

ECONOMIC REDEVELOPMENT AGREEMENT BETWEEN WEXFORD CHESTERFIELD PARKING, LLC AND THE CITY OF DURHAM

THIS AGREEMENT (the “Agreement”), is made, dated and entered into as of the _____ day of _____, 2015, by and between the City of Durham (the “City”), a North Carolina municipal corporation and Wexford Chesterfield Parking, LLC, a North Carolina limited liability company (“Company”), a wholly owned, indirect subsidiary of BioMed Realty Trust, Inc., a Maryland corporation and a publicly traded real estate investment trust. The City and Company are also referred to individually as “Party” and collectively as “Parties.”

1. BACKGROUND AND PURPOSE

The purpose of this Agreement is to aid and encourage the redevelopment of the property located at 701 West Main Street, and a portion of the properties located at 704 W. Pettigrew Street, 202 & 206 S. Gregson Street, 601, 605, 607, 609 & 614 Wilkerson Avenue, 809 W Pettigrew Street, and 604 Burch Avenue (associated offsite parking and future development area), in Durham, North Carolina. The properties are located inside the Downtown Development Tier of the Community Development Area (“CDA”) in the City of Durham. The City Council finds that the construction of the capital improvements to be made by the Company and the resulting jobs to be created are likely to have a positive effect on the revitalization of the City of Durham’s downtown. The City Council also finds that it is in the City’s interest and of benefit to the Brightleaf District.

2. DEFINITIONS

2.1 “Associated Parking Properties,” refers generally to the property to be used for parking for the benefit of the Chesterfield Building. As of the date of this Agreement, these properties include 704 W. Pettigrew Street, 202 & 206 S. Gregson Street, 601, 605, 607, 609 & 614 Wilkerson Avenue, 809 W. Pettigrew Street, and 604 Burch Avenue and identified by the following Durham County tax Parcel ID nos: 103125, 211382, 103306, 103307, 103308, 103309, 103310, 103311, 103332, 103333, 103305. The Company has the authority to develop portions of these properties for non-parking projects at any time without affecting the Company’s right to receive City Payments as long as the Company meets the obligations related to parking set forth below in Section 3.4. For the purpose of this Agreement, Associated Parking Properties refers both to the parking garage which will be constructed on certain portions of these properties (“Parking Garage”) as well as the remainder of the land, which may be used for surface parking or developed in the future for non-parking projects (“Parking Land”).

2.2 “Capital Investment,” refers to expenditures that are subject to City and County property taxes and are in the nature of the types of capital investment expenditures defined in the Resolution Establishing an Economic Development Financial Assistance and Incentive Policy for Job Creation, Job Retention and Capital Investment Approved by the City Council on April 21, 2014, Resolution #9890 (the “Incentive Resolution”). For the purpose of this Agreement, improvements made to the Chesterfield Building by any of the tenants leasing space therein which are paid for by the Company (or its affiliates) also shall be treated as Capital Investments.

2.3 “Certificate of Compliance,” refers to the final, official document issued by the local governing authority certifying that a newly constructed or renovated building or structure is in compliance with applicable building codes, regulations and laws, such that said building or structure may be lawfully and beneficially occupied for its intended purpose as contemplated by this Agreement.

2.4 “Chesterfield Building,” refers to the property located at 701 West Main Street and identified by Durham County tax Parcel ID No. 103125, comprising a 6-story brick building, the former Liggett Group cigarette factory.

2.5 “City Payment,” refers to the payments the Company is eligible to receive if the Company satisfies the requirements of this Agreement.

2.6 “City Payment Period,” refers to the period of time commencing on the date of this Agreement and ending on the date the City has made the fifteenth (15th) City Payment or the 19th anniversary of First Date of Operations, whichever occurs first.

2.7 “Commercial Space,” refers to the total square footage of rentable office, laboratory, and commercial spaces described in the Use Development Requirements planned for the Chesterfield Building, exclusive of parking in the Chesterfield Building.

2.8 “Construction Activities,” refers to activities necessary for the construction of the Use Development Requirements to the Property.

2.9 “Continuous Occupancy,” refers to the maintenance of an average occupancy of at least sixty-five percent (65%) for the Commercial Space. For the purpose of the Continuous Occupancy calculations, the entirety of the square footage which is set forth in a particular lease for space in the Chesterfield Building is deemed to be “occupied” on the date of the lease, even if there is a period of time when the space is not actually occupied by the tenant, as long as the entirety of such square footage is subject to a Valid Lease (defined below) and such space must be delivered to the tenant during the term of the lease. By way of example, Continuous Occupancy shall be calculated by (i) taking the total square feet of Commercial Space subject to Valid Leases (defined below) multiplied by the number of days such space is subject to Valid Leases (defined below) during the applicable period (as defined in Section 3.1.6 below) and (ii) dividing that number by the total rentable square feet of Commercial Space multiplied by the number of days in the applicable period.

