

46 who wholly or partially owns or is wholly or partially owned by the Persons who own any of the
47 Company.
48

49 **2.2 Architect.** “Architect” shall be a professional Architect licensed to practice in
50 North Carolina, whose services shall be engaged by the Company for the Project design and
51 construction administration related work. The term Architect shall be inclusive of all
52 professional subconsultant specialties and disciplines necessary to complete the Project,
53 including, but not limited to, surveying and engineering. The Architect responsible for the
54 design and construction administration of the DPAC Amenities must be satisfactory to the City
55 Manager in his reasonable discretion. Without limiting the choice of other persons or firms to
56 qualify as Architect, the City Manager has determined that Szostak Design Incorporated is
57 satisfactory to serve as Architect.
58

59 **2.2 Condominium Purchase Contract.** “Condominium Purchase Contract” means
60 the contract for purchase of the Restroom Condominium, which is attached hereto as Exhibit H.
61

62 **2.3 Construction.** “Construction” means the construction activities performed by the
63 Company’s own employees and forces and/or causing the construction to occur by means of
64 entering into agreements with other persons. It includes the initial construction of the Project,
65 and includes the purchasing, acquiring and renting apparatus, supplies, materials and equipment
66 as appropriate for that work.
67

68 **2.4 Construction Contract.** “Construction Contract” means the contract between the
69 Company and the Contractor(s) for the Construction of the Project.
70

71 **2.5 Construction Documents.** “Construction Documents” mean the
72 architectural/engineering drawings and technical specifications prepared by the Architect and
73 required for the completion of the Construction of the Project, including all revisions and
74 amendments to same, and prepared in compliance with Legal Requirements.
75

76 **2.6 Contractor.** “Contractor” shall refer to a general contractor licensed under NC
77 law with the appropriate classification for the work performed, chosen by and under contract
78 with the Company to perform Construction work for the Project. The Parties agree that the
79 Construction work for the Project may be performed by more than one prime Contractor. The
80 Contractor(s) for the DPAC Amenities shall be approved by the City Manager. The approval of
81 the Contractor of the DPAC Amenities by the City Manager shall be based on the proposed
82 Contractor’s (i) status as a licensed general contractor in the State of North Carolina; (ii)
83 experience on commercial construction projects of a similar nature; and (iii) experience on
84 commercial construction/renovation projects approximately the same size as the Project.
85 Without limiting the choice of other persons or firms to qualify as a Contractor, the City
86 Manager has determined that Davidson and Jones Construction Company is satisfactory to serve
87 as the Contractor. Any reference in this Agreement to “a Contractor,” “the Contractor,” or
88 “Contractor(s)” shall be interchangeable to refer to Davidson and Jones Construction Company
89 or other City approved Contractor(s). City approval of Contractor(s) is not intended to apply to
90 subcontractors used by an approved Contractor(s).

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2.7 Declaration of Condominium. “Declaration of Condominium” means the declaration of condominium to be filed by the Company after the completion of Construction of the Wrapper Building in accordance with the North Carolina Condominium Act designating the Restroom Condominium as a condominium unit of the Wrapper Building.

2.8 DPAC Building. “DPAC Building” or “DPAC” means the 2,712-seat Durham Performing Arts Center building and facility located at 123 Vivian Street;

2.9 DPAC Amenities. “DPAC Amenities” refers collectively to the Restroom Condominium and President’s Club leased space to be used by the DPAC and constructed within the Wrapper Building.

2.10 DPAC Lot. “DPAC Lot” refers to the real property upon which the DPAC Building is located comprising approximately 1.465 acres and more particularly identified as Lot 4 on the Project Plat;

2.11 East Parking Deck. “East Parking Deck” means the parking garage located at 250 South Mangum St., and bordering the south side of the DPAC Lot.

2.12 Legal Requirements. “Legal Requirements” means all material laws, statutes, ordinances, rules, regulations, permits, licenses, and requirements of all governments or regulatory authorities, that now or hereafter may be applicable to the Project and the operation thereof, including those relating to employees, zoning, building, health, safety and environmental matters, and accessibility of public and private facilities. “Legal Requirements” also includes intellectual rights of third parties including copyright. Use of the term “Legal Requirements” in this Agreement does not create any obligation of the parties with respect to the operations of the Private Improvements, in the case of the Company, or the DPAC Amenities, in the case of the City, after this Agreement terminates pursuant to Section 7.0.

2.13 Minimum Private Investment. “Minimum Private Investment” means the minimum amount of Project Costs that the Company shall be required to invest or cause to be invested in the Private Sector Improvements after the execution date of this Agreement. The Company shall invest or cause to be invested a minimum of \$10,000,000.00 as the Minimum Private Investment in the Project.

2.14 New Dumpster Easement. “New Dumpster Easement” means the proposed dumpster and trash easement to be deeded to the City for use by the City in order to accommodate the operating needs of the DPAC and located in the East Parking Deck and intended to replace the Original DPAC Dumpster Easement.

2.15 Original DPAC Dumpster Easement. “Original DPAC Dumpster Easement” means the “Declaration of Easement for Dumpster Area” established by the City for use by the DPAC and recorded in Deed Book 5487, Pages 183-190 of the Durham County Registry and

136 located on a portion of Lot 5 as shown on plat and survey recorded in Plat Book 176, Pages 73,
137 76 and 79 Durham County Registry.

138

139 **2.16 Mortgagee Approvals.** “Mortgagee Approvals” refer to the required consent
140 and/or release executed by a mortgagee and/or trustee as referred to in Section 3.3 and prepared
141 in a form acceptable for recording in the Durham County Registry.

142

143 **2.17 President’s Club.** “President’s Club” means the new DPAC President’s Club
144 space to be constructed within the Wrapper Building and made directly accessible by DPAC
145 patrons and comprising a minimum of 4,024 rentable square feet located on the 1st and 2nd floors
146 of the Wrapper Building.

147

148 **2.18 President’s Club Lease.** “President’s Club Lease” is the lease agreement
149 between the City and the Company for use of the President’s Club by the DPAC.

