

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF DURHAM

THIS LEASE (this "Lease") is made and entered into this _____ day of _____, 2013 (the "Effective Date"), by and between HOTEL COMMERCIAL, LLC, a North Carolina limited liability company ("Landlord") and the CITY OF DURHAM, a North Carolina municipal corporation ("Tenant").

WITNESSETH:

WHEREAS, Tenant and Landlord, or an affiliate of Landlord, or an entity under common control with Landlord, have entered into an agreement titled "Agreement for the Construction of an Annex and Wrapper Building Adjacent to the Durham Performing Arts Center" dated [REDACTED] (the "Development Agreement"), whereby Landlord, or an entity under common control with Landlord, has agreed to construct a certain condominium building (the "Building") located in Durham County, North Carolina; and,

WHEREAS, upon completion of the Building, Landlord will become the owner of fee simple title to those certain premises highlighted in purple on Exhibit A attached hereto and made a part hereof (the "Premises"). The Building that is depicted on Exhibit B attached hereto and the Premises will be located within the Building. The Premises will be transferred to Landlord upon completion of the Building; and,

WHEREAS, Landlord and Tenant are desirous of entering into a Lease of the Premises;

NOW, THEREFORE, in consideration of the rent and the mutual covenants hereinafter set forth, Landlord and Tenant agree as follows:

Section 1. Premises; Term; Rent.

A. Premises; Initial Term; Base Rent. Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises consisting of approximately four thousand three hundred eleven (4,311) square feet on the first (1st) and second (2nd) floors of the Building for a term commencing on the Commencement Date (hereinafter defined) and continuing thereafter until June 30, 2023 (the "Initial Term"), and together with all extensions and renewals thereof, the "Term") at a base rental of Nine Thousand Fifty-Four and No/100 Dollars (\$9,054.00) per month ("Base Rent") payable in advance on the first day of each month commencing on the Commencement Date. Notwithstanding the foregoing, in no event shall the Premises contain less than four thousand twenty-four (4,024) square feet of space. On each successive anniversary of the Commencement Date throughout the Term (including each Renewal Term), Base Rent shall increase by four percent (3%) over the then-current Base Rent amount. Subject to the precondition that Landlord, or an entity under common control with Landlord, has fully performed its obligations under Sections 3.1, 3.2 and 3.3 of the Development Agreement, the "Commencement Date" shall mean the date that the Building and Premises have been substantially completed in accordance with the drawings and specifications attached hereto as Exhibit B, Exhibit C, and Exhibit D (other than punch list items which cannot be completed on such date, provided such incompleteness will not substantially interfere with Tenant's use of the Premises) and, if required for occupancy, a Certificate of Occupancy (temporary or final) for the Premises has been issued by the appropriate governmental authority necessary for the beneficial occupancy and lawful use of the Premises by Tenant for its intended use. Landlord anticipates that the Commencement Date will occur on or around November 1, 2014; provided, however, that Landlord shall have no liability to Tenant so long as the Commencement Date does not occur later than forty-five (45) months from the Effective Date of the Development Agreement.

B. Renewal Term. Unless Tenant delivers to Landlord written notice of its decision not to renew this Lease, which notice shall be provided to Landlord at least 180 days prior to the expiration of the then-

current Term of this Lease, the Term of this Lease shall automatically renew for the following periods (each, a “Renewal Term”): one (1) period of eighty-four (84) months, followed by three (3) consecutive periods of sixty (60) months each. A Renewal Term with respect to the Premises shall commence immediately following the expiration of the Initial Term or the preceding Renewal Term, as applicable. Time is of the essence in regards to all of Tenant’s rights and obligations related to each Renewal Term, including without limitation, Tenant’s delivery to Landlord of any notice of termination under this Section.

C. Landlord Obligations during Renewal Term. The renewal of this Lease shall be upon the same terms and conditions of this Lease. Tenant shall have no option to renew the Term beyond the fourth Renewal Term. Tenant shall have the right to assign such renewal rights to a sublessee or assignee as permitted by Landlord in Landlord’s reasonable discretion. Landlord shall have no obligation to improve the Premises prior to or during any Renewal Term and no upfit or refurbishment allowance shall be paid to Tenant in connection with any Renewal Term, such Premises shall be accepted by Tenant at the commencement of any Renewal Term in its “As-Is” condition.

D. Right of Termination. Notwithstanding anything contained herein to the contrary, if Tenant does not use the Premises for the Permitted Use (hereinafter defined) for a period in excess of one hundred twenty (120) days for any reason other than casualty, then Landlord shall have the right to terminate this Lease at any time upon one hundred twenty (120) days’ prior written notice to Tenant.

Section 2. Rent Payment. Tenant shall pay the Base Rent for the Premises without deduction or offset, except as otherwise expressly provided in Section 12(F) below. Base Rent for any partial month during the Term shall be prorated to reflect the number of days during the month that Tenant is given possession of the Premises. Base Rent not paid when due shall bear interest at the rate of three-fourths (0.75) percent per month until paid, without waiving any other remedies available for default hereunder.

Section 3. Use.

A. Use. Tenant shall use the Premises as an assembly, meeting, and conference space (the “Permitted Use”) and for no other purpose without Landlord’s written consent, which consent shall not be unreasonably withheld, conditioned or delayed. In connection with its use, Tenant shall at its expense promptly comply with all applicable laws, ordinances, rules and regulations of any public authority and shall not annoy, obstruct, or interfere with the rights of any other tenants or occupants of the Building. Tenant shall create no nuisance nor allow any objectionable fumes, noises, or vibrations to be emitted from the Premises. Tenant shall not conduct any activities that will increase insurance rates for any portion of the Building or that will in any manner degrade or damage the reputation of the Building. Tenant shall comply with the terms of the declaration of condominium to be recorded upon completion of the Building, including any reasonable rules or regulations promulgated thereunder consistent with the Permitted Use, except that Tenant shall not be responsible for payment of any fees or assessments required pursuant to the declaration of condominium.

In addition to the uses permitted by Landlord above in this Section 3, Landlord acknowledges that Tenant intends to use the Premises as an assembly, meeting and conference space for patrons of the Durham Performing Arts Center (“DPAC”) located at 123 Vivian St. to which the Premises will be connected by way of a common corridor between the DPAC and the Building. Currently, the Tenant contracts for the operation of the DPAC as a theater and performance venue with a 3rd party entity (the “DPAC Operator”). Tenant shall have the right to allow the DPAC Operator or any successor to operate the Premises.