2.10 “First Date of Operations,” refers to the first day of the calendar month immediately following the date on which the Company demonstrates to the satisfaction of the City that the Company has made a Minimum Required Capital Investment in the Property of at least \$45,000,000 and has fully complied with all the provisions of Sections 3.1.1 and 3.1.3, unless such date actually falls on the first day of any calendar month.

2.11 “Minimum Required Capital Investment,” refers to a minimum Capital Investment to be made in the Property in accordance with the graduated schedule set forth in

Section 3.1.2. of this Agreement.

2.12 “Precondition Payment,” refers to the payment to be made to the City by the Company and accompanied with each invoice as a precondition for the Company to be eligible for each City Payment.

2.13 “Property,” refers collectively to the Chesterfield Building and the Associated Parking Properties.

2.14 “Use Development Requirements,” refers to the specific development improvements or renovations to be made to the Property by the Company, which development shall include (a) renovation of the Chesterfield Building into a six story building providing approximately 284,000 of rentable square feet of Commercial Space and (b) construction of a Parking Garage on a portion of the Associated Parking Properties, with such Parking Garage having approximately 544 spaces. For the purposes of the definition of Use Development Requirements, the term “approximately” as used in this definition shall mean no less than a 10% overall downward deviation in the use development listed above.

2.15 “Valid Lease” shall mean a binding lease agreement for an identifiable amount of rentable square footage in the Chesterfield Building, whether all such space is immediately occupied by the tenant on the date of the lease or not, between the Company (and/or its successor, assigns, or affiliates) and a tenant which serves a legitimate business purpose. A lease is not considered a Valid Lease under this Agreement if it is an objectively sham transaction, in the reasonable opinion of the City, designed solely for the purpose of circumventing the Continuous Occupancy provisions of this Agreement. However, the City acknowledges that the Company has a legitimate business reason for offering periods of free or reduced rent in an effort to attract tenants and businesses (and such practice is not uncommon in the industry), and the single fact that a lease contains such a provision in no way indicates that said lease is a sham transaction.

3. PARTY REQUIREMENTS AND OBLIGATIONS

3.1 Company Requirements for City Payment. As a precondition to eligibility for City Payments and to maintain continuing eligibility for City Payments, Company shall comply with the following requirements:

3.1.1 Commencement and Completion of Construction. Subject to an event of Force Majeure as set forth below in Section 23, the Company shall apply for a permit(s) for any portion of the Use Development Requirements where the estimated value of such work for which the permit is issued is at least \$1,500,000 by no later than December 31, 2015, and secure a final Certificate of Compliance for at least the core and shell improvements to the Chesterfield Building and a final Certificate of Compliance for the Parking Garage by December 31, 2017 (hereinafter, “Completion Date”). Although permits may be requested and obtained prior to the finalization of this Agreement, only the cost of the work commenced after the execution of this Agreement may be considered in determining whether the Minimum Required Capital Investment is met.

3.1.2 Use Development Requirements. As part of the Use Development Requirements, the Company shall cause to be invested the Minimum Required Capital Investment in connection with development of the Property in accordance with the following schedule:

TIMING	Cumulative Minimum Required Capital Investment in the Property
On or before the Completion Date	\$45,000,000.00
On or before January 1 st after the 1 st anniversary of the First Date of Operations	\$70,000,000.00
On or before January 1 st after the 2 nd anniversary of the First Date of Operations	\$80,000,000.00

The Company shall provide marketing material or other appropriate documentation verifying the type and quantity of use development for the Property necessary to comply with the Use Development Requirements.