150

151 **2.19 Private Sector Improvements.** “Private Sector Improvements” means the
152 improvements to be made by the Company from the Minimum Private Investment, which
153 improvements shall include, by way of example but without limitation, construction costs, tenant
154 up-fit, furniture, fixtures and equipment, construction testing services and other similar costs.
155 The Private Sector Improvements shall include the Construction of a hotel with approximately
156 90,000 square feet, the elevator unit that will connect the hotel to the East Parking Deck and the
157 retail units comprising approximately 7,500 square feet. The Private Sector Improvements will
158 comprise portions of the Wrapper Building.

159

160 **2.20 Project.** “Project” means all work required for the completion of the
161 Construction of the Wrapper Building, including the Private Sector Improvements and the DPAC
162 Amenities in accordance with the Construction Documents. The Project includes a total of
163 approximately 102,000 square feet of improvements and will consist of up to six condominium
164 units as follows: one hotel unit, the President’s Club unit, including an elevator and stairs to
165 provide access to the President’s Club, the Restroom Condominium, two retail units, and one
166 unit for an elevator attached to the East Parking Deck. So long as Company meets the Minimum
167 Private Investment expenditure requirements under this Agreement, nothing herein shall limit the
168 Company from electing in its sole discretion to modify the condominium units for the hotel unit,
169 the two retail units, and East Parking Deck elevator unit, including the square footage allocated
170 between the respective units.

171

172 **2.21 Project Costs.** “Project Costs” means the following categories of costs incurred by
173 the Company for the Private Sector Improvements (and not the DPAC Amenities): architectural
174 and engineering design services, construction costs paid by the Company to the Contractor as
175 required by the Construction Contract pursuant to pay applications submitted by the Contractor
176 (including schedule of values), and any costs directly incurred by the Company for the
177 procurement of furniture and equipment.

178

179 **2.22 Public Investment.** “Public Investment” is the contribution(s) and commitments
180 made by the City to the Company for all services and Construction required to complete the

181 Project. The Pubic Investment includes, without limitation, the purchase of the Restroom
182 Condominium, the execution of the Presidents Club Lease, and Project Property Conveyances
183 from the City to the Company.

184
185 **2.23 Project Property Conveyances.** “Project Property Conveyances” means all
186 property interest conveyances necessary for the Construction of the Project or required pursuant
187 to Legal Requirements, including, but not limited to, the New Dumpster Easement, the Easement
188 for Maintenance of Mechanical Equipment, the One Building Agreement, the Easement for
189 Cross Access, the Easement for Footings, the Easement for Utilities, Deeds for Fee Parcels,
190 Deeds for Air Rights Property Areas, Easement for Cross Access and Utilities, Easement for
191 Stormwater Drainage, and the Temporary Construction Easement. Reference to all such Project
192 Property Conveyances shall be indicated in the Project Plat.

193
194 **2.24 Project Plat.** “Project Plat” means the surveyed plat depicting the real property
195 affected by the Project detailing the areas of Project Property Conveyances over the properties
196 identified as Lots 2, 3, 4, 5 and 6 as originally depicted on plat and survey recorded in Plat Book
197 176, Pages 73, 76 and 79 Durham County Registry, and shown on plat and survey entitled
198 “_____” prepared by Jeffery P. Williams, Professional Land Surveyor,
199 with Coulter/Jewell/Thames, P.A., dated _____, 2013 and to be recorded in the Durham
200 County Registry.

201
202 **2.25 Restroom Condominium.** “Restroom Condominium” means the women’s
203 restroom facility to be constructed within the Wrapper Building and purchased by the City. The
204 Restroom Condominium will be directly accessible by DPAC patrons from the 2nd floor of the
205 DPAC Building. The Restroom Condominium shall comprise approximately 942 square feet.

206
207 **2.26 Restroom Condominium Price.** “Restroom Condominium Price” is the
208 purchase price to the City for the Construction of the Restroom Condominium including costs of
209 Construction. The Restroom Condominium Price is Six Hundred, Forty-One Thousand, Three
210 Hundred, Thirty-Eight and No/100 Dollars (\$641,338.00), which price may be modified pursuant
211 to Section 3.1.4.7.

212
213 **2.27 Wrapper Building.** “Wrapper Building” means the building to be constructed by
214 the Company on the Wrapper Lot comprising both the Private Sector Improvements and the
215 DPAC Amenities.

216
217 **2.28 Wrapper Lot.** “Wrapper Lot” refers to the real property upon which the
218 Wrapper Building is to be located adjacent to the DPAC Lot and comprises approximately 0.877
219 acres and more particularly identified as Lot 5 on the Project Plat.

220
221 **3.0 COMPANY AND CITY OBLIGATIONS FOR PROJECT CONSTRUCTION**

222
223 **3.1 Company Obligations.** The Company shall construct the Wrapper Building,
224 including Private Sector Improvements and the DPAC Amenities on the Wrapper Lot. The

225 Company shall invest or cause to be invested the Minimum Private Investment in the Private
226 Sector Improvements.

227
228 3.1.1 Minimum Private Investment. The Company shall make or cause to be
229 made the Minimum Private Investment in the Private Sector Improvements consistent with the
230 final Construction Documents for the Wrapper Building. The Company shall submit invoices,
231 copies of the Contractor’s applications for payment, receipts, monetary obligations, and other
232 documentation evidencing expenditures in sufficient amounts to allow the City to confirm that
233 the Company has expended the required Minimum Private Investment.

234
235 3.1.2 Timing of Project Construction. The Company shall commence
236 Construction of the Wrapper Building within three (3) months from the date the Parties have
237 received the Mortgagee Approvals referenced in Section 3.3, and shall complete the Private
238 Sector Improvements and DPAC Amenities within thirty-six (36) months after the date of the
239 commencement of Construction. The Parties shall use good faith efforts at obtaining the
240 appropriate Mortgagee Approvals within a reasonable time of the Effective Date of this
241 Agreement. If however, despite such good faith efforts, the Parties are unable to secure the
242 appropriate Mortgagee Approvals within six (6) months of the Effective Date, this Agreement
243 shall terminate with no further obligations of the Parties.

244
245 3.1.3 Failure to Make Minimum Private Investment. In the event the Company
246 fails to make the qualified Minimum Private Investment agreed to on or before the above
247 specified date, subject to any unavoidable delays, then the City shall not be obligated to make the
248 Public Investment purchase of the Restroom Condominium or enter into the President’s Club
249 Lease.