B. Equipment. Tenant shall have the right to install in the Premises only such equipment as is reasonably customary for the Permitted Use and shall not overload the floors or electrical circuits of the Premises or the Building or alter the plumbing or wiring of the Premises or the Building. Landlord must approve in advance the location and manner of installing any electrical, heat generating or communication

equipment or exceptionally heavy articles. Any additional air conditioning required because of heat generating equipment or special lighting installed by Tenant shall be installed, operated and maintained at Tenant's expense. Subject to coordination with the general contractor, Tenant shall be permitted access to the Premises two weeks prior to the anticipated Commencement Date for installation of any furniture, fixtures, and equipment that Tenant wishes to install in the Premises. Any audio-visual equipment, wiring or cabling Tenant requires within the Premises shall be furnished and installed by Tenant.

C. Signs. No signs, awnings, antennas, or other apparatus shall be painted on or attached to the Building or anything placed on any glass or woodwork of the Premises or positioned so as to be overtly visible from outside the Premises without Landlord's written approval. Tenant, however, shall have the right to paint, install, place or attach signage or other fixtures within the Premises in its discretion consistent with DPAC operations. All signs installed by Tenant shall be removed upon termination of this Lease with the sign location restored to its former state.

Section 4. Parking. Landlord shall not be responsible for providing any parking to Tenant and Tenant expressly acknowledges that none will be provided.

Section 5. Utilities and Services. Tenant shall provide all janitorial, trash disposal, and utilities services, including but not limited to electrical, water, gas and sewer, at Tenant's sole cost and expense. Tenant shall separately contract for these services and shall pay for all associated costs directly. Tenant shall comply with all governmental laws or regulations regarding the use or reduction of use of utilities in the Premises. Landlord shall take all reasonable steps to correct any interruptions in service to the extent required under Section 6 hereof. Landlord shall, as a part of the construction of the Building and Premises, pay any municipal tap and impact fees for the Premises prior to the Commencement Date.

In the event that any services or utilities are interrupted and (i) the interruption is caused by a matter within Landlord's control or is caused by a matter outside of Landlord's control but is covered by Landlord's rent-loss insurance (if any), (ii) such interruption causes the use of all or a material portion of the Premises to be materially, adversely affected or causes all or a material portion of the Premises to be untenantable, and (iii) the services or utilities are interrupted for three (3) or more consecutive days, then Tenant shall be entitled to a total abatement of the Base Rent attributable to any untenantable portion of the Premises in which Tenant discontinues operations during the interruption. Any abatement to which Tenant is entitled, as described above, shall begin on such third day and shall continue until the interrupted service is restored. Notwithstanding anything hereinabove to the contrary, Tenant shall have all rights under North Carolina law to pursue claims for constructive eviction or other similar claims (but not any claims for damages) because of any interruptions of such services or utilities to the Premises, where such interruptions are caused by, or are within the control of Landlord. .

Section 6. Maintenance, Repair and Alterations.

A. Tenant's Maintenance. Tenant shall keep the interior of the Premises (including, without limitation, any utility lines, elevators, stairwells, walkways, interior glass, non-load bearing walls, partitions, doors, fixtures, signs, mechanical systems, drop-down ceilings and floor coverings located within the Premises,) in good condition and repair and in a safe and orderly condition and shall maintain, redecorate, paint, renovate, repair, replace and restore the interior of the Premises as may be necessary to keep them in good condition, repair and appearance.

B. Landlord's Maintenance. Landlord, or the condominium owner's association, shall keep the foundations, roof, and structural portions of the walls and floors of the Premises, exterior glass, exterior plumbing not required to be maintained by Tenant hereunder, and utility lines located outside of the Premises (except to the extent that the same are the obligations of the appropriate utility company) in good order, repair, and condition and shall be solely responsible for all costs associated therewith.

C. Alterations. Except for the Landlord's up fit of the Premises for use as the DPAC President's Club, Tenant shall not make any alterations, additions or improvements to the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any such additions, alterations or improvements, except for unattached moveable trade fixtures, shall at once become part of the realty and belong to Landlord. Landlord may at its option, given at the time of such consent, require that Tenant remove any alterations and restore the Premises to the original condition upon termination of this Lease. Landlord shall have the right to approve the contractor used by Tenant for any work in the Premises, which approval shall not be unreasonably withheld conditioned or delayed, and to post notices of non-responsibility in connection with any work being performed by Tenant in the Premises.

Section 7. Insurance.

A. Fire or Casualty. "Major Damage" means damage by fire or other casualty to the Building or the Premises which causes the Premises or any substantial portion of the Building to be unusable, or which will cost more than 25% of the pre-damage value of the Building to repair, or which is not covered by insurance. In case of Major Damage, Landlord may elect to terminate this Lease by notice in writing to Tenant within ninety (90) days after such date. If this Lease is not terminated following Major Damage, or if damage occurs which is not Major Damage, Landlord shall promptly restore the Premises to the condition existing just prior to the damage. Tenant shall promptly restore all damage to any improvements or alterations installed by Tenant or pay the cost of such restoration to Landlord if Landlord elects to do the restoration of such improvements.

B. Waiver of Subrogation. Tenant shall be responsible for insuring its personal property and trade fixtures located on the Premises and any alterations or improvements that Tenant has made to the Premises. Notwithstanding anything to the contrary contained herein, neither Landlord nor Tenant shall be liable to the other for any loss or damage caused by water damage, sprinkler leakage or any of the risks that are or could be covered by a ISO Special Form Property Insurance policy, or for any business interruption, and there shall be no subrogated claim by one party's insurance carrier against the other party arising out of any such loss.

C. Property Insurance; Liability Insurance.

(a) Landlord, or the condominium owner's association, shall maintain the equivalent of ISO Special Form Property Insurance on the entire Building. If the annual premiums for such property insurance exceed the standard premium rates because of the nature of Tenant's operations, contents or improvements, then Tenant shall upon receipt of copies of appropriate premium invoices reimburse Landlord for such increases in such premiums. Tenant shall maintain the equivalent of ISO Special Form Property Insurance insuring its personal property, including removable trade fixtures, located in the Premises. Landlord, notwithstanding anything to the contrary set forth herein, shall in no event be responsible or liable for any losses or damage to any such personal property.

(b) Landlord and Tenant shall each maintain a policy or policies of commercial general liability insurance (with a broad form endorsement), such insurance to afford minimum protection of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

Section 8. Insurance Standards.

