, the Manager shall deliver possession of the Premises to Owner. In addition, Owner may reenter and take possession in accordance with legal procedures. If Owner terminates this Agreement in accordance with the first sentence of this section, the Manager shall be liable for damages resulting from the Manager's breach and other accrued obligations and liabilities. If the Owner terminates the Manager's right to possession without terminating the Agreement, this Agreement shall remain in effect, and the Owner shall make reasonable efforts to re-let the Premises on the Manager's behalf, and the Manager shall compensate the Owner for the costs and expenses of such efforts.

(b) **Waiver**. Either party's waiver of or failure to exercise or enforce any of its rights under this Agreement shall not constitute a waiver of any right thereafter. The parties' respective rights under this section are in addition to other rights under this Agreement or as provided by law.

19. **INDEMNIFICATION**. (a) To the maximum extent allowed by law, the Manager shall defend, indemnify, and save harmless Indemnitees from and against all charges that arise in any manner from, in connection with, or out of acts or omissions by DCP, its agents, licensees, invitees and contractors, pursuant to this Agreement, including for Environmental Contamination.

In performing its duties under this subsection "a", the Manager shall at the Manager's sole expense, defend Indemnitees with legal counsel reasonably acceptable to the Owner. (b) Definitions. As used in subsections "a" and "c" of this section "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, settlement, and expenses (included within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item). "Environmental contamination" means petroleum products (including oil, gasoline, and kerosene)), hazardous wastes, hazardous substances, hazardous materials, toxic substances, toxic wastes, hazardous air pollutants, and toxic pollutants, as those terms are used in any federal, state, or local laws, rules regulations, codes, and ordinances, as amended from time to time. "Indemnitees" means the Owner and its officers, officials, independent contractors,

agents, and employees, and does not include the Manager.

20. **ADA**. If either party receives any notice or document (i) which alleges any violation of the Americans with Disabilities Act ("ADA") relating to the Premises, or (ii) which pertains to any claim made or threatened relating to the Premises regarding alleged noncompliance with the ADA, or (iii) which pertains to any governmental or regulatory action or investigation instituted or threatened relating to the Premises regarding alleged noncompliance with the ADA, it shall, within ten (10) days after receipt of such notice or document, provide the other party with a copy.

21. **TERMINATION, CASUALTY, AND EMINENT DOMAIN**. (a) If casualty renders the Premises unuseable, and if the casualty is not the fault of the Manager or any person for whose acts of omissions the Manager is liable, and if the Owner cannot or does not make the Premises reasonably useable for the Manager's purposes within ten (10) days afterwards, the Manager may, by sending notice to the Owner within fifteen (15) days of the casualty, terminate the term effective as of the date of casualty. (b) If a casualty substantially damages the Premises, and if the casualty is not the fault of the Manager or any person for whose acts or omissions the Manager is liable, and if the Owner cannot or does not substantially repair the Premises within twenty (20) days afterwards, the Manager may, by sending notice to the Owner within twenty-five (25) days of the casualty, terminate the term effective as of the date of the casualty. (c) If a casualty renders the Premises unusable for the Manager's purposes, the Owner may, by sending notice to the Manager within twenty (20) days of the casualty, terminate the terms effective as of the date of the casualty. (d) If an authority with the power of eminent domain acquires an interest in the Premises that substantially affects their use for the Manager's purposes, the Manager may, by sending notice to the Owner within thirty (30) days of the taking of possession by the authority, terminate the term effective as of the date of the taking of possession by the authority. (e) Each subsection of this section is intended to be independent of the other subsections of this section.

22. **EFFECTS ON OTHER RIGHTS**. The Owner shall not be liable for any loss or damage occurring to the personal property of the Manager or any of its agents or invitees, except through the intentional act of the Owner, and except as otherwise provided by law or this Agreement. Nothing in this Agreement shall limit the City of Durham's governmental powers regarding the Premises, including eminent domain, zoning, subdivision, and police.

23. **RENEWAL**. **INTENTIONALLY OMITTED**.

24. **ADDRESSES. NOTICES**. Notices to the Owner shall be in writing and such notice shall be sent to:

Director
Department of Parks and Recreation
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701

Notices to the Manager shall be in writing and shall be sent to:

Executive Director
Durham Central Park, Inc.
P. O. Box 1526
Durham, North Carolina 27702

By sending a notice stating its new address, either party may change the address to which notices may be sent.

25. **INTERPRETATION**. Unless the context requires otherwise, the singular includes the plural, and vice versa. "Including" and "included" mean including or included but not limited to. Section headings are not for interpretation of this Agreement. If any provision of this Agreement shall be determined to be invalid or unenforceable in whole or in part, for any reason, such invalidity or unenforceability shall not affect the validity or enforceability of any of the remaining provisions and such invalid or unenforceable provision shall be revised so that it will be valid and enforceable to the maximum extent legally possible consistent with its intent.

26. **COVENANTS**. The Owner warrants that the Owner has title to the Premises, the right to enter into this Agreement concerning the Premises with the Manager, and that for as long as the Manager is not in default under this Agreement after notice and the opportunity to cure, the Manager shall have peaceable possession and quiet enjoyment of the Premises for the Term. The Manager covenants that it is a corporation in good standing and that it has the authority to enter into this Agreement with Owner, and the capacity to fulfill its obligations under this Agreement.