250
251 3.1.4 Construction of DPAC Amenities. The Company shall cause the
252 Construction of the DPAC Amenities in accordance with the following requirements:

253
254 3.1.4.1 Design of DPAC Amenities. The Company shall enter into a
255 contract with the Architect to perform the necessary design and construction
256 administration services for the DPAC Amenities.

257
258 3.1.4.2 City’s Right to Approve Design of DPAC Amenities – the
259 Company shall cause the Architect to prepare the Construction Documents
260 suitable and complete for the Construction of the DPAC Amenities. The City
261 Manager or his designee shall have the right to review the drawings and
262 specifications, at a minimum, at one hundred percent (100%) design development
263 and one hundred percent (100%) construction document stages of design. The
264 Construction Documents shall include detailed technical specifications and
265 drawings, the general description of which is depicted in Exhibit A, “DPAC
266 Amenities Floor Plan,” Exhibit B, “Restroom Condominium Specs and Finishing
267 List,” Exhibit C, “President’s Club Specs and Finishing List,” and Exhibit D,
268 “Fire Alarm System Specifications for Restroom Condominium and President’s
269 Club.” Upon completion of the Construction Documents for the DPAC

270 Amenities, the Company shall send a copy of the completed Construction
271 Documents to the City for final approval. Notwithstanding the approval
272 procedures provided in Section 11.14 below, the City shall have ten (10) working
273 days (i.e., excluding weekend days and City holidays) to approve the Construction
274 Documents. If the City fails to respond with ten (10) working days, the City shall
275 be deemed to have approved the Construction Documents relating to the DPAC
276 Amenities plans and specifications. The Company shall not modify or approve
277 any material modification or material change order to the approved plans and
278 specifications without the City's written consent, which consent shall not be
279 unreasonably withheld or delayed, except that the City shall have sole discretion
280 to approve any proposed modifications to any finishes or fixtures to be provided
281 in the DPAC Amenities.
282

283 3.1.4.3 City Interest in DPAC Amenities Plans and Specifications –The
284 Company shall acquire ownership rights or the right to use DPAC Amenities final
285 Architecture and Engineering drawings and technical specifications which
286 comprise the Construction Documents and other documentation, such as
287 submittals, RFIs, or other construction documentation, and assign such rights to
288 the City that provides to the City the right to use the drawings and technical
289 specifications for additions to and modifications of the Restroom Condominium
290 and the President's club, provided that the Company or assignee agrees to
291 indemnify the Architect for losses, including reasonable attorney's fees, suffered
292 by the Architect as a result of the use of the design and the documents for such
293 other purposes. If such drawings and specifications are used by the City or its
294 agents for such other purposes, then neither the Company nor the Architect shall
295 be responsible for their use in connection with such other purposes, and the City
296 agrees to indemnify the Company and the Architect for claims and losses,
297 including reasonable attorneys' fees, suffered by the Company or the Architect for
298 such other purposes. Architect shall provide hard copy and electronic
299 documentation of Construction Documents in a format requested by the City.
300

301 3.1.4.4 DPAC Amenities Construction. After approval of the final
302 Construction Documents of the DPAC Amenities by the City, the Company may
303 commence with construction of the DPAC Amenities (although the Company
304 may commence construction of the site work and the structure of the Wrapper
305 Building without such approval). The Company shall assume all responsibilities
306 for costs and expenses for the Construction of the DPAC Amenities. The
307 Construction of the DPAC Amenities shall be in conformance with the City
308 approved Construction Documents for the DPAC Amenities.
309

310 3.1.4.5 Form of the Construction Contract. The Company shall use its
311 best efforts to enter into a Construction Contract with the Contractor for
312 construction of the DPAC Amenities in accordance with the approved
313 Construction Documents, which, in the Company's sole discretion, may be made
314 a part of a Construction Contract for the Wrapper Building. The Construction

315 Contract between the Company and the Contractor shall name the City as a third-
316 party beneficiary having the same protections, warranties, and other benefits
317 under the Construction Contract as the Company with regard to the Construction
318 of the DPAC Amenities. The City Manager or his designee shall have the right to
319 approve the form of the Construction Contract between the Company and
320 Contractor to ensure the City has the appropriate protections, warranties, and
321 other benefits under the Construction Contract.
322

323 3.1.4.6 Project Management Oversight -- The Company shall have a
324 designated project manager responsible for oversight of both the Architect and the
325 Contractor during the Construction of the Project. At the City's expense, the City
326 shall have the right to maintain its field personnel or other designees at the
327 construction site for such Construction to observe the Contractor's construction of
328 the DPAC Amenities, or to attend Company's or Contractor's meetings, if any, on
329 the construction site or alternate locations. No such observation or attendance by
330 personnel or designees of the City shall impose upon the City responsibility for
331 failure by the Company, Architect or the Contractor to observe any laws or safety
332 practices in connection with such construction or excuse Company's obligation to
333 cause the Project to be constructed in accordance with the Project Construction
334 Documents.
335

336 .1 Neither the City's public representative(s) nor the designated
337 project manager, if any, will have control over, will be in charge of
338 or will be responsible for construction means, methods, techniques,
339 sequences, or procedures, or for safety precautions and programs
340 in connection with the work, since these are solely Company's and
341 the Contractor's responsibility. Additionally, neither the City's
342 public representative nor project manager has authority to bind the
343 City.
344

345 .2 The City may at any time and from time to time, without prior
346 notice to or approval of Company or the Contractor, replace the
347 City's public representative or project manager, if any, with a new
348 City representative. Upon receipt of notice from the City
349 informing Company of such replacement and identifying the new
350 City representative, Company shall recognize such person or firm
351 as City's representative for all purposes under this Agreement.
352

353 .3 The City's public representative and project manager, if any,
354 their consultants, and other persons authorized by City will at all
355 times have access to the work wherever it is in preparation or
356 progress. Company shall cause the Contractor to provide proper
357 facilities for such access and for inspection, and any Any such
358 personnel shall comply with any reasonable rules or requirements
359 by the Wrapper Contractor for access to the construction site.

