



Date: August 20, 2013

To: Thomas J. Bonfield, City Manager

Through: W. Bowman Ferguson, Deputy City Manager

From: Joel V. Reitzer, Jr., Director, General Services Department

Subject: Development Agreement between City of Durham and Blackwell Street Management Company, LLC for the construction of a wrapper building adjacent to the Durham Performing Arts Center

President’s Club Lease between City of Durham and Hotel Commercial, LLC

Condominium Purchase Contract between City of Durham and Hotel Commercial, LLC

Real property conveyances for the wrapper building project

Executive Summary

At the time of construction of the Durham Performing Arts Center, it was contemplated that future development would occur on the property surrounding the DPAC. Blackwell Street Management Company, LLC (“Blackwell”) proposes to construct a mixed-used development that will “wrap” around part of the DPAC and East Parking Deck, known as the “Wrapper Building”. The “Wrapper Building” will be comprised of approximately 90,000 square feet of commercial hotel space and approximately 7,500 square feet of retail and commercial space. As part of the proposed development, Blackwell proposes to construct additional restroom facilities for the DPAC and construct a DPAC President’s Club directly accessible from the 2nd floor of the DPAC, known as “DPAC amenities”. The City would purchase the restroom facilities (942 SF) as a condominium, in the wrapper building, in the amount of \$641,338.00. The City would lease the President’s Club lounge (4,024 SF) for the initial base rent amount of \$9,054.00 per month for the initial term of 9 years, with options for renewal for additional 22 years. The DPAC operator will be responsible all costs associated with the lease through the DPAC Operating Agreement. The lease term plus options for renewal coincides with the recently approved term of the DPAC operator agreement. As part of the development agreement, and in order to enable the construction on the site as planned, several real estate transactions must occur wherein the City and Blackwell agree to project property conveyances. The project property conveyances includes: a new dumpster easement, a mechanical equipment easement, one building agreement, easement for cross access, easement for footings, easement for utilities, temporary construction easement and air rights. These easements are required to effectuate the development of the Wrapper Building and

DPAC amenities, described above and further ensure that each party's use and operations and future use are appropriately addressed.

Recommendation:

That City Council:

1. Adopt a Capital Improvement Plan ordinance for the Durham Performing Arts Center.
2. Authorize the City Manager to execute a development agreement with The Blackwell Street Management Company, LLC for the Wrapper Building adjacent to the Durham Performing Arts Center and DPAC amenities.
3. Authorize the City Manager to execute the purchase contract with Hotel Commercial, LLC, pursuant to the terms of the Development Agreement, for the condominium unit consisting of 942 square feet on the second floor of the Wrapper Building in an amount of \$641,338.00 pursuant to the terms and conditions outlined in the development agreement; and,
4. Authorize the City Manager to execute the Lease Agreement with Hotel Commercial, LLC, pursuant to the terms of the Development Agreement, for the DPAC President's Club (lounge), consisting of 4,024 square feet, on the first and second floor of Wrapper building, for \$9,054.00 per month, for the initial term of 9 years with options to renew up to an additional 22 years, pursuant to the terms and conditions outlined in the development agreement.

Background

The Durham Performing Arts Center is located at 123 Vivian Street and sits on approximately 1.465 acres. Blackwell Street Management Company, LLC owns property adjacent to the west side of the DPAC property and has proposed construction of a Wrapper Building to be located contiguous to the DPAC building and East Parking Deck. The proposed construction will require exchange of certain property interests between the City and Blackwell. The City supports and encourages the location of desirable business enterprises which will increase the tax property base and add new jobs and business prospects to the City. The DPAC has been very successful for the City, both as a facility, regional draw and an economic driver for downtown businesses. The addition of the proposed Wrapper Building comprised of 134 hotel rooms and restaurant and commercial space is anticipated to increase the attendance at the DPAC and be an even more attractive draw for out-of-town patrons to this premiere performing arts venue. The addition of much needed downtown hotel rooms within close proximity to the DPAC and other venues, such as the Durham Convention Center, will boost event options and increase activity within downtown. Moreover, as part of the proposed construction, certain DPAC amenities will be added, including a women's restroom facility and President's Club Lounge accessible from the second floor of the DPAC. The new women's restroom is proposed to augment current facilities, thereby reducing the long lines that form due to short intermission time frames during events. While the DPAC meets the building code for the requisite number of plumbing fixtures, use and operation of the DPAC has identified that additional women's restrooms are necessary to ensure that patron expectations and experiences are satisfactory. The new restroom facility will include 15 new toilets.