(a) All such policies and renewals thereof as are required to be obtained by Tenant shall name Landlord as an additional insured. All such policies of insurance shall provide (i) that no material change or cancellation of said policies shall be made without thirty (30) days' prior written notice to Landlord and (ii) that the insurance company issuing the same shall have waived any right of subrogation against Landlord. All of the insurance required of Tenant, or its

respective agents or employees, under this Lease shall be primary and noncontributory, issued by companies which are rated at least A-IX in Best's Insurance Reports and are authorized to do business in North Carolina. Insurance requirements may be reasonably increased from time to time by Landlord in order to protect its interest in the property.

(b) Tenant shall be solely responsible for the payment of premiums for all of Tenant's insurance required to be maintained by Tenant hereunder. Upon the written request of Landlord to Tenant, Tenant shall deliver to Landlord a certificate of insurance of all policies procured by Tenant in compliance with its obligations under this Lease. The limits of Tenant's insurance shall in no event limit Tenant's liability under this Lease.

Section 9. Hold Harmless. Landlord, its partners and representatives shall not be liable to Tenant, or to Tenant's agents, servants, employees, customers or invitees for any damage to person or property caused by any act, omission or neglect of Tenant, its agents, invitees, servants, employees and to the extent permitted by law Tenant agrees to hold Landlord harmless from all claims for any such damage. Further, to the extent permitted by law Tenant shall indemnify and defend Landlord from any claim, liability, damage or loss occurring on the Premises, or resulting from Tenant's failure to comply with any term of this Lease. Tenant shall not be liable to Landlord, or to Landlord's agents, servants, employees, customers or invitees for any damage to person or property caused by any act, omission or neglect of Landlord, its agents, servants, employees, and Landlord agrees to indemnify and hold Tenant harmless from all claims for such damage. Except to the extent arising due to Tenant's acts, omissions or failure to comply with the terms of this Lease, Landlord further agrees to indemnify and hold Tenant harmless for Landlord's failure to comply its obligations as a condominium association owner, including, but not limited to fees and assessments, required pursuant to the terms of the Declaration of Condominium recorded for the Premises and Building. The indemnifications granted by each of Landlord and Tenant herein are subject to any express provisions to the contrary in this Lease. Notwithstanding the foregoing, in no event shall Landlord or Tenant be liable to the other for punitive, consequential, indirect, or special damages. The provisions of this Section 9 shall survive expiration or earlier termination of this Lease.

Section 10. Eminent Domain. If a condemning authority takes title by eminent domain or by agreement in lieu thereof to the entire Building or a portion sufficient to render the Premises unsuitable for Tenant's use, then either party may elect to terminate this Lease effective on the date that possession is taken by the condemning authority. All condemnation proceeds shall belong to Landlord, and Tenant shall have no claim against Landlord or the condemnation award because of the taking.

Section 11. Assignment and Subletting; Transfer of Landlord's Interest. This Lease shall bind and inure to the benefit of the parties, their respective heirs, successors and assigns provided that Tenant shall have the right to assign its interest under this Lease or sublet all or any portion of the Premises with Landlord's consent in writing, which consent shall not be unreasonably withheld, conditioned or delayed. No assignment shall relieve Tenant of its obligation to pay Base Rent or perform other obligations required by this Lease, and no consent to one assignment or subletting shall be a consent to any further assignment or subletting. If an assignment or subletting is permitted, any cash profit, or the net value of any other consideration received by Tenant as a result of such transaction shall be paid to Landlord promptly following its receipt by Tenant. Tenant shall pay any costs incurred by Landlord in connection with a request for assignment or subletting including reasonable attorneys' fees actually incurred at customary hourly rates.

In the event of the sale, assignment or transfer by Landlord of its interest in the Premises (other than a collateral assignment to secure a debt of Landlord) to a successor in interest who expressly assumes the obligations of Landlord hereunder, Landlord shall thereupon be released or discharged from all of its covenants and obligations hereunder, except such obligations as shall have accrued prior to any such sale, assignment or transfer; and Tenant agrees to look solely to such successor in interest of Landlord for performance of such obligations. Landlord's assignment of the Lease or of any or all of its

rights herein shall in no manner affect Tenant's obligations hereunder. Tenant shall thereafter attorn and look to such assignee, as Landlord, provided Tenant has first received written notice of such assignment of Landlord's interest. Landlord shall have the right to freely sell, assign or otherwise transfer its interest in the Premises and this Lease after providing written notice to Tenant.

Section 12. Default.

A. Default by Tenant. Any of the following shall constitute a default by Tenant under this Lease (each a "Tenant Default"):

i. Tenant's failure to pay Base Rent or any other charge under this Lease within ten (10) days following receipt of an invoice therefor.

ii. Tenant's failure to comply with any other term or condition within thirty (30) days following written notice from Landlord specifying the non-compliance. If such non-compliance cannot be cured within the thirty (30) day period, this provision shall be satisfied if Tenant commences correction within such period and thereafter proceeds in good faith and with reasonable diligence to effect compliance as soon as possible.

iii. Tenant's insolvency, business failure or assignment for the benefit of its creditors. Tenant's commencement of proceedings under any provision of any bankruptcy or insolvency law or failure to obtain dismissal of any petition filed against it under such laws within sixty (60) days thereafter, or the appointment of a receiver for Tenant's properties.

B. Tenant's Opportunity to Cure. Upon the occurrence of an event of default contained in Section 12(A)(iii) above, Landlord shall provide to Tenant written notice of such default within the times specified. If the nature of the event of default under Section 12(A)(iii) is such that Tenant reasonably cannot cure the default within the cure period, then Tenant shall have an additional reasonable amount of time to cure the event of default provided that Tenant has begun its efforts to cure the event of default within the cure period and Tenant continues its efforts to cure the event of default in a commercially reasonable manner.