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.4 The City shall have the right to periodically conduct inspections and tests, at its own expense, on the work performed by the Contractor using its own project manager, employees or a third party for the purpose of independently verifying compliance with the Construction Documents relating to the Construction of the DPAC Amenities. The City shall provide reasonable notice to the Company and the Wrapper Contractor if it intends to conduct inspections or tests. If the Company or Contractor unreasonably interfere with such inspections or tests after being given prior notice by the City of such tests or inspections, the Company shall be responsible for added or extra costs to the City resulting from such unreasonable interference. If the City's inspections or tests unreasonably interferes with the Construction, and causes delays or extra costs to be incurred, the City shall be responsible for the added or extra costs resulting from such unreasonable interference.

.5 The presence of the City's public representative and project manager, if any, their consultants, and other persons authorized by the City at the construction site under this Subsection 3.1.4.6 shall not unreasonably interfere with the performance of the work by the Company, the Contractor(s) and its subcontractors.

3.1.4.7 City Change Order Requests -- Prior to the commencement of, or during the Construction of the DPAC Amenities, the City may provide the Company a written request for changes in scope, systems, kinds and quality of materials, finishes or equipment of the DPAC Amenities. Upon receipt of such a request, the Company will use its best efforts to cause the Contractor to propose a change order to perform such work, which change order will be in writing. The proposed change order shall provide (1) a description of the change in the original scope of Construction for the affected DPAC Amenity; (2) the amount of the adjustment, if any, in cost; and (3) schedule implications. The City shall have the right to decide in its sole discretion to approve or reject the proposed change. If the City desires to accept the proposed change order, it will provide written notice accepting the change order within the time specified in the written proposed change order, which specified time shall not be less than five (5) business days. If the City fails to provides such notice in a timely manner, the proposed change order will be deemed rejected.

.1 Accounting of City Change Order Requests for Restroom Condominium – the Company shall maintain an accounting of all approved and implemented City change order(s) throughout the Construction of the DPAC Amenities and provide to the City a copy of such accounting upon request. Prior to the City's acquisition of the Restroom Condominium, the Company shall

405 provide the City with a final accounting of all City change order
406 requests that were accepted by the City for the Restroom
407 Condominium.
408

409 .2 Accounting of City Change Order Requests for President’s
410 Club – the Company shall maintain an accounting of all approved
411 and implemented City change order(s) throughout the Construction
412 of the President’s Club. Prior to the City taking possession of the
413 President’s Club pursuant to the terms of the President’s Club
414 Lease, the Company shall provide the City with a final accounting
415 of all City change order requests that were accepted by the City for
416 the President’s Club. Pursuant to the President’s Club Lease, City
417 (as tenant) shall be responsible, at its sole cost and expense, to pay
418 for the cost of any approved change order related to a city
419 requested change order to the Construction of the President’s Club
420 if the change order increases the cost of the finishes.
421

422 .3 Timing of Payment of Change Orders – the cost of any change
423 orders to the Restroom Condominium shall be added to the
424 Restroom Condominium Price. The City shall pay to the Company
425 within ten (10) days of the Commencement Date of the President’s
426 Club Lease the amount of all change orders accepted by the City
427 for the President’s Club.
428

429 **3.2 Conveyance of Project Property Interests.** The Parties acknowledge that the
430 success of the Project requires complex property transactions given the requirements of the
431 Construction Documents and the proximity of the Wrapper Lot to the DPAC Lot and intended
432 use of the DPAC Amenities. Accordingly, the Parties agree to cooperate with each other as
433 necessary to finalize the necessary Project Property Conveyances before commencement of the
434 Construction of the Project. The Parties acknowledge that the Project Property Conveyances will
435 include, but not be limited to, the following:
436

437 3.2.1 New Dumpster Easement. The Company shall convey or cause to be
438 conveyed to the City the New Dumpster Easement in the East Parking Deck as shown on the
439 Project Plat. The Company will convey the New Dumpster Easement to the City in a form
440 substantially similar to the attached Exhibit E. In return for conveyance of the New Dumpster
441 Easement to the City, and as part of its Public Investment in the Project, the City agrees to
442 terminate the Original DPAC Dumpster Easement.
443

444 3.2.2 Mechanical Equipment Easement. The Company acknowledges that the
445 location of the Wrapper Building adjacent to the DPAC Building affects the City’s ability to
446 remove, replace and maintain certain large HVAC equipment that is essential for the DPAC
447 (“DPAC Mechanical Equipment”). Beginning with the Construction of the Project and after
448 completion, the City will require periodic access to the DPAC Mechanical Equipment for the
449 purposes of inspecting and to maintain, repair, replace or remove the equipment. Such access

450 may require encroachment over the Wrapper Building and Wrapper Lot using large cranes or
451 even a helicopter capable of lifting large pieces of equipment into the air and over the ground.
452 Accordingly, the Company shall convey to the City an Easement for Maintenance of the DPAC
453 Mechanical Equipment to the City in a form substantially similar to the attached Exhibit F.
454

455 **3.2.3 One Building Agreement.** Completion of the Project requires the execution
456 of a “one building agreement”, due to (a) certain design elements of the Wrapper Building, (b) its
457 proximity to the DPAC Building, and (c) the City’s desire to locate the DPAC Amenities in the
458 Wrapper Building. The one building agreement will allow the Company to proceed with the
459 Construction of the Wrapper Building in close proximity to the DPAC Building and establish
460 joint facility operational requirements and property owner responsibilities for certain shared
461 structures and walls. The Parties agree to execute and record a One Building Agreement
462 substantially in the form of the attached Exhibit G. The Parties acknowledge that the One
463 Building Agreement must conform to Legal Requirements, including, but not limited to the
464 North Carolina Building Code. The Parties agree to make necessary modifications to the
465 agreement as may be required to comply with Legal Requirements.
466

467 **3.2.4 Other Project Property Conveyances.** The Parties acknowledge that
468 numerous other real property interest conveyances are required in order to proceed with the
469 Project. Such conveyances include, but are not limited to the following: fee simple
470 conveyance(s), air rights conveyance(s), easements for cross access, easements for footings,
471 easements for utilities, no build zone declaration(s), and temporary construction easement(s).
472 The Parties agree to negotiate in good faith and to prepare, execute and record all Project
473 Property Conveyances as necessitated by the Project pursuant to the requirements of the
474 Construction Documents and Legal Requirements.
475