3.1.3 Workforce Plan and Durham-Based Business Plan Conditions. Company shall complete and return the document entitled “Durham-Based Business Plan” (attached hereto as Exhibit A) upon execution of this Agreement and comply with its provisions for construction work necessary to complete the core and shell improvements to the Chesterfield Building and the Parking Garage. Company shall complete and return the document entitled “Workforce Development Plan” (attached hereto as Exhibit B) upon execution of this Agreement and comply with its provisions for construction work necessary to complete the core and shell renovations to the Chesterfield Building and the construction of a Parking Garage on a portion of the Associated Parking Properties. The requirements set forth below apply only to the core and shell renovation to the Chesterfield Building and the construction of a Parking Garage on a portion of the Associated Parking Properties:

3.1.3.1 Company shall meet with the Director of the City’s Office of Economic and Workforce Development (“Director” and “OEWD,” respectively) prior to the Company entering into any contract(s) for construction of the Property in order to discuss potential contracting opportunities for goods and services or construction and repair work with Durham-based firms. The City and the Company hereby acknowledge and agree that the requirements of this Section 3.1.3.1 have been met as of the date of this Agreement

3.1.3.2 The Director will provide the Company with recommended goals for hiring such identified Durham-based firms. The City and the Company hereby acknowledge and agree that the requirements of this Section 3.1.3.2 have been met as of the date of this Agreement.

3.1.3.3 In all solicitations for which goal(s) are established, Company, or

Company's contractor responsible for hiring construction related firms, will not enter into contracts without soliciting bids from Durham-based firms, if such qualified firms exist in Durham, and requiring bidders to submit a participation plan identifying whether it is a Durham-based firm (as defined by OEWD) and the level of participation of other Durham-based firms as subcontractors. If a Company's contractor responsible for hiring construction related firms fails to achieve the goal(s), the Company's contractor responsible for hiring construction related firms must submit documentation to Company of its good faith efforts to achieve the goal(s). Company shall take all reasonable actions needed to see that its contractors, as applicable, comply with this subsection. Company shall make bids and documentation of good faith efforts available to the Director promptly upon request. Nothing contained herein, however, obligates the Company to solicit bids for specific trades which are parties to existing negotiated contracts, including, but not limited to, the general contractor the Company retained for the Project.

3.1.3.4 Company will notify the Director of OEWD of upcoming contracting opportunities to ascertain the availability of Durham-based firms that might be qualified to provide the pertinent work. Each such notice shall be given in a manner and schedule so that the Durham-based firms will have a reasonable amount of time to respond.

3.1.3.5 Company will provide reports quarterly, or more frequently if requested by the City, but not more often than monthly, using a form highly similar in format to, Exhibit C "Durham Based Business Plan Quarterly Report," on all contracting activity, to the Director, for reporting to the City Council. The reports shall be due the last day of April (for January – March), July (for April – June), October (for July – September) and January (for October – December).

3.1.4 Assurance by Company of Appropriate Treatment of Contractors and Lower Tier Subcontractors. In order to remain eligible for City Payments, upon written request by the City delivered in accordance with the notice provisions of this Agreement, Company shall provide to the City (i) lien waivers demonstrating that all entities with whom it has contracted to construct all or any portion of the improvements on the Property have been paid in full, or (ii) documentation demonstrating that a bona fide dispute over the satisfactory completion of the work to be performed exists and is in the process of being resolved in accordance with applicable law (collectively, the "Required Documentation"). Evidence of bona fide disputes over the satisfactory completion of any work pursuant to any contract or subcontract shall include, but not be limited to, unsatisfied property or payment liens, pending lawsuits or unresolved contract claims made in writing. If Company fails to provide the Required Documentation following a request from the City, the City shall give the Company thirty (30) days written notice of its intent to suspend City Payments. If the Company has not provided the Required Documentation at the end of this thirty (30) day period the City may suspend City Payments. City Payments shall be resumed upon the submission by the Company to the City of the Required Documentation. The City shall have no power to suspend City

*Economic Development Agreement between
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Payments due to failures of contractors and subcontractors with whom the Company does not have a direct contractual relationship to comply with the terms of contracts to which the Company is not a party. The rights and obligations of the City and the Company pursuant to this Section 3.1.4 shall only apply during the City Payment Period, and only shall apply to the initial construction of the Use Development Requirements pursuant to this Agreement, and not to any subsequent construction work or tenant upfit performed on the Property at a later date.

3.1.5 Precondition Payment Requirement. As a precondition of eligibility for each City Payment, Company shall submit a Precondition Payment for the applicable year with each invoice in the amount provided in the table below:

INVOICE YEAR	PRECONDITION PAYMENT
1 st City Payment Invoice	\$155,416
2 nd City Payment Invoice	\$207,221
3 rd City Payment Invoice	\$362,637
4 th City Payment Invoice	\$310,832
5 th through 15 th City Payment Invoices	\$260,000