C. Landlord's Remedies for Default. In case of a Tenant Default as described herein, Landlord shall have the right to the following remedies which are intended to be cumulative and in addition to any other remedies provided under applicable law:

i. Landlord or its agents shall have the right to and may enter the Premises pursuant to legal process, and may relet the Premises, and receive the rent therefor, upon such terms as shall be satisfactory to Landlord, and all rights of Tenant to repossess the Premises shall be forfeited. Such re-entry by Landlord shall not operate to release Tenant from any rent to be paid or covenants to be performed hereunder during the full Term. For the purpose of reletting, Landlord shall be authorized to make such repairs or alterations in or to the Premises as may be necessary to place the same in good order and condition. Tenant shall be liable to Landlord for the cost of such repairs or alterations, and all expenses of such reletting. If the sum realized or to be realized from the reletting is less than the Base Rent required to be paid under this Lease, Landlord, at its option, may require Tenant to pay such deficiency month by month (it being agreed that Landlord shall not be required to file a separate suit for each month), or may hold Tenant liable for the entire deficiency to be realized during the term of the reletting. Tenant shall not be entitled to any surplus accruing as a result of the reletting. Tenant agrees to pay, as additional rent, all attorneys' fees and other expenses actually incurred at customary hourly rates by Landlord in enforcing any of the obligations under this Lease; and

ii. Terminate this Lease and, pursuant to legal process, Tenant's right of possession of the Premises, and recover all damages to which Landlord is entitled under law,

specifically including (a) the cost of recovering the Premises (including, without limitation, reasonable attorneys' fees actually incurred at customary hourly rates and costs of suit), (b) the cost incurred by Landlord of any alterations of, or repairs to, the Premises which are necessary or proper to prepare the same for reletting (including repairs, alterations, improvements, additions, decorations, reasonable legal fees actually incurred at customary hourly rates and brokerage commissions), (c) the unpaid Base Rent owed at the time of termination, plus interest thereon from the due date at the maximum rate permitted by law or ten percent (10%) per annum, whichever is less, (d) the balance of the Base Rent for the remainder of the Term of this Lease less the rent provided for in any lease covering a re-letting of the Premises (or less the fair rental value of the Premises if not re-let) reduced to a present value at a discount rate of eight percent (8%), and (e) any other sum of money and damages owed by Tenant to Landlord. In such case Landlord shall not be obligated to relet the Premises; provided, however, Landlord agrees to use commercially reasonable efforts to mitigate its damages.

D. Default by Landlord. Landlord shall be in default of its obligations under the Lease if Landlord fails to perform any of its obligations under this Lease.

E. Landlord's Opportunity to Cure. Upon the occurrence of an event of default by Landlord contained in Section 12(D), Landlord shall have thirty (30) days to cure such default from the date it receives notice from Tenant of the event of default. If the nature of the event of default is such that Landlord reasonably cannot cure the default within that thirty (30) day period, then Landlord shall have an additional reasonable amount of time to cure the event of default provided that Landlord has begun its efforts to cure the event of default within that thirty (30) day period and Landlord continues its efforts to cure the event of default in a commercially reasonable manner. If Landlord fails to cure the default in the time provided in this Section 12(E) such failure shall constitute a default (a "Landlord Default").

F. Tenant's Remedies for Default. In case of a Landlord Default as described herein, Tenant shall have the right to the following remedies which are intended to be cumulative and in addition to any other remedies provided under applicable law:

Upon the occurrence and during the continuance of any Landlord Default, Tenant shall have the right to pursue any remedy available at law or equity or perform Landlord's obligation or obligations that Landlord has failed to perform and, to the extent allowed by law, receive reimbursement from Landlord for Tenant's actual costs and expense incurred in connection with performing any such obligation or obligations. Before exercising its right pursuant to this Section 12(F)(i) to perform Landlord's obligations, Tenant shall give Landlord five (5) days notice of its intention, which notice shall distinctly state the Landlord Default upon which Tenant relies, and Tenant's right to perform Landlord's obligations shall cease if Landlord cures the events of default contained in the notice. If Tenant fails to receive payment from Landlord for any amount due under this Lease within fifteen (15) days of the receipt of an invoice therefor, then Tenant shall have the right to offset all such amounts from subsequent installments of Base Rent due hereunder until such time as Tenant has received a credit against Base Rent due hereunder in an amount equal to the amount due Tenant pursuant to this Lease

Section 13. Attorney's Fees. In the event of a default or breach by any party of its covenants, agreements, duties, obligations, warranties, indemnities, or representations contained herein, there shall be included in any judgment obtained against such party on account thereof, the reasonable attorneys' fees actually incurred at hourly rates and costs of suit of the other party.

Section 14. Surrender. On expiration or early termination of this Lease, Tenant shall deliver all keys to Landlord and surrender the Premises broom clean and in the same condition as at the commencement of the Term subject only to reasonable wear and tear from ordinary use. Tenant shall remove all of its furnishings, trade fixtures, and property, and shall restore all damage resulting from such

removal. If Tenant fails to vacate the Premises when required including failure to remove all its personal property, Landlord may treat Tenant as a tenant from month to month, subject to the provisions of this Lease except that Base Rent shall be one-and-one-half times the total rent being charged when the Lease Term expired, and, pursuant to legal process, may eject Tenant from the Premises and recover damages caused by wrongful holdover. Tenant shall remain liable for any and all damages suffered by Landlord as a result of any holdover without Landlord's unequivocal written acquiescence. The provisions of this Section 14 shall survive expiration or earlier termination of this Lease.

Section 15. Regulations. Landlord and the condominium owner's association shall have the right (but shall not be obligated) to make, revise and enforce reasonable regulations or policies consistent with this Lease for the purpose of promoting safety, order, economy, cleanliness and good service to all occupants of the Building. All such regulations and policies shall be complied with as if part of this Lease.

Section 16. Access. Upon reasonable prior notice to Tenant, Landlord shall have the right to enter upon the Premises at any time by passkey or otherwise to determine Tenant's compliance with this Lease, to perform necessary services, maintenance and repairs to the Building or the Premises, or to show the Premises to any prospective tenant or purchasers. Except in case of emergency, such entry shall be at such times and in such manner as to minimize interference with the reasonable business use of the Premises by Tenant.

Section 17. Subordination; Transfer of Building.

A. Subordination. This Lease shall be subject and subordinate to any mortgages, deeds of trust, or land sale contracts (hereafter collectively referred to as "Encumbrance(s)") encumbering the Building and/or Premises (including the underlying land) from time to time, and Tenant shall execute such documents as may reasonably be requested by Landlord or the holder of the Encumbrance to evidence this subordination.

B. Transfer of Premises. If the Premises, or Landlord's interest in the Premises, is sold, transferred by reason of foreclosure or other enforcement proceeding, or otherwise transferred by Landlord or any successor, Tenant shall attorn to the purchaser or transferee and recognize it as the lessor under this Lease, and, provided the purchaser or transferee assumes all obligations hereunder, the transferor shall have no further liability hereunder.

C. Non-Disturbance. So long as no event of Tenant Default has occurred, this Lease shall remain in full force and effect for the full Term hereof, and Tenant's occupancy of and rights to use the Premises shall not be disturbed by any termination of any such Encumbrance, or ground lease or by any foreclosure proceeding or any deed in lieu of foreclosure or other such transfer, and the subordination set forth in Section 17(A) is made subject to Tenant's non-disturbance rights under this Section 17(C). Landlord shall cause the holder of any Encumbrances and/or ground lessor to execute and deliver a subordination, non-disturbance and attornment agreement, in form and substance reasonably acceptable to all parties, as soon as reasonably possible after the Encumbrance is recorded, and the same shall be recorded if requested by Landlord or Tenant at the cost of the requesting party.