476 **3.3 Mortgagee Approval of Project Property Conveyances.** The Parties
477 acknowledge that certain Project Property Conveyances shall require the review and approval of
478 the mortgagee(s) having secured interest(s) in the respective properties affected by the Project.
479 The Parties acknowledge that the Project cannot proceed until and unless the appropriate
480 consents and releases are executed by the mortgagee(s) and trustee(s) of the affected properties.
481 The Parties agree to use their best efforts in securing such consents and releases to allow the
482 Project to go forward.
483

484 **3.4 City as Third-Party Beneficiary.** The Company shall expressly provide that the
485 City is a third-party beneficiary in any contract between the Company and any entity performing
486 design or Construction related work on the DPAC Amenities, including the contract between the
487 Company and the Architect and between the Company and the Contractor.
488

489 **3.5 City Obligations.** If the Company successfully completes the Construction of the
490 Wrapper Building, including both the Private Sector Improvements and DPAC Amenities
491 pursuant to the terms of this Agreement, the City agrees to purchase the Restroom Condominium
492 and enter into a long term lease for use of the President’s Club Lease.
493

494 3.5.1 Restroom Condominium Purchase Contract. The Company and the City
495 shall execute the Condominium Purchase Contract for the City’s acquisition of the Restroom
496 Condominium, which purchase shall be conditioned on the fulfillment of (a) any preconditions of
497 this Agreement, including the obligations of the Company under Section 3.1, 3.2 and 3.3, (b)
498 prior approval by the City of the Declaration of Condominium and (c) any stated preconditions
499 of the Condominium Purchase Contract, attached hereto as Exhibit H. The City shall pay the
500 Company the Restroom Condominium Price, which shall be subject to adjustment pursuant to
501 Sections 3.1.4.7 above. The Condominium Purchase Contract shall be executed promptly
502 following execution of this Agreement. The purchase of the Restroom Condominium shall be
503 subject to the City approval of the Declaration of Condominium. The Declaration of
504 Condominium shall expressly exempt the City, as member of the condominium association, from
505 any association fees or assessments for common area maintenance, repair or construction
506 expenses. The Declaration of Condominium shall expressly state that any stated obligations or
507 liabilities of the City under the Declaration of Condominium shall be subordinate to conflicting
508 local, state or federal laws applicable to local governmental entities, generally, and the City of
509 Durham, specifically. Prior to closing, the Company shall transfer title to the Restroom
510 Condominium to the City, and the Parties shall execute the appropriate closing documents.
511

512 3.5.2 President’s Club Lease. The Company and the City shall execute the
513 President’s Club Lease, which lease shall be conditioned on the fulfillment of (a) any
514 preconditions of this Agreement, including the obligations of the Company under Section 3.1,
515 3.2 and 3.3 and (b) any stated preconditions of the President’s Club Lease. The form of
516 President’s Club Lease is attached hereto as Exhibit I. The City agrees to pay rent to the
517 Company equal to a base rent of \$9,054.00 per month (for the first year) for a minimum for
518 4,024 total rentable square feet, which base rent amount shall increase by 3% per year. The lease
519 shall be executed promptly following execution of this Agreement. The term of the lease shall
520 commence upon completion of the Project and coincide with the term of the operating lease
521 between the City and the DPAC operator, including renewals.
522

523 **4.0 PROVISION FOR NONPERFORMANCE**

524
525 If after obtaining the Mortgagee Approvals, Company fails to substantially complete or cause to
526 be completed the Wrapper Building, including the DPAC Amenities, in accordance with the
527 scope of work provide in this Agreement and within the time limits established in Section 3.1.2,
528 then within thirty (30) days thereafter the City shall have the right to terminate the Company’s
529 services in connection therewith and Company shall reimbursement the City for any fees, costs
530 or expenses incurred by the City in reliance on Company’s performance under this Agreement.
531

532 **5.0 UNAVOIDABLE DELAYS**

533
534 Notwithstanding anything contained herein to the contrary, the Company’s performance of its
535 work under this Agreement and any deadlines or other specific dates shall be subject to being
536 extended for the duration of any unavoidable delays. For purposes of this Agreement,
537 “unavoidable delay” or “unavoidable delays” means any delay, obstruction or interference with
538 the work resulting from any act or event provided that such act or event is beyond the reasonable

539 control of the Company and was not separately or concurrently caused by any willful act or
540 omission or negligent act or omission of the Company and could not have been prevented by
541 reasonable actions of the Company, including, but not limited to, delay, obstruction or
542 interference resulting from:

543
544 **5.1** An act of God (but not including reasonably anticipated weather conditions for the
545 geographic area), lightning, landslide, sinkhole, earthquake, fire, explosion, flood, sabotage or
546 similar occurrence; acts of a public enemy; acts of terrorism, extortion, or blockade or
547 insurrection, riot or civil disturbance.

548
549 **5.2** Restraint of applicable laws;

550
551 **5.3** The failure of any utility to provide and maintain utilities services, water and
552 sewer lines, and power transmission lines to the work which are required for the construction or
553 completion of the alterations and renovations or for other obligations of the Company;

554
555 **5.4** Any unforeseeable condition at the site of the work which shall prevent, or require
556 a change in, the scope or work, or adversely affect the completion schedule for said work.

557
558 **5.5** Strikes, work stoppages or other substantial labor dispute; and

559
560 **5.6** Delays caused by the presence of any hazardous waste conditions not previously
561 disclosed by the City to the Company prior to development of the scope of work.

562
563 Notwithstanding the above, the sole remedy to the Company for any such unavoidable delay
564 shall be time extensions under this Agreement. There shall be no damages for any unavoidable
565 delay. Failure to request a time extension for an unavoidable delay within thirty (30) calendar
566 days of the completed duration of the unavoidable delay shall constitute a waiver of any claim on
567 the part of the Company.

