

EASEMENT FOR DUMPSTER AREA

Prepared by and mail after recording to: Moore & Van Allen PLLC (ABB)
100 N. Tryon Street, Suite 4700
Charlotte, NC 28202

STATE OF NORTH CAROLINA

DURHAM COUNTY

THIS EASEMENT FOR DUMPSTER AREA (this "Easement") is made as of the ____ day of _____, 2013, by and between the City of Durham, a North Carolina municipal corporation (the "City"), and East Deck, Inc., a North Carolina corporation ("East Deck").

WITNESSETH:

THAT WHEREAS, the City is the owner of that certain real property located in the City of Durham and identified as Lot 4 (hereinafter "Lot 4") as shown on plat and survey entitled "[title]" prepared by Jeffrey P. Williams, Professional Land Surveyor, with Coulter/Jewell/Thames, P.A., dated [date], 2013 and last revised on [redacted], 2013, and recorded in Plat Book [XX], Page [XX-XX] in the Durham County Registry (collectively, the "New Plats"); and

WHEREAS, East Deck is the owner of that certain real property located in the City of Durham and identified as Lot 6 (hereinafter "Lot 6") as shown on plat and survey entitled "Final Plat — Property of City of Durham, Subdivision, Recombination and Blackwell St. and Vivian St. Right of Way Dedication of American Tobacco Campus Phase III" prepared by Jeffrey P. Williams, Professional Land Surveyor, with Coulter/Jewell/Thames P.A., dated September 27, 2006 and last revised on January 22, 2007, and recorded in Plat Book 176, Pages 73, 76 and 79, Durham County Registry (collectively, the "Old Plats"); and

WHEREAS, the City owns the Durham Performing Arts Center located upon Lot 4 (the "DPAC"); and

WHEREAS, East Deck owns the structured parking facility sometimes referred to as the Mangum Street Parking Deck or the East Deck located upon Lot 6 (the "Parking Deck"); and

WHEREAS, trash from the DPAC is currently transported across and stored on a portion of Lot 6 that is labeled "New Trash, Storage & Handling Easement Area" on the New Plats (the "Dumpster Easement Area"); and

WHEREAS, East Deck, as the owner of Lot 6, desires to establish certain easement rights in the Dumpster Easement Area for the benefit of the owner of Lot 4 in order to allow the trash from the DPAC to be transported across and stored in the Dumpster Easement Area, according to the terms set forth herein; and

WHEREAS, the City, as the owner of Lot 4, desires to execute this Easement for the purpose of acknowledging the terms of its use of the Dumpster Easement Area.

NOW, THEREFORE, in consideration of the premises; to enhance and protect the value of Lot 4 and Lot 6; to assure the proper function and use of the DPAC; and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, East Deck does hereby grant, bargain, sell and convey unto the City, its tenants, operators, employees, licensees, customers, business invitees, successors, heirs and assigns, the following easements, rights, covenants and undertakings and to which Lots 4 and 6 shall be owned, sold, conveyed, transferred, occupied and used:

1. Incorporation of Recitals. The foregoing recitals shall constitute an integral part of this Easement, and this Easement shall be construed in light thereof.

2. Establishment of Dumpster Easement. East Deck hereby grants, bargains, sells and conveys to the City as owner of Lot 4, an exclusive perpetual right, privilege and easement (the "Dumpster Easement") over the Dumpster Easement Area for the construction, maintenance and operation of a service area for the collection, storage and removal of papers, debris, filth, refuse and recyclable materials and the use of trash cans, dumpsters, compactors and other storage containers in connection therewith. Further, the Dumpster Easement shall include the non-exclusive perpetual rights of vehicular and pedestrian ingress, egress and regress in, over, upon, across and through that portion of Lot 6 that is labeled "Ex. Loading Dock Easement Area" on the New Plats (the "Loading Dock Area"). The Dumpster Easement shall also include the right and easement exercisable from time to time in the sole discretion of, and at the sole cost and expense of, the owner of Lot 4 to use the Dumpster Easement Area and the Loading Dock Area to install, maintain and replace utility lines, cables, wires, terminals, pipes, conduits, drains and fire protection/life safety systems and other mechanical equipment and panels.

3. Maintenance of Easements and Improvements. The owners, operators and tenants of Lot 4 shall maintain the Dumpster Easement in good repair and condition so as not to adversely impact the full use and enjoyment of the improvements constructed upon Lot 6. The owners, operators and tenants of Lot 6 shall maintain the improvements constructed upon Lot 6 in good repair and condition so as not to adversely impact the full use and enjoyment of the Dumpster Easement.

4. Other Maintenance Cost. Notwithstanding anything herein to the contrary, any cost and expense relating to the Dumpster Easement or Lot 6 which is attributable to a particular owner, operator or tenant or attributable to the negligence or deliberate act or omission of said owner, operator or tenant shall be the sole responsibility and expense of said owner, operator or tenant.