3.1.6 Maintenance of Minimum Level of Continuous Occupancy. Subject to Section 23 (Force Majeure) below, and to ensure job creation and maintenance, beginning with the date the Company submits an invoice for the third (3rd) City Payment, the Company shall demonstrate that the Commercial Space has maintained the Continuous Occupancy rate during the relevant time period prior to the submission of such invoice in order to be eligible for the third (3rd) City Payment and subsequent City Payments as further described herein. Failure to maintain the applicable Continuous Occupancy for the relevant time period shall result in a 100% reduction in the City Payment for the subject year (i.e., no City Payment for that year). For the purposes of the Continuous Occupancy requirements pursuant to this Agreement, any space for which there is a Valid Lease shall be considered to be occupied space. The following table shows the applicable period for which Continuous Occupancy of 65% is required to be eligible for City Payments:

CITY PAYMENT	APPLICABLE CONTINUOUS OCCUPANCY PERIOD
1 st and 2 nd City Payments	Not Applicable
3 rd City Payment	The period between the 2 nd and 3 rd anniversary of the First Date of Operations (i.e., a 1-year look back).
4 th City Payment	The period between the 2 nd and 4 th anniversary of the First Date of Operations (i.e., a 2-year look back).
5 th through 15 th City Payment	The three years prior to the applicable anniversary of the First Date of Operations (i.e., a 3-year look back).

Example 1: Assume the total Commercial Space is 284,000 square feet (sf). If, during the applicable Continuous Occupancy period for the 3rd City Payment 100% of the Commercial Space was subject to a Valid Lease, but only for 219 days during the subject 1 year period, the Continuous Occupancy requirement would not be met, and there would be no City Payment for that year. The calculation is as follows:

$$(284,000(sf) \times 219 (days)) \div (284,000(sf) \times 365 (days)) = 60\%$$

Example 2: Assume the total Commercial Space is 284,000 square feet (sf). Assume that during the 3 years prior to the receipt by the City of an invoice for the 5th City Payment (a) 50% of the Commercial Space was subject to a Valid Lease for the entire 3-year period, and (b) 50% of the Commercial Space was subject to a Valid Lease for 745 days. The Continuous Occupancy requirement would be met and there would be no reduction in the City Payment. The calculation is as follows:

$$\left((142,000(sf) \times 1095 (days)) + (142,200(sf) \times 745(days)) \right) \div (284,000(sf) \times 1095(days)) = 84.1\%$$

3.2 City Obligations. The City agrees to make the City Payments as described herein, to make certain improvements to the infrastructure near the Company’s Property, and to assist the Company as set forth below.

3.2.1 City Incentive Payments. After the Company has satisfied the applicable preconditions of Sections 3.1.1, 3.1.2, 3.1.3 and 3.1.5, the City agrees to make the City Payments for Year 1 and 2 to the Company according to the conditions of this Section 3.2. For the remaining City Payments in Year 3 through Year 15, Sections

3.1.6 shall also apply to the Company's eligibility for the remaining City Payments. The maximum eligible payments for each annual City Payment for the applicable payment year is provided in the table below:

CITY PAYMENT	CITY PAYMENT AMOUNT
1 st City Payment	\$240,000.00
2 nd City Payment	\$320,000.00
3 rd City Payment	\$560,000.00
4 th City Payment	\$480,000.00
5 th through 15 th City Payment	\$400,000.00

The total maximum possible City Payments shall not exceed \$6,000,000 over the City Payment Period. The City acknowledges that the provision of the City Payments is material to the Company's agreement to make the Minimum Required Capital Investment and to comply with other obligations in this Agreement. The City hereby represents that it will comply with all applicable laws, ordinances, and regulations in offering, budgeting, and appropriating funds and resources as necessary to comply with its obligations under this Agreement, and that it will continue to do so for the City Payment Period. The City agrees to cause its City Manager and Finance Director to include the City Payments coming due in each fiscal year in the corresponding annual budget request and shall require the City Manager and Finance Director to each use his or her best efforts to obtain an appropriation therefor. This covenant on the part of the City contained in this section shall be deemed to be and shall be construed to impose by law ministerial duties and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform its obligations under this Agreement.

3.2.1.1 Invoicing and Timing of Incentive Payments. The Company shall send invoices to the City for the aforementioned City Payment amounts to be paid pursuant to this Agreement. Each invoice shall document, to the reasonable satisfaction of the City: confirmation that the Company has complied with required preconditions to be eligible for the applicable City Payment, including such additional information as may be reasonably requested by the City. Within 60 days after the City receives a City Payment invoice, with appropriate documentation, the City shall send the Company a check for the applicable City Payment.