568
569 **6.0 NOTICES CHANGE OF NOTICE INFORMATION**

570
571 **6.1** All notices, documentation and other communications required or permitted by this
572 Agreement shall be in writing and shall be given either by personal delivery, fax or certified
573 United States Mail, return receipt requested, addressed as follows:

574
575 To the City:

576
577 Director of General Services
578 Department of General Services
579 City of Durham
580 101 City Hall Plaza
581 Durham, North Carolina 27701
582 Fax: 919-560-4986
583

*Agreement for the Construction of a Wrapper Building
Adjacent to the Durham Performing Arts Center*

584 With a copy to:
585 City of Durham
586 Durham City Attorney
587 101 City Hall Plaza
588 Durham, NC 27701
589 Fax: (919) 4660
590

591
592 To the Company:
593

594 Blackwell Street Management Company
595 318 Blackwell Street, Suite 150
596 Durham, North Carolina 27701
597 Attn: Michael J. Goodmon, Sr.
598 Fax: 919-433-4278
599

600 With a copy to:
601

602 Capitol Broadcasting Company, Incorporated
603 2619 Western Boulevard
604 Raleigh, North Carolina 27606
605 Attn: Jennifer B. Venable, Esq.
606 Fax: 919-821-8733
607

608 **6.2** A change of address, fax number or person to receive notice may be made by either
609 party by notice given to the other party. Any notice or other communication under this
610 Agreement shall be deemed given at the time of actual delivery, if it is personally delivered or
611 sent by fax. If the notice or other communication is sent by United States mail, it shall be
612 deemed given upon the third calendar day following the day on which such notice or other
613 communication is deposited with the United States Postal Service or upon actual delivery,
614 whichever first occurs.
615

616 **7.0 COMPLETION OF PERFORMANCE OBLIGATIONS UNDER THE AGREEMENT**
617

618 If Company successfully completes its performance obligations required pursuant to Sections 3.1
619 and 3.2 of this Agreement, including the completion of Construction of the Wrapper Building,
620 the successful documentation by the Company to the City that the Company has successfully
621 satisfied the Minimum Private Investment requirement, the sale of the Restroom Condominium
622 to the City, and upon the execution and recordation of the Project Property Conveyances, the
623 President's Club Lease, and the Declaration and Condominium, this Agreement shall be deemed to
624 have been completed and this Agreement shall terminate, except as otherwise expressly provided
625 herein. The ensuing rights and responsibilities of the Parties shall be defined by the various
626 agreements contemplated by this Agreement.
627
628

629 **8.0 EXHIBITS**

630

631 The following exhibits are made a part of this contract:

- 632 Exhibit A “DPAC Amenities Floor Plan,” consisting of ___ pages;
- 633 Exhibit B “Restroom Condominium Specs and Finishing List”, consisting of ____
- 634 pages;
- 635 Exhibit C “President’s Club Specs and Finishing List”, consisting of ___ pages;
- 636 Exhibit D “Fire Alarm System Specifications for Restroom Condominium and
- 637 President’s Club”, consisting of ___ pages;
- 638 Exhibit E “New Dumpster Easement,” consisting of ___ pages.
- 639 Exhibit F “Easement for Maintenance of the DPAC Mechanical Equipment,”
- 640 consisting of ____ pages.
- 641 Exhibit G “One Building Agreement,” consisting of ___ pages.
- 642 Exhibit H “Condominium Purchase Contract,” consisting of ___ pages.
- 643 Exhibit I “President’s Club Lease” consisting of ___ pages.
- 644 Exhibit J “City of Durham Subcontractor Quarterly Record of Payment Report,”
- 645 consisting of 1 page.

646

647 In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text
648 of this contract shall control.

649

650 **9.0 INSURANCE**

651 The Company shall require that both the Architect and Contractor name the City as an
652 additional insured on the insurance policies required by the Company pursuant to its contracts
653 with the Architect and the Contractor for the Project.

654

655 **10.0 INDEMNIFICATION**

656

657 **10.1 Definitions.** In this Section 10.0, the following definitions shall apply:
658 “Claims” are claims, losses, damages, liabilities, fines, penalties, fees, royalties, costs, demands,
659 actions, suits, and judgments of any kind or nature whatsoever, whether at law or in equity,
660 including court costs and reasonable attorney’s fees assessed as part of any of said items.
661 “Persons Connected with Company” are Company’s officers, members, managers, board
662 members, employees, agents, contractors, subcontractors of all tiers, and invitees, but excluding
663 the City.

664

665 **10.2 Indemnification by Company.** “City Indemnitees” are defined as City, its
666 officers, officials, employees, agents, and independent contractors, but excluding Company.
667 Company shall indemnify, defend, and hold harmless the City Indemnitees from and against all
668 Claims arising out of, relating to, or resulting from acts or omissions by Company or Persons
669 Connected with Company arising out of, relating to, or resulting from the Company’s obligations
670 with respect to this Agreement. Without limiting the preceding sentence, and as an additional
671 obligation of Company, it is agreed that Company shall indemnify, defend, and hold harmless
672 the City Indemnitees from and against all Claims made by independent contractors, including
673 subcontractors of all tiers, where the independent contractor was engaged by Company to

674 perform work pursuant to this Agreement, except to the extent the Claim is the result of a
675 negligent or wrongful act or omission by any of the City Indemnitees. In performing its duties
676 under this Section 10.2, Company shall defend City Indemnitees with legal counsel reasonably
677 acceptable to City.

678
679 **9.3 Survival.** This Section 9.0 shall remain in force despite termination of this
680 Agreement with respect to acts and omissions occurring before termination of this Agreement
681 (whether by expiration of the term or otherwise) and termination of the services of Company
682 under this Agreement.

683
684 **11.0 MISCELLANEOUS PROVISIONS**

685
686 **11.1 SDBE.** The provisions of this Section 11.0 shall apply only to the portion of the
687 Project that is the DPAC Amenities.

688
689
690 **11.1.1 General Requirements.**

691
692 .1 Company shall meet with the Director of the City’s Department of
693 Equal Opportunity/Equity Assurance (EO/EA) prior to the Company entering into
694 any contract(s) for Construction of the Project in order to discuss potential
695 contracting opportunities for goods and services for small disadvantaged
696 businesses certified by the City (SDBEs).

697
698 .2 The Director may set project specific goals as the Director determines
699 to be generally applicable under Article III of Chapter 18 (as amended from time
700 to time) in City contracting.

701
702 .3 In all solicitations for which goal(s) are established, Company will not
703 enter into contracts for goods or services without first soliciting bids from SDBEs
704 and requiring bidders to submit a Participation Plan to meet the goal(s). Bidders
705 must state their SDBE participation in a manner like that required by bidders on
706 contracts to be awarded by the City. If a bidder fails to achieve the goal(s), the
707 bidder must submit documentation to Company of its good faith efforts to achieve
708 the goal(s) within two working days after bid opening. Company shall take all
709 reasonable actions needed to see that bidders comply with this subsection.
710 Company shall make bids and documentation of good faith efforts available to the
711 Director.