D. Estoppel. Either party will, within twenty (20) days after notice from the other, execute, acknowledge and deliver to the other party a certificate certifying whether or not this Lease has been modified and is in full force and effect, whether there are any modifications or alleged breaches by the other party, the dates to which rent has been paid in advance and the amount of any security deposit or prepaid rent, and any other facts that may reasonably be requested.

Section 18. Quiet Enjoyment. Landlord warrants that so long as no Tenant Default exists, Tenant shall be entitled to peaceable and undisturbed possession of the Premises free from any eviction or disturbance by Landlord or any party claiming by or through Landlord. Landlord shall have no liability to

Tenant for loss or damages arising out of the acts of other tenants of the Building or third parties, nor any liability for any reason which exceeds the value of its interest in the Building.

Section 19. Liens. A. Tenant shall not allow any liens to attach to the Building or Tenant's interest in the Premises as a result of its activities, it being expressly acknowledged and agreed that in no event may a contractor or subcontractor of Tenant file a lien against the Premises or Building. If a lien is filed, Tenant may contest the lien in good faith, but even if Tenant contests the lien, within fifteen (15) days after the lien is filed, Tenant shall have the lien released of record by payment, bond, court order, or otherwise. If Tenant fails to release of record any such lien within the above period, Landlord, at its option, may pay the claim or post a bond. Tenant shall indemnify Landlord against any loss or expenses incurred as a result of the assertion of any such lien prohibited by this Section 19(A).

B. Landlord shall not allow any liens to attach to the Building or Landlord's interest in the Premises as a result of its activities, it being expressly acknowledged and agreed that in no event may a contractor or subcontractor of Landlord file a lien against the Premises or Building. If a lien is filed, Landlord may contest the lien in good faith, but even if Landlord contests the lien, within fifteen (15) days after the lien is filed, Landlord shall have the lien released of record by payment, bond, court order, or otherwise. If Landlord fails to release of record any such lien within the above period, Tenant, at its option, may pay the claim or post a bond. Landlord shall indemnify Tenant against any loss or expenses incurred as a result of the assertion of any such lien prohibited by this Section 19(B).

Section 20. Hazardous Materials.

A. Except for general cleaning supplies typically used in the ordinary course of business, Tenant shall not knowingly receive, store or otherwise handle on the Premises any product which is hazardous, toxic, explosive, highly flammable or any Hazardous Material. For purposes of this Lease, (i) "Hazardous Material" means polychlorinated biphenyls, petroleum, radioactive materials, asbestos, and any waste, substance or material defined as such in, or for purposes of, the applicable Environmental Laws or listed as such by the United States Environmental Protection Agency, but shall not include ordinary business supplies, and (ii) "Environmental Laws" means any applicable current or future federal, state, or local governmental law, regulation or ruling applicable to environmental conditions on, under or about the Building, including, without limitation, federal, state or local solid waste disposal rules, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, the Toxic Substances Control Act, as amended, the Water Pollution Control Act, as amended, the Clean Air Act, as amended, or any other applicable federal, state or local laws, regulations or ordinances.

B. All of Tenant's activities on the Premises shall comply with applicable Environmental Laws.

C. The provisions of this Section shall survive the expiration or termination of this Lease.

Section 21. Waiver. No provision of this Lease shall be deemed to have been waived by a party unless such waiver is in writing signed by such party. A party's waiver of a breach of any term or condition of this Lease shall not be deemed a waiver of any subsequent breach. Acceptance of any Base Rent or other payments shall not be deemed a waiver of such breach.

Section 22. Severability. If any term or provision of this Lease, or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each provision of this Lease shall be valid and shall be enforceable to the extent permitted by applicable law.

Section 23. Notices. All notices, demands, consents and approvals which may or are required to be given by either party to the other hereunder shall be in writing and shall be deemed to have been fully given when personally delivered or within three (3) days of when deposited in the United States mail, certified or registered, postage prepaid or the following business day after delivery to a recognized overnight delivery service with overnight delivery requested and addressed to the party to be notified at the address for such party specified in this Lease, or to such other place as the party to be notified may from time to time designate by at least fifteen (15) days' notice to the notifying party. The notice addresses of the parties are as follows:

If to Landlord: Hotel Commercial, LLC
c/o Blackwell Street Management Company, LLC
318 Blackwell Street, Suite 150
Durham, NC 27701
Attn: Michael J. Goodmon, Sr.

Phone No.: (919) 433-1568

With a copy to: Capitol Broadcasting Company, Incorporated
2619 Western Boulevard
Raleigh, North Carolina 27606
Attention: General Counsel
Phone No.: (919) 821-8933

If to Tenant: City of Durham
Director of General Services
2011 Fay St.
Durham, NC 27704
Phone No.: (919) 560-4197

With Copy to: City of Durham
Durham City Attorney
101 City Hall Plaza
Durham, NC 27701
Phone No.: (919) 560-4158

With Copy to: DPAC OPERATOR CONTACT

Section 24. Entirety. This instrument and any attached addenda or exhibits constitute the entire agreement between Landlord and Tenant. No prior or contemporaneous promises, inducements, representations or agreements, oral or otherwise, between the parties hereto not embodied herein shall be binding or have any force or effect.

Section 25. Taxes. Tenant shall be responsible for all ad valorem taxes on its personal property and on the value of any improvements or alterations made to the Premises by or on behalf of Tenant.

Section 26. Limitation on Landlord's Liability. Anything contained in this Lease to the contrary notwithstanding, Tenant agrees that it shall look solely to the estate and property of the Landlord in the Building and Premises for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord for any breach or Landlord Default of any of its obligations under this Lease, subject, however, to the prior rights of any ground or underlying landlord or the holder of any

Encumbrance covering the Building or Premises or of Landlord's interest therein. No other assets of the Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claim.

Section 27. Miscellaneous. All rights and remedies of Landlord and Tenant under this Lease shall be cumulative and none shall exclude any other rights or remedies allowed by law. All of the terms hereof shall be construed according to the laws of North Carolina. All Exhibits attached hereto are incorporated herein by this reference. If any term(s), condition(s), covenant(s), clause(s) or provision(s) herein contained shall operate or would prospectively operate to invalidate this Lease in whole or in part, then such term(s), condition(s), covenant(s), clause(s), and provision(s) only shall be held for naught as though not herein contained, and the remainder of this Lease shall remain operative and in full force and effect. Time is of the essence with respect to each and every provision of this Lease and the performance of all obligations hereunder. This Lease may not be modified except by document in writing executed by Landlord and Tenant.