3.2.1.1.1 Year 1 City Payment Timing. Upon establishment of the First Date of Operations, the Company may invoice the City for the Year 1 City Payment no earlier than January 1 of the calendar year immediately following the

date on which the 1st year anniversary of the First Date of Operations occurs. By way of example, if the First Date of Operations is determined to be March 1, 2015, the earliest that the Company could invoice the City for the Year 1 City Payment would be January 1, 2017. If, however, the First Date of Operations was established to be December 20, 2014, the earliest the Company could invoice the City for the Year 1 City Payment would be January 1, 2016.

3.2.1.2.2 Year 2 through Year 15 City Payment Timing. The Company may invoice the City annually for each City Payment in Year 2 through Year 15 beginning on the 1st anniversary of the Company's receipt of the Year 1 City Payment.

3.2.2 Infrastructure Improvements. The City agrees to use its best efforts to actively assist and support the Company in identifying appropriate pedestrian improvements to the public right of way in order to facilitate safe and efficient passage to and from the Associated Parking Properties and the Chesterfield Building (hereinafter, "Pedestrian Passage") with the goal of completing all such improvements prior to the date on which a Certificate of Compliance for the core and shell improvements to the Chesterfield Building is received. Any recommended Pedestrian Passage shall require final approval to be made by the City and shall be based upon the good faith judgment and opinion of city engineers and transportation specialists. The City agrees to actively participate, support, and work with the Company to communicate and consult with stakeholders and property owners along the potential pedestrian passages to determine the preferred design and routing of the Pedestrian Passage and to otherwise collaborate in good faith with the Company to resolve the issue of pedestrian access to and from the Associated Parking Properties and the Chesterfield Building. Company acknowledges that such efforts may require engineering design and study to identify the appropriate Pedestrian Passage. Additionally, certain of the improvements that may be proposed for the Pedestrian Passage may require approvals from other property and right-of-way owners, including, but not limited to the North Carolina Department of Transportation ("NCDOT") and the North Carolina Railroad ("NCR") or other railroad owners and operators. In particular, the City agrees to the following:

3.2.2.1. Crosswalk – If identified as part of the approved Pedestrian Passage, the City will use its best efforts to obtain the necessary approvals, including seeking appropriations through the City's normal budgetary process, to install a new painted pedestrian crosswalk at the intersection of W. Pettigrew Street and S. Gregson Street to be located on the west side of S. Gregson Street. Company acknowledges that the proposed crosswalk for this Section 3.2.2.1 may require curb and/or sidewalk ramp adjustments and construction to comply with requirements under the American with Disabilities Act. To the extent such curb and/or sidewalk ramp adjustments are required, as determined by the City, the City agrees to enter into a reimbursement agreement with the Company pursuant to which the City will agree to reimburse the Company for the Company to construct such improvements in conformance with city engineering specifications

so long as the total cost of construction for both corners (southwest and northwest corners of S. Gregson St. and W. Pettigrew St.) does not exceed \$10,000.00.

3.2.2.2. Traffic Signals -- It is the city's understanding that NCDOT is currently considering the installation of a traffic signal and new painted pedestrian crosswalks at the intersection of Peabody Street and Gregson Street. The City agrees to work with NCDOT and others as necessary to facilitate the implementation of such improvements.

3.2.2.3. Pedestrian Access to Chesterfield Building -- If the City believes it is in the best interest of traffic safety to pedestrians, vehicles and railroad operations, the City shall use its best efforts to actively assist and support the Company in identifying appropriate pedestrian improvements to facilitate safe and efficient passage between the Chesterfield Building and the Associated Parking Properties, to include the practicality of, and its ability to, convert existing spaces for street parking on Peabody Street between Gregson Street and Duke Street into a pedestrian walkway. Company acknowledges that this area falls within the NCRR right of way.

3.3 No additional Tax Credits or Tax Exemptions. To induce the City to enter into this Agreement, Company covenants and agrees that during the City Payment Period, no new or additional application for designation of any portion of the Property pursuant to N.C.G.S. § 160A-400.5 or any similar or successor statute, shall be submitted to the City or County by the Company which would have the effect of reducing the tax revenue of the City for all or any portion of the real estate which comprises the Property during the City Payment Period. The Company further agrees that no application for exemption from ad valorem property taxes shall be submitted to the City or County by the Company for any portion of the Property. Notwithstanding the foregoing, the City acknowledges that the Chesterfield Building has an existing landmark status and receives a tax credit as a result of such status, and therefore, Company shall not be prohibited from seeking or obtaining the continuation of the existing landmark status of the Property or from pursuing or participating in programs for credits or deductions related to state or federal income tax. Nothing contained herein, however, shall (a) prevent the Company from challenging or appealing the assessed tax value of any of its Property within Durham County, or (b) bar any tenant which is leasing Commercial Space from the Company or the Company's affiliates from seeking any tax credits that relate to its own business operations within the Property, and such actions by a tenant shall not be deemed a breach of this provision by the Company; and nothing in this Agreement shall be construed as a waiver of such rights. Unless the City waives the Section 3.3 requirements in writing, failure of the Company to comply with this Section 3.3 shall release the City of its obligation to make any further City Payment otherwise required and shall allow the City to seek reimbursement for all City Payment made as of the date of non-compliance by the Company of this Section 3.3 in an amount equal to the City Payment(s) made to the Company for the year(s) during which such ad valorem property tax exemption applied.

