

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

**THIRD DEED OF TRUST NOTE
ASSIGNMENT OF LEASES, RENTS AND PROFITS**

THIS ASSIGNMENT, made this _____ day of _____, 2012 by Southside Revitalization Phase 1 LP, a Missouri limited partnership the mailing address of which is c/o McCormack Baron Salazar, Inc., (hereinafter referred to as "Assignor"), to the City of Durham, a municipal corporation (hereinafter referred to as "Assignee").

WITNESSETH

WHEREAS, Assignor is justly indebted to Assignee for money borrowed in the sum of One Million Four Hundred Sixty Six Thousand Two Hundred Sixty-one and No/100 Dollars (\$1,466,261.00), as evidenced by a certain Third Deed of Trust Promissory Note, of even date herewith, with a like principal amount (the "Note"), and secured by a Third Deed of Trust of even date herewith (the "Deed of Trust") (capitalized terms not defined herein shall have such meaning as defined in the Third Deed of Trust Construction/Permanent Loan Agreement of even date herewith (the "Loan Agreement")); and

WHEREAS, Assignee is willing to make said loan, provided, among other things, that Assignor shall assign to Assignee its interests in the tenant leases of the premises described in the Deed of Trust by Assignor for the benefit of Assignee of even date herewith (the "Deed of Trust")(capitalized terms not defined herein shall have such meaning as defined in the Loan Agreement);

WHEREAS, Assignor is willing to make such assignment on the terms and conditions hereof as an inducement to Assignee to make such loan;

NOW, THEREFORE, in consideration of the premises, of the construction to be undertaken and of the loan provided to accomplish the construction, Assignor hereby grants, conveys, transfers and assigns to Assignee all of the right, title and interest of Assignor in and to Assignee all existing and future leases

upon all or any part of those certain premises, and the improvements to be built upon them with the loan proceeds, located in Durham County, North Carolina and being more particularly described on Exhibit A attached hereto and incorporated herein (the “Premises”), together with any and all amendments, extensions, renewals and replacements thereof and also together with the right (but not the obligation) to collect all of the rents and other sums which may become due under said leases. Said leases, together with all such guaranties, amendments, modifications, extensions, renewals and replacements thereof, are hereinafter referred to collectively as the “Lease”; provided, however, that such grant, conveyance, transfer, and assignment shall be subordinate to the First Deed of Trust and the Second Deed of Trust (as defined in Section 14 of the Deed of Trust), subject to the rights of prior Lenders, Assignor hereby appoints Assignee as its attorney in-fact with the right (but not the obligation) to collect such rents, with or without suit, and to apply the same, less all operating expenses and expenses of collection, including attorneys’ fees, to such portions of the Indebtedness as Assignee may determine.

This assignment and power of attorney shall apply to all Leases and Contracts (as defined herein) received in the future, whether by present or by future owners of the Premises, shall be in addition to all other remedies provided herein in the event of default (as defined in the Loan Agreement and the Deed of Trust), and may be put into effect independently or concurrently with any of such remedies, but no liability shall attach to Assignee on account of failure or inability to collect any such rents.

Assignor, subject to the First Deed of Trust and the Second Deed of Trust (as defined in Section 14 of the Deed of Trust), does hereby grant, convey, transfer, set over and assign to Assignee all of the right, title and interest of Assignor in and to all rents, royalties, bonuses, issues, revenues, income and profits relating to or accruing from the Premises and inuring to the benefit of Assignor;

Assignor, subject to the First Deed of Trust and the Second Deed of Trust (as defined in Section 14 of the Deed of Trust), hereby assigns to the Assignee Assignor’s interest in any and all franchise agreements, management contracts, construction contracts, and other contracts, licenses and permits, now or hereafter affecting the Premises (hereinafter sometimes collectively referred to as the “Contracts”;

Assignor agrees to execute and deliver to the Assignee such additional instruments, in form and substance satisfactory to Assignee, as may hereinafter be requested by Assignee further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be

construed as a consent by Assignee to any of the Contracts or Leases, or to impose upon Assignee any obligation with respect thereto. Without first obtaining on each occasion the written approval of Assignee, except in the normal course of Assignor's business, Assignor shall not modify, cancel or permit the cancellation of any Contracts or Leases, or accept, or permit to be made, any prepayment of any installations of rent or fees thereunder (except for security deposits and the usual prepayment of rent which results from the acceptance by a landlord on the first day of each month for the rent for that month). Assignor shall faithfully keep and perform, or cause to be kept and performed, all of the covenants, conditions and agreements contained in each of the Contracts and Leases, now or hereafter existing on the part of Assignor to be kept and performed and shall at all times do all things consistent with Assignor's prudent operation or its business and necessary to compel performance of each other party to the Contracts and Leases, of all obligations, covenants and agreements by such other party to be performed thereunder.