712
713 .4 Company will notify the Director of EO/EA of upcoming contracting
714 opportunities to ascertain the availability of SDBEs that might be capable of
715 supplying the pertinent goods or services. Each such notice shall be given in a
716 manner and schedule so that the SDBEs will have a reasonable amount of time to
717 respond.
718

719 .5 Company will provide quarterly reports using the attached form,
720 “Exhibit J” (CITY OF DURHAM SUBCONTRACTOR QUARTERLY
721 RECORD OF PAYMENT REPORT), on all contracting activity to the Director
722 for reporting to the City Council. The reports are due the last day of April (for
723 January – March), July (for April – June), October (for July – September) and
724 January (for October – December).
725

726 .6 Company shall comply with all applicable provisions of Article III of
727 Chapter 18. The failure of Company to comply with Article III of Chapter 18
728 shall be a material breach of contract which may result in the rescission or
729 termination of this Agreement and/or other appropriate remedies in accordance
730 with the provisions of that chapter, this Agreement, and State law. The
731 Participation Plan submitted by Company in accordance with that chapter is
732 binding on Company.
733

734 .7 Section 18-59(f) of Chapter 18 provides, in part, “If the City
735 Manager determines that [Company] has failed to comply with the provisions of
736 [this Agreement], the City Manager shall notify [Company] in writing of the
737 deficiencies. [Company] shall have 14 days, or such time as specified in [this
738 Agreement], to cure the deficiencies or establish that there are no deficiencies.” It
739 is stipulated and agreed that those two quoted sentences apply only to
740 [Company’s] alleged violations of its obligations under Article III of Chapter 18
741 and not to [Company’s] alleged violations of other obligations.
742

743 **11.1.2 Remedies.** The Parties recognize that the City considers the obligations of
744 Company under subsection 11.1.1 above to (1) further an important policy of the City for
745 the benefit of the public; (2) be material to this Agreement, and (3) be part of the reason
746 that the City is willing to enter into this Agreement. The Parties recognize that the City
747 will suffer financial loss if Company does not comply with its obligations under
748 subsection 11.1.1. The Parties recognize that the City could terminate this Agreement if
749 Company materially breaches its obligations under subsection 11.1.1 after notice from
750 the City describing the nature of the breach and the Company’s failure to cure said breach
751 within a reasonable period of time, not to exceed 30-days of notice, and that such a
752 termination would result in monetary losses to the City. The Parties also recognize the
753 delays, expense, and difficulty to both Parties involved in proving or contesting the
754 amounts of those losses. Instead of requiring proof of those amounts, it is agreed that
755 Company shall be liable for and shall pay the City the amount specified herein as
756 liquidated damages, and not as a penalty. The amounts stated as liquidated damages are
757 agreed to be reasonable estimates of the City’s losses and expenses for delays, including
758 administrative costs. The City may collect liquidated damages by retaining moneys
759 otherwise due Company in the amount of such damages, and by other legal means.
760 Nothing in this Section 11.5.2 shall reduce the City’s rights under other provisions of this
761 Agreement, any applicable statutes or ordinances, or any applicable principle of law. In
762 its discretion, the City may waive some or all liquidated damages against Company.
763 Such a waiver is valid only if done by a signed writing that refers specifically to this

764 Section 11.5.2 and specifically mentions “liquidated damages.” If the City seeks an
765 injunction to require compliance with any portion of Section 11.1.1, Company hereby
766 agrees to waive any contention that the injury from the noncompliance would not be
767 irreparable or that the City has an adequate remedy at law.
768

769 The damages shall be as follows:
770

771 For Company’s failure to comply with Section 11.1.1(1): \$200 for the first two weeks of
772 noncompliance; \$300 for the second two weeks of noncompliance; and \$200 for each subsequent
773 week.
774

775 For Company’s failure to comply with Section 11.1.1(3), except for failure to make bids
776 and documentation of good faith efforts available to the Director : One percent of the amount of
777 the payments made by Company under each contract entered into in violation of Section
778 10.1.1(3), unless the goals were met or good faith efforts were made with respect to that contract.
779

780 For failure to make bids and documentation of good faith efforts available to the Director
781 as required by Section 11.1.1(3): \$100 for the first week of noncompliance; \$200 for the second
782 week; and \$300 for each subsequent week.
783

784 For noncompliance with Section 11.1.1(4): One percent of the amount of the payments
785 made by Company under each contract entered into in violation of Section 11.1.1(4), unless the
786 goals were met or good faith efforts were made with respect to that contract.
787

788 For noncompliance with Section 11.1.1(5): \$200 for the first two weeks of
789 noncompliance; \$300 for the second two weeks of noncompliance; and \$200 for each subsequent
790 week.
791

792 **11.1.3 Definitions.** In this document, words, including "SDBE" and the
793 "Director" shall have the meaning assigned in Article III of Chapter 18, unless the context
794 requires otherwise. "Article III of Chapter 18" means Article III of Chapter 18 of the
795 Durham City Code (Equal Business Opportunities Ordinance).
796

797 **11.2 EEO Provisions.** Company agrees as follows: (1) The Company shall not
798 discriminate against any employee or applicant for employment because of race, color, religion,
799 sex, national origin, political affiliation or belief, age, or handicap. The Company shall take
800 affirmative action to insure that applicants are employed and that employees are treated equally
801 during employment, without regard to race, color, religion, sex, national origin, political
802 affiliation or belief, age, or handicap. Such action shall include but not be limited to the
803 following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or
804 termination, rates of pay or other forms of compensation, and selection for training, including
805 apprenticeship. The Company shall post in conspicuous places, available to employees and
806 applicants for employment, notices setting forth these EEO provisions. (2) The Company shall
807 state, in all solicitations or advertisement for employees placed by or on behalf of the Company,
808 that all qualified applicants will receive consideration for employment without regard to race,

809 color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The
810 Company shall send a copy of the EEO provisions to each labor union or representative of
811 workers with which it has a collective bargaining agreement or other contract or understanding.
812 (4) In the event of the Company's noncompliance with these EEO provisions, the City may
813 cancel, terminate, or suspend this Agreement, in whole or in part, and the City may declare the
814 Company ineligible for further City contracts. (5) Unless exempted by the City Council of the
815 City of Durham, the Company shall include these EEO provisions in every purchase order for
816 goods to be used in performing this Agreement and in every subcontract related to this
817 Agreement so that these EEO provisions will be binding upon such subcontractors and vendors.
818

819 **11.3 City Policy.** THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF
820 RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR
821 OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK
822 FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.
823

824 **11.4 Choice of Law and Forum.** This Agreement shall be deemed made in Durham
825 County, North Carolina. This Agreement shall be governed by and construed in accordance with
826 the laws of the State of North Carolina. The exclusive forum and venue for all actions arising
827 out of this Agreement shall be the North Carolina General Court of Justice in Durham County.
828 Such actions shall neither be commenced nor removed to federal court. This section shall not
829 apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this
830 section.