5. No Barriers. No fences or barriers shall be established or maintained on Lot 6 which inhibit the free flow of pedestrian and vehicular traffic over the Loading Dock Area portion of the Dumpster Easement. Notwithstanding anything herein to the contrary, the owner of Lot 4 may, at its sole cost and expense, establish and maintain fences, gates and other barriers as may be desirable from time to time to provide a visual screen and/or to limit and restrict pedestrian and vehicular access to the Dumpster Easement Area.

6. Covenants Running with the Land. The Dumpster Easement and the easements rights, covenants and undertakings contained within this Easement shall run with the land and be appurtenant to and for the benefit of the owners of Lot 4 and shall be a burden upon the title to Lot 6. Any conveyance of Lot 4, Lot 6, or any portions thereof, shall be subject to the Dumpster Easement and the easements, rights, covenants and undertakings contained in this Easement, and, at the time of conveyance, the grantor in any deed of conveyance shall be relieved of future obligations thereafter arising or to be performed by the owners of the Lot or property interest so conveyed. Any grantee of the City or East Deck, as applicable, or their successors, heirs, operators, or assigns, by recordation of a deed or other instrument of transfer or conveyance, shall be deemed to have assumed the obligations under this Easement with respect to such Lot.

7. Amendment and Termination. This Easement may be modified, amended or terminated only by written agreement of the owners of Lot 4 and Lot 6, and shall be duly acknowledged in a manner suitable for and effective upon recording in the Office of the Register of Deeds of Durham County, North Carolina.

8. Governing Law. This Easement shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to principles of conflict of laws.

9. No Public Dedication; No Third Party Beneficiaries or Consents. This Easement is not intended, and shall not be construed: (a) as a dedication to the public of any interests in the Dumpster Easement described herein, (b) to give any member of the public, or any party other than as provided herein, any right whatsoever herein or therein, or (c) to require any consent or other action of any other party other than as expressly provided herein to any amendment to or waiver of any provision of this Easement.

10. Severability. This Easement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Easement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain expressed herein, the remainder of this Easement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

11. Compliance Certificate. Upon the written request of the owner of Lot 4 or Lot 6 or the holder of any first lien deed of trust or first lien mortgage on any such parcel, any such owner shall execute, have acknowledged and deliver a certificate stating whether, to the knowledge of the signatory party, the requesting party is otherwise in compliance with this Easement.

12. Waiver. This Easement may not be waived orally or impliedly, but only by written document executed by the party against which such waiver is sought. Neither the failure of a party to complain of any violation of this Easement, regardless of how long such failure continues, nor the failure of a party to invoke (or the election by a party not to invoke) any right, remedy or recourse for a violation hereof, shall extinguish, waive or in any way diminish the rights, remedies and recourses of the party with respect to such violation. No waiver by a party of any provision of this Easement shall be deemed to be a waiver of any other provision hereof.

13. Rights Cumulative. All rights, powers and privileges conferred hereunder shall be cumulative and in addition to, and not to the exclusion of, those provided at law or in equity. No breach of the provisions of this Easement shall entitle any party to cancel, rescind or otherwise terminate this Easement.

14. Counterparts. This Easement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be considered as one and the same instrument.

15. No Merger. In the event that there is an identity of interest between an owner of a Lot and another interest in the land, such that the interests are identical or mutual, no merger of such interests shall be deemed to occur.

16. Headings. The paragraph headings in this Easement are for convenience only, and shall in no way define or limit the scope or content of this Easement, and shall not be considered in any construction or interpretation of this Easement or any part thereof.

TO HAVE AND TO HOLD the aforesaid Dumpster Easement and all privileges and appurtenances thereunto belonging to the City as grantee. And Data covenants with the City, that Data has done nothing to impair such title as Data received, and Data will warrant and defend the title against the lawful claims of all persons claiming by, under or through Data.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City has executed this Easement as of the day and year first above written.

Attest:

City of Durham

Name: _____
Title: City Clerk

By: _____
Thomas J. Bonfield, City Manager

STATE OF NORTH CAROLINA

COUNTY OF _____

I, a Notary Public of _____ County, North Carolina, certify that _____ (the "Signatory") personally came before me this day and acknowledged that (s)he is the City Clerk of the City of Durham, North Carolina and that by authority duly given and as the act of said City, the foregoing instrument was signed in its name by the City Manager of the City of Durham, North Carolina and attested by (him/her) as City Clerk to the City of Durham, North Carolina.

The Signatory acknowledged to me that (s)he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the ____ day of _____, 2013.

Notary Public

Print: Name: _____
[Note: Notary public must sign exactly as on notary seal]

My Commission Expires: _____
(MUST BE FULLY LEGIBLE)

(Notarial Stamp/Seal)

IN WITNESS WHEREOF, East Deck has executed this Easement as of the day and year first above written.

East Deck, Inc., a North Carolina corporation

By: _____
Michael J. Goodman, Sr., Vice President

STATE OF NORTH CAROLINA

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Michael J. Goodman, Sr.

Date: _____, 2013 Official Signature of Notary: _____

Notary's printed or typed name: _____

My commission expires: _____

(Official Seal)