THIS ASSIGNMENT IS MADE FOR THE PURPOSE OF SECURING payment of the indebtedness evidenced by the Note, together with all other sums with interest, if any, becoming due and payable to Assignee under the provisions hereof or of the Note and Deed of Trust and the performance and discharge of the obligations, covenants and agreements of the Assignor contained herein or in the Note or any other Loan Document executed by Assignor as security for the repayment of the Indebtedness.

Assignors may execute an assignment of the leases, income, rents or profits, or any part thereof, from the Premises to the beneficiary under the First Deed of Trust, the Second Deed of Trust, the Third Deed of Trust, the Fourth Deed of Trust and the Fifth Deed of Trust (as defined in Section 14 of the Deed of Trust). Except for the Lenders set forth in Section 14 of the Deed of Trust, Assignor shall not execute any other assignment of the leases, income, rents or profits, or any part thereof, from the Premises except to Assignee or to such person designated by the Assignee, unless such assignment shall expressly provide that it is subject and subordinate to the assignment of leases, income, rents or profits and to the assignment of Leases herein contained.

Assignor shall furnish to Assignee, within ten (10) days after requested by Assignee to do so, a sworn statement setting forth the names of all lessees and tenants of the Premises, the terms of their respective Leases, the space occupied, and the rentals payable thereunder, and stating whether any defaults, off-sets or defenses exist under or in connection with any of said Leases.

ASSIGNOR COVENANTS THAT IT WILL faithfully abide by, perform and discharge each and every obligation, covenant and agreement of the Leases to be

performed by Assignor; give prompt notice to Assignee of any notice of default under the Leases received or given by Assignor, together with an accurate and complete copy of such notice of default; enforce, at the sole cost and expense of Assignor, without terminating the Leases, the performance of each and every obligation, covenant, condition and agreement of the Leases; assign and transfer to the Assignee any and all subsequent Leases of all or any part of the Premises; and execute and deliver at the request of the Assignee all such further assurances and assignments to effectuate this Assignment as the Assignee shall from time to time require;

THIS ASSIGNMENT is also made on the following terms, covenants and conditions:

1. So long as there shall exist no Event of Default under the Loan Documents, Assignor shall have the right to collect upon accrual, but not prior thereto, all rents, issues and profits from said Premises without accountability to Assignee, except as Assignor is required to account or is otherwise restricted by the terms of the Loan Documents.
2. Upon the occurrence of any Event or Default under the Loan Documents not cured within any applicable cure period, subject to the right of the First Deed of Trust and the Second Deed of Trust Lenders, the Assignee may exercise all rights and remedies contained in the Deed of Trust and in any other agreement securing the Note, and Assignee, without in any manner waiving such Event of Default, may at its option, without notice and without regard to the adequacy of the security for said indebtedness, either in person, by agent or by a receiver appointed by the court, take possession of the Premises and have, hold, manage, lease and operate the same on such terms and for such period of time as the Assignee may deem proper, and, either with or without taking possession of said Premises in its own name, Assignee may demand, sue for or otherwise collect and receive all rents, income and profits of said Premises, including those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs thereto or replacements thereof as may seem proper to Assignee, and to apply such rents, income and profits to the payment of (a) all expenses of managing the Premises, including, but not limited to, the salaries, fees and wages of a managing agent and such other employees as the Assignee may deem necessary or desirable and all expenses of operating and maintaining the Premises, including, but not limited to, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens and premiums for insurance which the Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Premises, and (b) the indebtedness evidenced by the Note and Secured hereby and by the Deed of Trust together with all costs and attorneys' fees, in

such order of priority as Assignee in its sole discretion may determine, notwithstanding any statute, law, custom or usage to the contrary. Exercise by Assignee of the option granted it in this paragraph and the collection of rents, income and profits, and the application thereof as herein provided, shall not be considered a waiver of any default by Assignor hereunder or under the Loan Documents.

3. Subject to the right of the First Deed of Trust and the Second Deed of Trust Lenders, the Assignee is hereby vested with full power to use all measures, legal and equitable, and take any action deemed by it necessary or proper to enforce this Assignment and collect the rents assigned hereunder, including the right (but not the obligation) to enter upon the Premises and take possession thereof forthwith to the extent necessary to effect the cure of any default on the part of the Assignor as lessor under the Leases.