Section 28. Changes to Finishes of the Premises. Prior to the commencement of, or during the construction of, the Building, Tenant may provide Landlord with a written request for changes (each a "Tenant Change") to the finishes to the Premises that are described on Exhibit D attached hereto. Upon receipt of such a request, Landlord will use its best efforts to cause the contractor to provide a change order to perform such Tenant Change(s), which change order will be in writing. Tenant shall have the right to decide in its sole discretion whether to approve or reject the proposed change, and shall send written notice of its decision to Landlord within the time period specified in the change order. If Tenant fails to provide such notice in a timely manner, the proposed change order will be deemed rejected. Tenant shall be responsible, at its sole cost and expense, to pay for the cost of any approved change order related to a Tenant Change if the change order increases the cost of the finishes. Tenant shall pay such cost or expense directly to the contractor within the time period specified in the change order or construction contract.

Section 29. Consent. Except as otherwise herein specifically provided, where the consent or approval of a party is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

Section 30. Deadlines. In the event any act is to be performed by either party within a time limit and the dates on which said act may be so performed falls on a Saturday, Sunday or legal holiday, the deadline shall be extended to and include the next following business day and Saturday shall not be deemed a business day for the purpose of such a deadline under this Lease.

Section 31. Memorandum of Lease. Landlord and Tenant shall execute a memorandum of this lease, in form and substance reasonably satisfactory to both parties, which may be recorded by Tenant at its sole cost and expense.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Lease under seal as of the date aforesaid.

LANDLORD:

HOTEL COMMERCIAL, LLC,
a North Carolina limited liability company

By: Capitol Broadcasting Company, Incorporated,
a North Carolina corporation,
its Manager

By: _____ (SEAL)
Name: _____
Title: _____

TENANT:

CITY OF DURHAM,
a North Carolina municipal corporation

Attest:

Clerk

By: _____ (SEAL)
Thomas J. Bonfield, City Manager

Exhibit A
Depiction of Premises

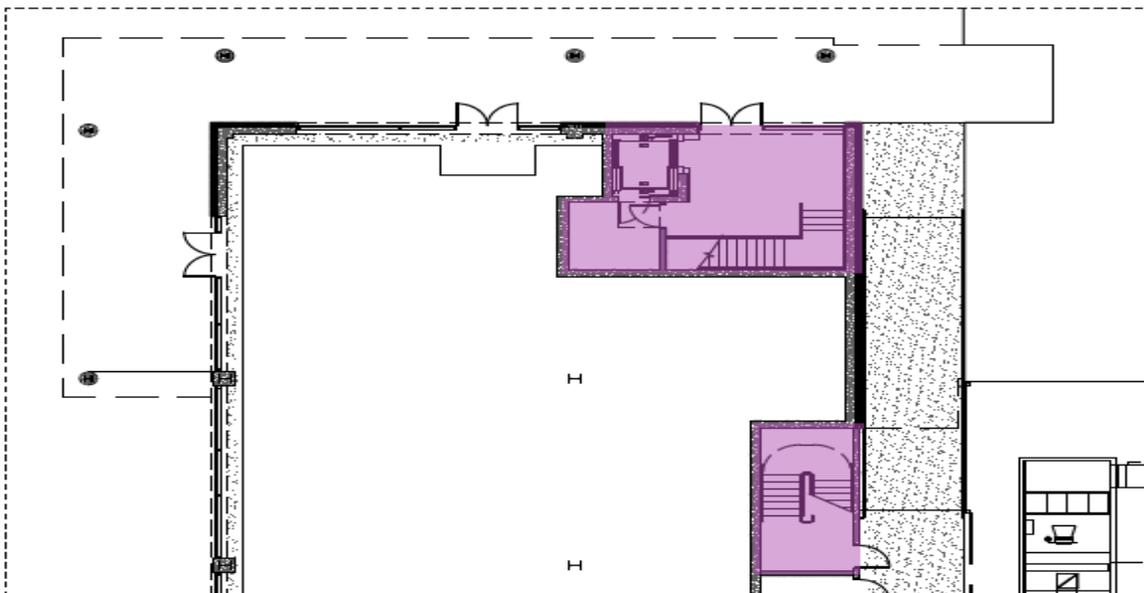
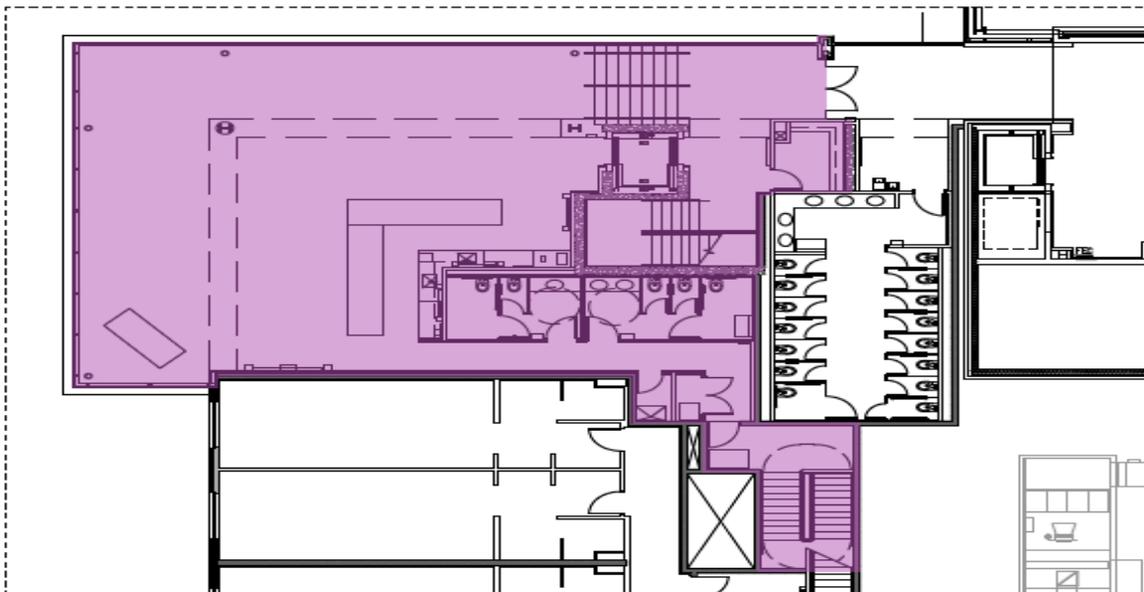