831 **11.5 Principles of Interpretation and Definitions.** In this Agreement, unless the
832 context requires otherwise (a) the singular includes the plural and the plural the singular. The
833 pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations
834 include all statutory or regulatory provisions consolidating, amending, or replacing the statute or
835 regulation. References to contracts and agreements shall be deemed to include all amendments
836 to them. The words "include," "including," etc. mean include, including, etc. without limitation;
837 (b) references to a "Section" or "section" shall mean a section of this Agreement; (c) "Contract"
838 and "Agreement," whether or not capitalized, refer to this instrument; (d) titles of sections,
839 paragraphs, and articles are for convenience only, and shall not be construed to affect the
840 meaning of this Agreement; (e) "Duties" includes obligations; (f) the word "person" includes
841 natural persona, firms, companies, associations, partnerships, trusts, corporations, governmental
842 agencies and units, and other legal entities; (g) the word "shall" is mandatory; and (h) the word
843 "day" means calendar day.
844

845 **11.6 Waiver.** No action or failure to act by either party hereto shall constitute a waiver
846 of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to
847 act constitute approval of or acquiescence in a breach thereunder, except as may be specifically
848 agreed in writing.
849

850 **11.7 Performance of Government Functions.** Nothing contained in this Agreement
851 shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising
852 or performing any regulatory, policing legislative, governmental, or other powers or functions.
853

854 **11.8 Severability.** If any provision of this Agreement shall be unenforceable, the
855 remainder of this Agreement shall be enforceable to the extent permitted by law.
856

857 **11.9 Assignment; Successors and Assigns.** The Company shall not assign (which
858 includes to delegate) any of its rights (including the right to payment) or duties that arise out of
859 this Agreement. The City Manager may consent to an assignment without action by the City
860 Council. Unless the City otherwise agrees in writing, the Agreement and all assignees shall be
861 subject to all of the City’s defenses and shall be liable for all of the Company’s duties that arise
862 out of this Agreement and all of the City’s claims that arise out of this Agreement. Without
863 granting the Company the right to assign, it is agreed that the duties of the Company that arise
864 out of this contract shall be binding upon it and its heirs, personal representatives, successors,
865 and assigns.
866

867 **11.10 Compliance with Law.** In performing all of its obligations under this
868 Agreement, the Company shall comply with all applicable laws and ordinances.
869

870 **11.11 No Third Party Rights Created.** This Agreement is intended for the benefit of
871 the City and the Company and not any other person.
872

873 **11.12 Modifications; Entire Contract.** A modification of this Agreement is not valid
874 unless signed by both parties and otherwise in accordance with requirements of law. Further, a
875 modification is not enforceable against the City unless the City Manager or a Deputy or Assistant
876 City Manager signs it for the City. This Agreement contains the entire agreement between the
877 parties pertaining to the subject matter of this Agreement. With respect to that subject matter,
878 there are no promises, contracts, conditions, inducements, warranties, or understandings, written
879 or oral, expressed or implied, between the parties, other than as set forth or referenced in this
880 Agreement.
881

882 **11.13 City’s Manager’s Authority.** To the extent, if any, the City has the power to
883 exercise the City’s rights and remedies under this Agreement that power may be exercised by the
884 City Manager or a Deputy or Assistant City Manager without City Council action.
885

886 **11.14 Approval Procedure between the Parties.** When a party hereto is herein given
887 the right to consent to or approve any document, plan, specification, proposed action or work in
888 accordance with the provisions of this Agreement, the following procedures shall be followed:
889

890 .1 Such document or a written description of the proposed action or work
891 requiring consent or approval shall be submitted by the party having
892 responsibility therefor (the “Requesting Party”) in accordance with the notice
893 requirements of Section 6.0, to the party having the right of consent or approval.
894

895 .2 Within 10 calendar days after the receipt of any written notice requesting
896 consent or approval, the party having the right of consent or approval shall notify
897 the Requesting Party in writing of its consent or approval or of its specific
898 objections to the documents, proposed action or work.

*Agreement for the Construction of a Wrapper Building
Adjacent to the Durham Performing Arts Center*

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.3 Failure to respond with the specific objections within the maximum time period specified herein shall constitute the written consent or approval of the matters contained in the notice requiring approval or consent.

.4 In order to avoid any delay in the design and completion of the Project, it is the intention of the parties that all changes or other matters affecting the schedule and budget for the Project shall be reviewed, approved and handled in the most expeditious manner possible.

.5 Except in situations where it is stipulated that approval or consent may be granted or withheld in the sole discretion of the party from whom approval or consent is requested, such approval and consent shall not be unreasonably withheld, conditioned or delayed.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed under seal themselves or by their respective duly authorized agents or officers.

CITY OF DURHAM

ATTEST:

By: _____

Preaudit Certification:

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BLACKWELL STREET MANAGEMENT COMPANY, LLC

By: _____ (SEAL)
Manager

State of _____
County of _____

**ACKNOWLEDGMENT BY
BLACKWELL STREET MANAGEMENT
COMPANY, LLC**

I, a notary public in and for said county and state, certify that
_____ personally (1) appeared before me this day, (2)
stated that he or she is a manager of **BLACKWELL STREET MANAGEMENT COMPANY,
LLC**, a limited liability company 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,
under seal, of the contract on behalf of the company. This the _____ day of
_____, 20_____.

My commission expires:

Notary Public