4. The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases and Assignor shall and does hereby agree to indemnify the Assignee against and hold it harmless from any and all liability, loss or damage which it might incur under the Leases, or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be secured hereby and by the Deed of Trust above described, and Assignor shall reimburse the Assignee therefore within ten (10) days after written demand for reimbursement is made upon Assignor, and upon failure of Assignor to do so, Assignee may at its option declare all sums secured hereby and by the Deed of Trust immediately due and payable. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises after an Event of Default has occurred or from any other act or omission of Assignee in managing the Premises after an Event of Default has occurred unless such loss is caused by the willful misconduct and bad faith of the Assignee. It is further understood that this Assignment shall not operate to place responsibility upon Assignee for the control, care, management or repair of the Premises or for the carrying out of any of the terms and conditions of the Leases, nor shall it operate to make Assignee responsible or liable for any waste committed on the premises by the lessees or any other persons, or for any dangerous or defective conditions of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in the loss or injury or death to any lessee,

licensee, employee or other person unless such loss, injury or death is caused by the negligence, willful misconduct or bad faith of Assignee.

5. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The rights and remedies possessed by Assignee under the terms thereof. The rights of Assignee to collect said indebtedness and to enforce any other security therefore may be exercised by Assignee either prior to, simultaneously with or subsequent to any action taken by it hereunder.

6. This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee and any subsequent holder of the Note and Deed of Trust, and shall be binding upon Assignor and its successors and assigns. The Assignee shall have the right to assign the Assignor's right, title and interest in the Leases to any subsequent holder of the Note and Deed of Trust subject to the provisions of this Assignment, and to assign the same to any person acquiring title to the Premises, or any portion thereof, through foreclosure under the Deed of Trust or otherwise. After the Assignor shall have been barred and foreclosed of all right, title and interest and equity of redemption in said Premises, or any portion thereof, no assignee of the Assignor's interest in the Leases shall be liable to account to the Assignor for the rents.

7. The Assignee may take or release other security for the payment of the principal sum, interest and indebtedness evidenced by the Note, may release any party primarily or secondarily liable therefore, and may apply other security held by it to the satisfaction of such principal sum, interest or indebtedness without prejudice to its rights hereunder.

8. Upon payment in full of all indebtedness secured hereby, as may be evidenced by the recording or filing of an instrument of satisfaction or full release of said Deed of Trust, unless there shall have been recorded another security instrument in favor of Assignee covering the whole or any part of the Premises, this Assignment shall automatically become void and of no effect. Also, this Assignment may be canceled without payment of the indebtedness by the Assignee indicating that it has been canceled on its face and signing the same, and the Register of Deeds of any county shall be entitled to rely upon such notation in canceling this Assignment on the public record.

9. All notices required to be given hereunder shall be in writing and shall be deemed served at the earlier of (i) receipt or (ii) seventy-two (72) hours after

deposit in registered, certified or first-class United States mail, postage prepaid and addressed to the parties at the following addresses, or such other addresses as may from time to time be designated by written notice given as herein required:

To Assignor:

Southside Revitalization Phase 1 LP
c/o McCormack Baron Salazar, Inc.
720 Olive Street, Suite 2500
St. Louis, Missouri 63101
Attention: Hillary B. Zimmerman, General Counsel

To Assignee:

City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
Attention: Director, Department of Community Development

The parties hereto agree that any notice sent to the Assignor at its address set forth herein shall be deemed notice to all general partners of Assignor in the event that Assignor is a partnership. Personal delivery to a party or to any officer, partner, agent or employee of such party at its address herein shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. No notice of change of address shall be effective until the date of receipt thereof.

10. This Assignment shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF Assignor has caused this Assignment to be executed and sealed in its name all by authority duly given, this the day and year first above written.

City of Durham

By: _____
Thomas J. Bonfield, City Manager

ATTEST: Durham

City Clerk

Southside Revitalization Phase 1 LP

By: _____

By: _____

Name: _____

ATTEST:

Corporate Secretary

(Affix corporate seal here)
NORTH CAROLINA
COUNTY OF DURHAM

I, A Notary Public in and for the aforesaid county and state certify that
_____ personally appeared before me this day,
and acknowledged that he or she is the _____ City Clerk of the City of
Durham, a municipal corporation, and that by authority duly given and as the act of
the City, the foregoing agreement was signed in its corporate name by its City
Manager, whose name is Thomas J. Bonfield, sealed with its corporate seal, and
attested by its said City Clerk. This the _____ day of _____, 2012.

My Commission expires:

Notary Public

STATE OF _____
COUNTY OF _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is Assistant Secretary of Southside Revitalization Phase 1 LP, a limited partnership, and that by authority duly given and as the act of the corporation, the foregoing agreement with the City of Durham was signed in its name by its managing partner, whose name is Kevin McCormack, sealed with its corporate seal, and attested by him/herself as its said Assistant Secretary. This the ____ day of _____, 2012.

My Commission Expires: _____

Notary Public

PRE-AUDIT STATEMENT

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

City of Durham Finance Officer Date _____