Exhibit B
Building Plans

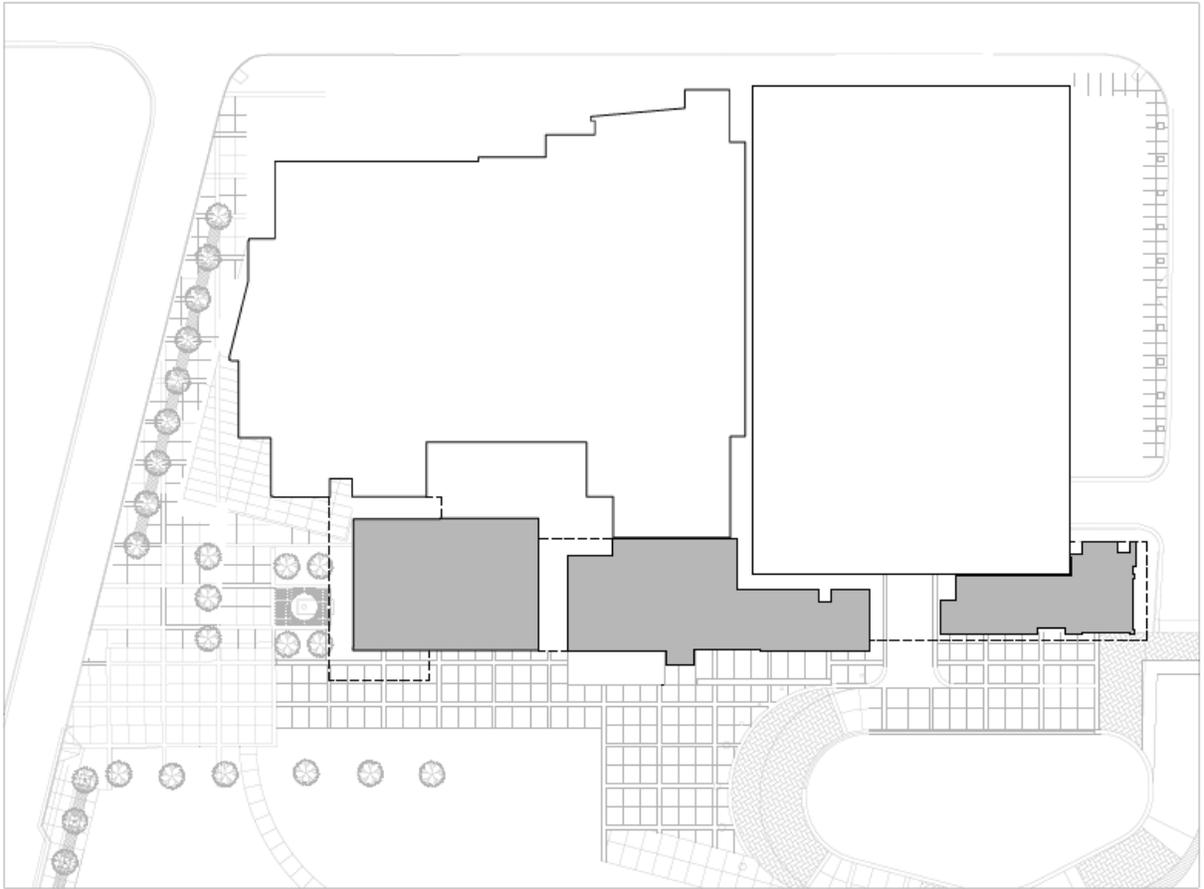


Exhibit C

Technical Specifications

HVAC

1. The HVAC system will be a DX split system, heat pump with electric auxiliary heat. The fan/coil unit will be mounted horizontally above the ceiling. The remote condensing unit will be located outdoors on the roof.
2. Provide a 15 ton fan/coil unit and matching condensing unit.
3. Provide insulation, hangers, dryer, vibration isolation spring bangers, precharged refrigerant piping, etc. for a complete system.
4. The fan/coil unit shall be equipped with an economizer cycle with outside air ductwork and relief duct work extending to the exterior.
5. Supply air will be adjusted to 6000 cfm, distributed thru rectangular, lined ductwork, Provide 25 supply diffusers, connected with insulated flex ductwork and tapped to the main with "spin-in" balancing taps.
6. Return air will be thru an architectural opening to an open return plenum.
7. Toilet exhaust will be 140 cfm for the Men's and 210 cfm for the Woman's restrooms. There will be one exhaust register in the Men's and Women's restrooms.
8. Exhaust ductwork will be rectangular sheet metal, extended to the east wall and connected to a wall type exhaust fan located 10 feet from all intakes.
9. Provide 1-1/4" condensate drainage piping, Insulated, and discharge into a mop sink located in the janitor's closet. The secondary drain pan will be equipped with a water detector "kill switch".
10. Provide one electronic thermostat controlled by the energy management system in the DPAC. Provide carbon dioxide sensor for demand control ventilation. Provide an air side economizer system per code.
11. Provide duct mounted smoke detectors in the supply and return ductwork.

PLUMBING

1. Water closets will be flush valve type, wall mounted, flush valves will be battery operated, infrared, automatic operation — Zurn or equal.
2. Lavatories will be countertop mount, faucets will be battery powered, infrared, automatic type with chrome finish – Sloan or equal.
3. Water heaters will be electric, instantaneous, wall mounted under the counter type. Provide one water heater for the Men's and one for the women's restrooms.
4. Sanitary sewer will be cast iron, 4", originating in the hotel and being extended to the Presidents Club restrooms. A 4" vent will discharge thru the roof
5. Provide a 2" floor drain in each restroom. All floor drains shall be equipped with a trap primer.
6. Cold water will be insulated copper, 2", originating at a dedicated water meter and service. Provide a brass, city water per city requirements.
7. Provide all ball valves, shock arrestors, insulation, hangers, cast iron carriers, floor drains, hub drain, etc. for a complete system.