3.4 Parking Available to General Public during Evening and Weekend Hours.

3.4.1 General Public Parking. For a period of forty (40) years from the Commencement Date (“General Public Parking Term”), Company shall make available 272 parking spaces constructed on the Associated Parking Properties (either on the Parking Land or in the Parking Garage, or both, in the Company’s discretion) to the general public on a first-come, first-serve basis, during evening and weekend hours at Market Rates in accordance with the terms of this Section 3.4 (hereinafter, “General Public Parking”).

3.4.2 Market Rate, Hours of Operation. For the purpose of this Section 3.4, the term “Market Rates” shall mean an hourly charge for parking on the Associated Parking Properties which is comparable to that charged by other parking facilities of similar quality to the Associated Parking Properties which are located in the Downtown Development Tier of the City of Durham, including, without limitation and by way of example only, those parking facilities owned or operated by the City of Durham and the County of Durham in that location. By way of example, an acceptable Market Rate shall be a rate that approximates the mean rate charged by public and privately owned comparable parking facilities located in the Downtown Development Tier. For purposes of determining an acceptable Market Rate, Company may establish a different Market Rate for the Parking Garage as compared to any surface parking on the Parking Land. The hours of operation for General Public Parking shall include “evening hours” to be from 6:30 p.m. through 6:00 a.m. the next morning Monday through Thursday, and weekend hours to be from 6:30 p.m. Friday through 6:00 a.m. Monday (the “Available Hours”). Company may charge the general public Market Rates for the General Public Parking for use of the Associated Parking Properties consistent with the terms of this Section 3.4.

3.4.3 No Discrimination Against General Public Parkers. Company shall not discriminate against the general public for use of, and access to, the Associated Parking Properties for General Public Parking during the Available Hours. The Company shall have the right to designate those spaces not subject to this Section 3.4 within the Associated Parking Properties as reserved for specified users during the Available Hours and during all other times. Subject to the restrictions of this Section 3.4, the general public shall be subject to the same rules and regulations regarding the use of the Associated Parking Properties as the tenants of the Chesterfield Building.

3.4.4 Enforcement of General Public Parking Rights. On or before the Completion Date, and in consideration of the City Payments and the terms of this Agreement, the Company shall prepare and record a set of protective covenants in a form acceptable to the Company and the City in their respective reasonable discretion (the “Covenant”) for the Property which Covenant shall grant an easement to the City for the benefit of the general public for the period of the General Public Parking Term, providing that the Associated Parking Properties are subject to the General Public Parking rights set forth in this Section 3.4 (“Parking Easement”). Such Covenant shall not include a dedication of any portion of the Associated Parking Properties for public use. The City, and only the

City, shall have the sole and exclusive right to enforce its easement for the General Public Parking rights in accordance with applicable law. The City acknowledges and agrees that the Covenant will provide that the Parking Easement will be terminated if the City defaults on its obligations under this Agreement and that the City will voluntarily execute such documents as are reasonably requested by the Company to terminate the Parking Easement as a matter of public record. The Covenant shall provide that, if there is a bona fide dispute between the City and the Company as to whether the City has defaulted, the Company shall have the right to submit such dispute in the forum and venue provided for under Section 11 of the Agreement. The Parties agree that any decree or adjudication issued by the court after rights of appeal have been exhausted on the issue of the City's default or lack thereof shall be binding.

4. Time Of Essence. Notwithstanding any other provision contained in this Agreement, the City shall have no obligation to and shall not make any payment to the Company pursuant to this Agreement if the construction activities on the Property are not commenced and completed by the Completion Date as described in Section 3.1.1.