The President's Club serves as the VIP premium seating program for the DPAC. In addition to key benefits such as premium seats and reserved parking, VIP members can take advantage of access to the President's Club Lounge (currently located on the first floor of the DPAC). Further, the President's Club Lounge is a rentable event space with opportunities to produce additional revenue for the DPAC, such as naming rights. The current President's Club Lounge is approximately 800 SF. This limited square footage is not enough to accommodate the needs of the DPAC and currently provides limited restrooms and growth opportunities. The operator has maximized the tickets sales of the current President's Club due to the limitations of the current President's Club Lounge. The new, proposed President's Club Lounge provides for expanded space that will include separate entry and direct DPAC connection, separate restrooms (within the new lounge area), enlarged lounge/seating area and updated audio-visual features. The existing space is proposed to be marketed for corporate private party space and therefore continue to generate revenue for the DPAC. Estimates from the operator for this expansion project an increase in net income as shown in the attached DPAC Annual Cash Flow.

In order to accommodate construction of the new Wrapper Building, exchange of certain property interests is necessary as well as execution of various property conveyances by way of easements and other agreements. The property exchanges, easements and agreements are acceptable to the City and necessary to accomplish development as proposed. Immediately after approval of the Development Agreement, the City and Blackwell will complete the property conveyance descriptions and details for approval from City Council.

Issues and Analysis:

The opportunity to improve the facility's amenities and further the development of the adjacent property will be a benefit to the City. The opportunity to add the women's restrooms and President's Club amenities in conjunction with the proposed private development have been evaluated and both financially and functionally a wise addition to the DPAC facility. Additionally, the expansion of restrooms and the president's club will help the facility keep pace with competition, increase sales, open new revenue streams and add and retain clients and corporate sponsors.

Development Agreement:

The proposed development agreement details and defines each party's responsibilities regarding the Wrapper Building development. The agreement identifies the Wrapper Building project as follows: includes a total of approximately 102,000 square feet of improvements and will consist of condominium units as follows: one hotel unit, the President's Club unit, the Restroom Condominium, elevator and stairs serving the DPAC, two retail units, and one unit for an elevator attached to the East Parking Deck.

Public Investment

The City's public investment in the project is comprised of:

- Purchase of the Restroom Condominium- amount not to exceed \$641,338.00
- Execution of the long term lease of the President's Club at base rental rate of \$9,054.00 per month
- Project Property conveyances from the City to wrapper lot property owner necessary for the development of the project.

Private Investment

Blackwell's minimum private investment in the project is comprised of:

- Construction costs, tenant up-fit, furniture, fixtures and equipment, construction testing services and other similar costs.
- Private Sector Improvements include the Construction of a hotel with approximately 87,000 square feet and the retail units comprising approximately 7,800 square feet.
- Minimum private investment of \$10,000,000

Total Project:

Includes total of approximately 102,000 square feet of improvements consist of the following:

One hotel unit, the President's Club unit, the Restroom Condominium, elevator and stairs serving the DPAC, two retail units, and one unit for an elevator attached to the East Parking Deck.

Construction timeline:

Project construction is anticipated to start in the fall of 2013 and complete in December 2014. The proposed construction schedule details early completion of the DPAC amenities by September 2014, for use starting with the 2014-15 DPAC Broadway season. Use of the completed DPAC amenities will require partial certificate of occupancy as the construction of the DPAC amenities is part of the construction of the overall project.

Project Construction will require close coordination with DPAC to ensure ingress/egress and operations are not impacted. Logistics and communications plans have been developed to address these issues prior and during the project construction.