ELECTRICAL

1. Provide power to the Presidents Club proper per Riser 01 on Sheet E6.00. Locate the new panelboard "LPC" in Electrical Closet on the second floor.
2. Lighting fixtures will be recessed fluorescent can downlights, open trim, clear alkak baffle, 32 watt quad tube fluorescent, vertical lamp, dimming ballast. Install 30 on these units — equally spaced throughout the space.
3. Lighting controls will be per the IECC using a dimming system in the Presidents Club for automatic shutoff. Provide a dimming system for the fixtures in the "Daylight Zone." Provide dual technology motion sensors for the lights in the restrooms.
4. Provide 35 duplex receptacles equally spaced thought the space. Provide 20 branch circuits to serve the receptacles
5. Provide 3 phase power for the fan/coil unit
6. Provide 3 phase power for the remote condensing unit — 15 ton.
7. Provide 120 volt power for the toilet exhaust fan — 1/2 hp.
8. Provide power, 208 v, 1 phase, 7.0 kw each to two (2) under counter water heaters,
9. Provide 3 phase power for the elevator — 15 hp (to be verified with vendor)

10. Provide 120 v control power and dedicated phone line to the elevator control package.

11. Provide three (3) data drops to three locations for the "POS" system; location to be determined.

12. Provide nine (9) telephone/data drops to nine locations; location to be determined.

NOTES:

1. All MEP penetrations between the Presidents Club and the adjacent Hotel or DPAC shall be fire proofed.

2. Roof drains and overflows will be part of the Hotel contract.

Exhibit D

Finish Schedule

- Walls: Exterior — Glass/Gypsum Board-Painted Interior - Gypsum Board-Painted
Interior Columns — Concrete Skim Coated and Painted
Intumescent Paint over 8” Round Steel Columns
- Floors: Combination Hard Wood/Carpet
Carpet — Same or similar to existing Presidents Club carpet
Tuva Looms by Bloomsburg Carpet Industries, Inc.
Design: TL3938 #1
Color: Red
Fiber: 100% Zeftron Nylon
Weave Type: Velvet
Hard Wood — 3.25” Wide White Oak Hardwood Flooring, Riff & Plain Cut with
Clear Finish
- Lower Lobby/Elevator Floors:
Slate Tile
Cut: As selected by Architect.
Color and Finish: Daltile S201 Brazilian Gray
Edges: Eased.
Module Size: 12 by 12 inches.
Nominal Tile Thickness: 3/8 inch, unless otherwise indicated or required.
Joint Width: 1/8 inch.
- Ceilings: Acoustical Panel Ceiling - Beveled Tegular - Same or similar to existing
Presidents Club
2x2 Armstrong World Industries, Inc. “Cirrus Open Plan #589” or a
comparable product
Color: White.
Edge/Joint Detail: Reveal sized to fit flange of exposed suspension system
members.
Thickness: 3/4 inch.
- 4x4 Hunter Douglas Architectural Products “Techstyle” or a comparable product
Color: White,
Edge/Joint Detail: Reveal sized to fit flange of exposed suspension system
members.
Thickness: 1.125 inches.
Modular Size: 48 inches x 48 inches.
Antimicrobial Treatment: Fungicide based
Gypsum Board
- Lighting Fixtures:
Same or similar to existing Presidents Club
Recessed Troffers — (Back of house Spaces) – 2’x4’x4-1/4” High Fluorescent
static troffer. Flush door regressed aluminum. White steel Housing.

Cans — 8” Diameter Recessed Compact Florescent Down light

Utility Room Lights – 4’ Long heavy gauge steel. Die embossed reflector.
Aperture uplight reflector, White finish.

- Cabinets: Same or similar to existing Presidents Club
Wood Veneer Bases – Anigre, To Match Architect’s Sample
Granite Countertops w/Self Service Area – to Match Architect’s Sample
Movable Bars: 3 - by Owner FF&E
- Shades: Electro 1/Extended Electroshade (by MechoShade) with optional 5” removable closure and closure mount.
Deduct Alternate: Manual Mecho/5 Pocket with optional snap loc fascia (white) and optional mounting angle
Fabric: Thermo Veil Dense Basket Weave 1513 Grey 3% Open.
- Walls: Gypsum Board-Painted
Mirrors
Glazed Wall Tile; To 6’ 8 on wet walls
Flat tile as follows;
Module Size: 4-1/4 by 4-1/4 inches.
Color: White.
- Floors: Slate Tile
Cut: As selected by Architect.
Color and Finish: Daltile S201 Brazilian Gray
Edges: Eased.
Module Size: 12 by 12 inches.
Nominal Tile Thickness; 3/8 inch, unless otherwise indicated or required.
Joint Width: 1/8 inch.
- Ceilings: Acoustical Panel Ceiling - Beveled Tegular -. Same or similar to existing Presidents Club
Armstrong World Industries, Inc. “Cirrus Open Plan #589” or a comparable product
Color: White.
Edge/Joint Detail: Reveal sized to fit flange of exposed suspension system members
Thickness: 3/4 inch.
- Lighting Fixtures:
Same or similar to existing DPAC Restrooms
Recessed 1-Lamp T8 Fluorescent Open Slot Aperture Asymmetric Linear Wallwash Luminaire In Nominal 2’,3’,4’ Lengths to Form Continuous Lighted Length
Cans — Recessed 8” Diameter Triple Tube Amalgam Compact Florescent Open Aperture Downlight Luminaire
- Vanities: Same or similar to existing DPAC Restrooms

Plam Bases – “Nevamar” S6020T Gunmetal Textured
Granite Countertops – Glacier White to Match Architect’s Sample

Toilet Enclosures:

Same or similar to existing DPAC Restrooms

Stainless Steel

Finish: No. 4 bright, directional polish on exposed faces

Brackets (Fittings):

Full-Height (Continuous) Type: Manufacturer’s standard design; stainless steel.

Plumbing Fixtures:

w/ Electronic Flush Valves- Same or similar to existing DPAC Restrooms:
Water Closet - Zurn Z5610 Wall Mounted Siphon Jet, Elongated, Vitreous
China Water Closet, 1.6 GPF
Valve — Sloan Electronic Flush Valves
Carrier – Zurn Z 1203-N4-50 —Individual Water Closets
Seat - Church Model 9500C Elongated, Open Front, Extra Heavy Weight,
Molded In Bumpers
Lavatory — Zurn Z5 114 Counter Mounted Lavatory, 20”x17”, Vitreous China
Metering Faucet — Sloan Valve Company Optima Plus ETF-80- Sensor Operated Faucet
with ETF-460-A Chrome plated brass grid strainer with 1 ¼” Outlet Tube, Cast Brass
P-Trap, 17 Gauge Wall Bend
Supply — Two - Zurn Z8SO3LK Chrome Plated Brass Angie Stop with Loose Key
Riser — Two — Zurn Z8973 Chrome Plated Copper Flexible Riser