5. Address Contact Information. Notices and Payments to the Company pursuant to this Agreement shall be sent to the following addresses:

For Payment:

Wexford Chesterfield Parking, LLC
17190 Bernardo Center Drive
San Diego, CA 92128
Attn: Accounting

For Notices:

Wexford Chesterfield Parking, LLC
17190 Bernardo Center Drive
San Diego, CA 92128
Attn: Vice President, Real Estate Legal

With Copy To:

Wexford Chesterfield Parking, LLC
801 West Baltimore Street, Suite 505
Baltimore, MD 21201
Attn: Daniel Cramer, Senior Vice President

When a notice is required or permitted by this Agreement, it shall be given by written notice to the City by delivery to:

Director
Office of Economic and Workforce Development
City of Durham

302 East Pettigrew Street, Suite 190
Durham, North Carolina 27701
FAX – 919-560-4986

6. Change Of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this agreement shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax with confirmation that such facsimile transmitted completely to the receiving party. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service.

7. EEO Provisions. During the performance of this Agreement the Company agrees as follows: (1) The Company shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Company shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Company shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Company shall in all solicitations or advertisement for employees placed by or on behalf of the Company, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Company shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Company's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Company ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Company shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

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

9. Assignment. Successors And Assigns. The City acknowledges and agrees that it cannot assign this Agreement to any third party. Without the City's written consent, which shall not be unreasonably withheld, the Company shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement, except that the Company shall not be required to obtain the City's written consent prior to entering into contracts with third parties which relate to the Construction Activities and which require such third parties to comply with the provisions of this Agreement, the Durham Based Business Plan,

the Workforce Development Plan, or the Durham Based Business Plan Quarterly Report requirements. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Company and all assignees shall be subject to all of the City's defenses to and shall be liable for all of the Company's duties that arise out of this Agreement, and all of the City's claims against the Company that arise out of this Agreement. Without granting the Company the right to assign, it is agreed that the duties of the Company that arise out of this Agreement shall be binding upon it and its heirs, personal representatives, successors, and assigns. Notwithstanding the foregoing limitations on assignment, the City's consent shall not be required for a whole or partial assignment of the Company's rights and duties hereunder if: a) the Company makes such assignment to any entity that is under majority control of the Company; or b) the Company makes such assignment in connection with the sale of the Chesterfield Building and/or Associated Parking Properties and the assignee specifically assumes all of the obligations of the Agreement.

10. Default. Termination. If the Company fails to fulfill any of its material obligations under the Agreement, or if any certification made by the Company is materially false, then in that event, subject to the notice and cure provisions in Section 25, the City may, but is not obligated to, hold the Company in default and terminate this Agreement and make no further payments to Company beyond any payments which were outstanding and due prior to the event of default, unless such grounds for default were based upon the City's reliance on materially false information provided by the Company as described herein. In the event any certification made by the Company is materially false, the City shall also be entitled to seek the recovery of all prior payments made to the Company, along with reasonable direct expenses, including reasonable attorneys' fees, incurred by the City in connection with the Company's materially false certifications. Notwithstanding the foregoing, it shall not be an event of default if the Company makes any certification under this Agreement based on materially false information it obtains from a third party which the Company, acting in good faith, believed to be accurate at the time such certification was made. If the Company does not deliver to the City the certification of compliance pursuant to Section 3.1, and does not seek payment under Section 3.2, the Company shall not be considered in default for failing to deliver the required certification. In the event the Company fails to provide such required certification(s) pursuant to Section 3.1 above within 18 months after the First Date of Operations, either party shall have the right to terminate this Agreement without becoming liable to the other for any damages as a result of such termination. The Parties agree that the only obligation of the City under this agreement is to pay the company the City Payments pursuant to the terms herein under Section 3.2. Accordingly, if the City defaults on its obligation to make any City Payment pursuant to this Agreement, the Company's sole claim or remedy at law shall be the value of the City Payment(s) that the City is obligated to pay, including reasonable direct expenses and attorneys' fees incurred in pursuing claims against the City related to or seeking the recovery of any City Payments which are due the Company.

11. Choice Of Law And Forum. This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this

section.

12. Modifications. Entire Contract. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a Deputy or Assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract or any amendments or modifications thereto.

13. City Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this Agreement or the Company's services under this Agreement, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action. However, if such termination or suspension is not based on the default of the Company, the Company may treat such termination or suspension as a default by the City, and shall be entitled to seek damages as set forth in paragraph 10 of this Agreement.

14. Principles Of Interpretation And Definitions. In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

15. Exhibits. The following exhibits are made a part of this Agreement:

Exhibit A, "Durham Based Business Plan," (containing 6 pages);
Exhibit B, "Workforce Development Plan," (containing 4 pages); and,
Exhibit C, "Durham Based Business Plan Quarterly Report," (containing 1 page).