27. **MEMORANDUM**. At either party's request, the other party shall execute and deliver a memorandum of this Agreement in the form reasonably requested by the requesting party and as prepared by the requesting party.

28. **CITY POLICY. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER THE OWNER CONTRACTS.**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

ATTEST:

_____
_____ Clerk

CITY OF DURHAM

By _____
City Manager

ATTEST:

_____
Corporate Secretary

DURHAM CENTRAL PARK, INC.

By _____
Board Chair (Please affix corporate seal here.)

NORTH CAROLINA

DURHAM COUNTY

I, _____, a Notary Public in and for said county and state, certify that _____ personally appeared before me this day, and acknowledged that she/he is _____ City Clerk of the City of Durham, a municipal corporation and that by authority given and as the act of the City, the foregoing instrument was signed in its corporate name by its City Manager, sealed with its corporate seal, and attested by herself as its said City Clerk or Deputy City Clerk.

This, the _____ day of _____, 2011

My commission expires:

_____ _____

Notary Public

NORTH CAROLINA

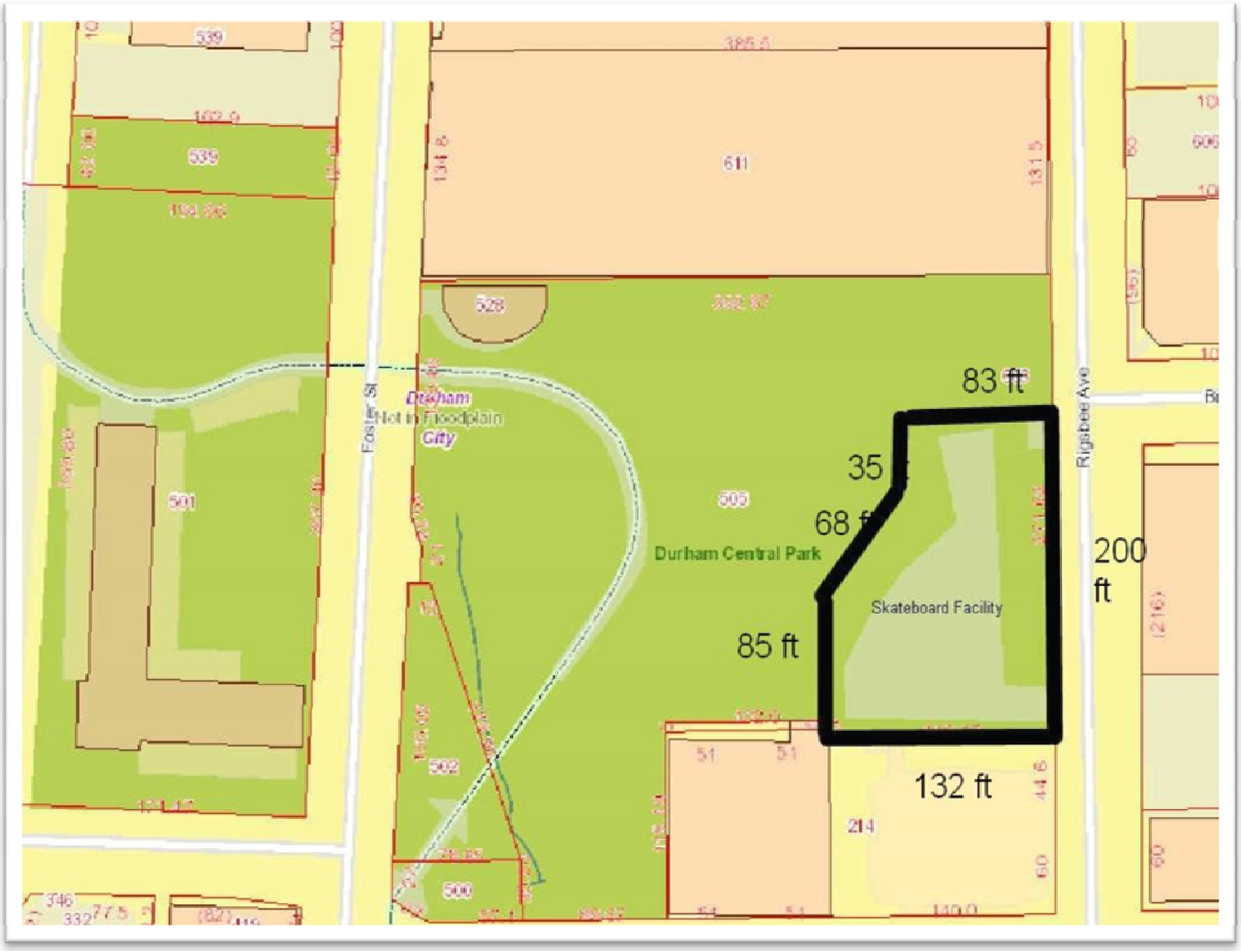
DURHAM COUNTY

I, _____, a Notary Public in and for said county and state, certify that _____ personally appeared before me this day, and acknowledged that she/he is _____ Secretary of Durham Central Park, Inc., a North Carolina corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument with the City of Durham was signed in its name by its _____ Board Chairperson, whose name is _____, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary, all on behalf of and as an act of the partnership.

This, the _____ day of _____, 2011.

My commission expires:

_____ _____

Notary Public

ATTACHMENT A