The DPAC amenities will coordinate with the existing DPAC in terms of transitions and appearance. Entry to the DPAC restrooms and the President's Club will be seamless from the main second floor lobby. An added feature of the President's Club is the separate entry available from the ground level without first entering DPAC. The flooring, ceiling and wall finishes of the new DPAC amenities will match or complement the existing DPAC finishes. Szostak Design, architect for the DPAC, is responsible for the complementary architectural design of the proposed development. The DPAC Amenities will cantilever outward on the second level to overlook the Plensa sculpture and DPAC plaza. This cantilever will be constructed of the glass curtain wall system similar to the DPAC, hence reinforcing the connection between the two spaces. On the interior, restroom finishes and fixtures will be the same as within the DPAC. The President's Club Lounge will have carpet and wood flooring, floor-to-ceiling glass for views, and separate restroom facilities in addition to being constructed to accommodate audio-visual equipment throughout, beverage stations and seating/furnishings.

Lease Agreement for President's Club-DPAC amenities:

The proposed lease agreement between the City and Hotel Commercial, LLC, is for an initial term that commences upon substantial completion of the leased space and receipt of conditional or final certificate of occupancy and continues until June 30, 2023 for 4,024 square feet on the 1st and 2nd floors of the Wrapper Building. The initial annual rental rate will

not exceed \$27.00 per rentable square foot, which rental rate is reasonable for its unique use and comparable to market rates.

- City pays base rent rate of \$9,054 per month for initial term
- Anticipated commencement lease date of approximately November 1, 2014
- Base rent increases by 3% on annual basis
- Renewal terms 1 period of 84 months; followed by 3 consecutive periods of 60 months each-possible renewals through 2045 (runs concurrent to DPAC operator term)
- Landlord responsible for maintaining foundations, roof, structural portions of walls
- City is responsible for maintenance of interior space and keeping it in good condition, repair and appearance. City is responsible for utilities for the space, which will be separately metered.

Condominium Purchase Contract-Women's restrooms-DPAC amenities

The proposed purchase contract for the new women's restrooms is for 942 square feet of space to serve the DPAC solely, thus it is proposed as a condominium purchase. The City will own the space within the Wrapper Building as it will be a permanent amenity. The purchase price is a one-time purchase payment of \$641,338.00. The purchase price has been vetted by the City in conjunction with internal reviews and an independent cost estimator to validate the apportionment construction analysis and validation of cost and is reasonable.

- City will pay purchase price at Closing, which will occur within 45 days after substantial completion of the space and use for its intended purpose.
- City will pay for the costs to record the deed
- Seller will pay for costs of preparing deeds
- Seller will establish a condominium owner's association (COA) responsible for maintenance and repair of the common areas
- City is NOT responsible for paying any COA fees or assessments

Property Conveyances

The success of the project requires completion of complex property transactions given the proximity of the wrapper lot to the DPAC lot and intended use of the DPAC amenities. The property transactions include:

- **Dumpster Easement Area Designation:** A "New Dumpster Easement" will be conveyed to the City in the East Parking Deck. The New Dumpster Easement shall accommodate the current and future waste disposal needs of the DPAC. The New Dumpster Easement will include associated ingress and egress easement to and from Mangum St. and a utility access easement to allow for connections to necessary utilities necessary for operation, management and maintenance of the DPAC waste disposal needs. In return for conveyance of the New Dumpster Easement to the City and as part of its public investment in the project, the City agrees to abandon the original DPAC dumpster easement currently located on the wrapper lot.
- **Mechanical Equipment Easement:** The location of the Wrapper Building adjacent to the DPAC building complicates the ability of the City to remove, replace and maintain certain large HVAC facility equipment that services the DPAC. During and

upon completion of the project, the City will require periodic access to the DPAC mechanical equipment for replacement, removal or repair. Such access may require encroachment over the Wrapper Building and wrapper lot using large cranes or helicopter capable of lifting equipment into the air and over the ground. Blackwell agrees to convey an easement for maintenance of mechanical equipment to the City for such purposes described above.