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

16. Indemnification. (a) To the maximum extent allowed by law, the Company shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of the Company or its contractors, subcontractors, employees, or agents acting on behalf of the Company in the performance of the Company's duties under this Agreement. In the event

litigation is instituted against the City and such litigation is based on a claim for which the Company would be obligated to indemnify and hold the City harmless pursuant to subsection (a) of this paragraph, the Company will retain legal counsel reasonably acceptable to City.

(b) **Definitions.** As used in subsection “a” above -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). “Indemnitees” means City and its officers, officials, independent contractors, agents, and employees, excluding the Company.

(c) **Other Provisions Separate.** Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(d) **Survival.** This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise).

(e) **Limitations of the Company's Obligation.** If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection “a” above shall not require the Company to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

17. Waiver. No action or failure to act by either party shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

18. Performance Of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

19. Severability. If any provision of this agreement shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

20. Compliance With Law. In performing all of the Work, the Company shall comply with all applicable law.

21. No Third Party Rights Created. This Agreement is intended for the benefit of the City and the Company and not any other person.

22. Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act, event, notice, or default after which the designated period of time

begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the county where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. (measured by the time of the in which the Property is located).

23. Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of the following: labor dispute, including strike and lockout; unavailability of essential materials, riot; epidemic; war, extreme weather events, fire; explosion; condemnation; accident; delays or default of the other party, then performance of such act shall be excused for the period of the delay, and thereafter the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. If any portion of the Chesterfield Building is condemned or subject to eminent domain proceedings which negatively affect the occupancy levels during the City Payment Period, for the purpose of calculating Continuous Occupancy levels, the area of Commercial Space eliminated due to such condemnation proceedings shall be excluded in calculating the occupancy rates of the Chesterfield Building as set forth above in Section 3.1.5. If an event of force majeure destroys or impairs the Chesterfield Building or any portion thereof, the Continuous Occupancy requirement will be suspended for a reasonable period of time to allow the Company to restore the Chesterfield Building, or any portion thereof which is affected by such occurrence. With regard to events of force majeure that can and will be cured, a party may take advantage of the extension of time to perform only to the extent that the event is not substantially caused by the party to this Agreement who seeks to use said event as an excuse for failure to perform. A party must use commercially reasonable efforts to perform despite said events and commercially reasonable efforts to prevent or cure the effects of said event insofar as it prevents performance. In the event of destruction or condemnation of any portion of the Property by force majeure, the Company shall have the option of notifying the City it will not restore or replace such portion of the Property, and if so, the Company shall not be obligated to return any City Payments received prior to the event causing such destruction, but any future City Payments shall be reduced proportionately according to the reduction in total Commercial Space area.

24. Regulatory Process. If the Durham City/County Planning Department or other regulatory agency delays or does not timely grant an application for a permit or site plan approval made by the Company, then each of the deadlines contained herein shall be extended by the length of such delay at the request of the Company, so long as the subject delay was not caused by the Company.

24.1. Parking Deck Construction. The City agrees that, with regard to reviews related to the construction of parking on one or more of the Associated Parking Properties, the City/County Planning Department will expedite such review process for those items that require only internal administrative review.

25. Cure Period. No default by either party hereto shall result in a termination or limitation of any rights of such party hereunder unless and until the other party notifies the defaulting party

in writing of said default, and the defaulting party fails to cure said default within thirty (30) days after the receipt of said written notice provided; however, in the event of a non-monetary default which cannot, by its nature, be cured within such thirty (30) day period, if the defaulting party commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then the other party shall not exercise its remedies or limit the rights of the defaulting party unless such non-monetary default remains uncured for more than ninety (90) days after the initial delivery of the other parties original default notice.

26. Performance by Affiliates of the Company. To the extent that affiliates of the Company own any portion of the Property, Company shall cause such affiliates to comply with the Company's obligations under this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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.

ATTEST: CITY OF DURHAM

_____ By: _____

Pre Audit Certificate

Wexford Chesterfield Parking, LLC

By: _____ (SEAL)
Title of officer: _____

State of _____

**ACKNOWLEDGMENT BY
Wexford Chesterfield Parking, LLC**

County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is (strike through the inapplicable:) chairperson/ president/ chief executive officer/ vice-president/ senior vice-president/ treasurer/ chief financial officer of Wexford Chesterfield Parking, LLC, a limited liability company, and that by authority duly given and as the act of the limited liability company, he or she signed, under seal, the foregoing contract or agreement with the City of Durham. This the _____ day of _____, 2015.

My commission expires:

Notary Public