- **One Building Agreement:** Due to certain design elements of the Wrapper Building, its proximity to the DPAC building and shared elements between the 2 buildings, execution of a “One Building Agreement” is required. The One Building Agreement allows the developer of the Wrapper Building to proceed with construction of the Wrapper Building in close proximity to the DPAC building and establish joint facility operational requirements and property owner responsibilities for certain shared structures and walls. City and Blackwell agree to execute and record a One Building Agreement conforming to legal requirements and North Carolina Building Code.
- **Other Project Property Conveyances:** Other real property interest conveyances are required in order to proceed with the project. Such conveyance(s) include, but are not limited to the following: termination & release of dumpster easement, new dumpster easement, the easement for maintenance of mechanical equipment, the one building agreement, the easement for cross access, the easement(s) for footings, the easement for utilities, deeds for fee parcels, deed(s) for air rights, stormwater cross access and utility easement(s), easement(s) for stormwater drainage, termination of 9 ft. cross access easement (in East Deck), new cross access easement (in East Deck) and the temporary construction easement(s).

Necessary Adoption of Property Conveyance Resolution

Although the Development Agreement outlines the obligations of the City and Blackwell necessary to complete the project as contemplated, the City must first request authorization and approval from the trustee of the deed of trust for the DPAC real property. This request must be made by formal resolution of the City Council providing detailed descriptions of the DPAC property conveyances to be released. Upon approval of the Development Agreement, the City will complete all relevant property conveyance instruments, including detailed property descriptions in order to prepare a formal resolution for adoption by City Council requesting the release of DPAC property related conveyances and authorizing the execution of a notice of extension to the DPAC deed of trust in order to extend the deed of trust lien to the additional property. It is anticipated that this resolution will be presented to City Council for adoption at the next City Council meeting in October 2013.

Alternatives:

The City could elect to not to participate in this Project. This alternative is not recommended for the purposes described above.

Financial Impact

The financial evaluation and cash flow analysis of the newly adopted operator’s agreement for the DPAC contemplated the potential for the expansion of the President’s Club and the construction of additional restrooms. Projections of annual cash flows for the expanded President’s Club as well as the additional annual operating costs for both the President’s

Club and new restrooms is attached and shows an increase in net revenues for the DPAC of \$98,379.00 in year one, growing to \$238,692.00 in year four.

All revenues and expenses associated with the new amenities would be considered as operating revenues/expense of the operator and would be subject to the newly updated revenue sharing provision of the operating agreement. For illustrative purposes, the cash flow analysis uses the 60%/40% baseline profit sharing splits which results in an increase in net revenue to the City of \$39,352.00 in year one, growing to \$95,477.00 in year four.

The upfront costs of \$641,338.00 associated with the one-time condo purchase payment for the restroom facilities as well as an estimated \$200,000.00 in furniture, fixtures and equipment for the President's Club Lounge will be funded from revenues that have accumulated in the DPAC facility fund. As of June 30, 2013, the fund had a balance of approximately \$3.4 million. These cash expenditures were contemplated in the broader evaluation of the ongoing capital needs for the facility during the evaluation and negotiation of the DPAC operator's agreement. During that evaluation, a higher purchase price had been assumed. As such, this lower purchase price only enhances the DPAC Facility Fund's ability to carry the costs of ongoing capital needs of the building without any General Fund support from the City.

SDBE Summary

An SDBE strategic plan has been developed between Davidson and Jones and the City's Department of Equal Opportunity/Equity Assurance for the condominium purchase contract-women's restrooms.

Attachments:

1. CIP Ordinance Amendment
2. Development Agreement and exhibits
 - a. Floor Plan
 - b. Restroom condo specifications
 - c. President's club specifications
 - d. Fire Alarm specifications
 - e. New dumpster easement
 - f. Easement for maintenance of DPAC mechanical equipment (in progress)
 - g. One building agreement
 - h. Condo purchase agreement
 - i. President's club lease
 - j. Subcontractor record of payment
3. DPAC Annual Cash Flow – Expanded President's Club Lounge Lease and Restroom Condominium Purchase
4. SDBE Strategic Plan
5. Presentation