

EXTRACTS FROM MINUTES OF THE CITY COUNCIL

A regular meeting of the City Council of the City of Durham, North Carolina, was duly held on January 19, 2016 at 7:00 p.m. in the Council's Chambers at City Hall, 101 City Hall Plaza, Durham, North Carolina. Mayor William V. Bell presiding.

The following members were present:

The following members were absent:

* * * * *

Council Member _____ moved that the following resolution, copies of which having been made available to the City Council, be adopted:

RESOLUTION NO. _____

RESOLUTION OF THE CITY OF DURHAM, NORTH CAROLINA REQUESTING A DEED OF PARTIAL RELEASE OF CERTAIN PREMISES RELATED TO AN INSTALLMENT PURCHASE CONTRACT AND AUTHORIZING THE EXECUTION AND DELIVERY OF A MODIFICATION TO THE DEED OF TRUST TO AMEND THE TERMS THERETO

WHEREAS, the City of Durham, North Carolina (the “City”) is a municipal corporation validly existing under the Constitution, statutes and laws of the State (the “State”);

WHEREAS, the City has previously entered into (a) an Installment Purchase Contract dated as of December 1, 2003 (the “2003 Contract”) with New Durham Corporation, a nonprofit corporation organized and existing under the Constitution and laws of the State of North Carolina (the “Corporation”), as amended by Amendment Number One to the Installment Purchase Contract dated as of May 1, 2005 (the “First Contract Amendment”) and as further amended by Amendment Number Two to the Installment Purchase Contract dated as of May 17, 2012 (the “Second Contract Amendment,” and together with the 2003 Contract and the First Contract Amendment, the “Contract”), each between the City and the Corporation, in order to pay the capital costs of, among other things, constructing the North Deck on the American Tobacco Campus (the “North Deck”) and (b) a Deed of Trust and Security Agreement dated as of December 1, 2003 (the “2003 Deed of Trust”), as extended by a Notice of Extension to Additional Property dated as of May 1, 2005 (the “Notice of Extension,” and together with the 2003 Deed of Trust, the “Deed of Trust”), from the City to a deed of trust trustee (the “Deed of Trust Trustee”) placing a lien on, among other things, the site of the North Deck and improvements thereon to secure the City’s obligations under the Contract;

WHEREAS, pursuant to an Indenture of Trust dated as of August 1, 2003 (the “2003 Indenture”), as supplemented by Supplemental Indenture, Number 1 dated as of May 1, 2005 (the “First Supplement”) and as further supplemented by Supplemental Indenture, Number 2 dated as of May 17, 2012 (the “Second Supplement,” and together with the 2003 Indenture and the First Supplement, the “Indenture”), each between the Corporation and Deutsche Bank, the successor to which is U.S. Bank National Association, as trustee (the “Trustee”), the Corporation has executed and delivered certain obligations, including Certificates of Participation, Series 2005B (the “2005B COPs”), Taxable Limited Obligation Bonds, Series 2012A (the “2012A LOBs”) and Limited Obligation Bonds, Series 2012B (the “2012B LOBs”), each Evidencing Proportionate Undivided Interests in Rights to Receive Certain Revenues Pursuant to the Contract (collectively, the “Indebtedness”), which currently remain Outstanding;

WHEREAS, the City has negotiated the sale of the North Deck; and, in connection with such sale, intends to release the North Deck from the lien created by the Deed of Trust;

WHEREAS, pursuant to Section 1.14 of the 2003 Deed of Trust, the City must make certain findings in order to request a release of the North Deck;

WHEREAS, in connection with the proposed release, the City intends to execute and deliver a Modification to the Deed of Trust (the “Modification”) in order to amend certain terms of the Deed of Trust;

WHEREAS, copies of the forms of the Deed of Partial Release and the Modification (collectively, the “Recording Documents”) have been made available to the City Council;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DURHAM, NORTH CAROLINA, AS FOLLOWS:

Section 1. Request for Release of Premises. That the City hereby requests, in accordance with Section 1.14 of the 2003 Deed of Trust, that the Deed of Trust Trustee release from the Deed of Trust those portions of the Premises described as the Released Property on Exhibit A attached hereto (which shall be contained in the Deed of Partial Release) and that the City agrees to pay all expenses associated with the completion of such release. In connection therewith, the City hereby finds (with the understanding that the Trustee will rely upon such findings in executing the Deed of Partial Release) that (i) the purpose of the Deed of Partial Release is to allow for the sale of the North Deck; (ii) an adequate legal description of the North Deck, which is included in the Deed of Partial Release, is attached hereto as Exhibit A and labeled "Released Property"; (iii) the value of the Premises after the proposed release of the North Deck will be in excess of 110% of the aggregate principal component of the Installment Payments (as defined in the Contract) related to the Indebtedness Outstanding; and (iv) the proposed release of the North Deck will not prohibit ingress, egress and regress to and from the Premises not being released or materially interfere with the use of the remainder of the Premises not being released.

Section 2. Consent of the Beneficiary. That the City hereby requests, in accordance with Section 1.14 of the Deed of Trust, that the Trustee, as the assignee of the beneficiary under the Deed of Trust, consent to the release from the Deed of Trust of those portions of the Premises described as the Released Property on Exhibit A attached hereto and execute and deliver the Deed of Partial Release.

Section 3. Authority to Execute and Deliver the Recording Documents. That the forms and content of the Recording Documents shall be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor, the City Manager and the City Clerk and their respective designees shall be and they hereby are authorized, empowered and directed to execute and deliver the Recording Documents, including necessary counterparts, in substantially the forms and content presented to the City Council, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions or deletions therein from the forms and content of the Recording Documents presented to the City Council, and that from and after the execution and delivery thereof, the City Manager, the Finance Director and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions thereof as executed.

Section 4. Actions by the City. That the Mayor, the City Clerk, the City Manager, the City Finance Director, the City Attorney and their respective designees, are hereby designated to act on behalf of the City to effectuate the release of the North Deck and the execution and delivery of the Modification to the Deed of Trust, all as described in this Resolution, and all actions of such officers on behalf of the City with respect to such actions, whether previously or hereinafter taken, are hereby approved, ratified and authorized.

Section 5. Severability. That if any section, phrase or provision of this Resolution shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 6. Repealer. That all motions, orders, resolutions and parts thereof, in conflict herewith are hereby repealed.

Section 7. Effective Date. That this Resolution shall become effective on the date of its adoption.

EXHIBIT A

Released Property

North Deck:

COMMENCING at LEC Monument #233 having grid coordinates of North 815,023.774 and East 2,028,555.741 and running thence North 19° 20' 09" West to an iron pin, the PLACE AND POINT OF BEGINNING, said iron pin being the southernmost corner of that parcel described as Lot 9, Block D, Project 16 on the Plat recorded in Plat Book 71, Page 43, Durham County Registry; thence South 30° 50' 26" West 20.50 feet to a computed point; thence South 59° 09' 34" East 255.24 feet to a computed point; thence North 30° 50' 26" East 343.35 feet to a computed point in the southern right of way of Pettigrew Street and Southern Railroad; thence along and with said right of way the following three courses and distances: 1) North 54° 33' 45" West 75.30 feet to an iron pin; 2) North 55° 38' 00" West 170.05 feet to an iron pin; and 3) North 55° 34' 27" West 5.22 feet to a computed point; thence leaving said right of way and running South 32° 35' 24" West 170.09 feet to an iron pin; thence South 30° 51' 24" West 169.66 feet to a place and point of beginning, and being all of Lot 1, containing 2.054 acres, as shown on the plat entitled "Final Plat: City of Durham American Tobacco Campus North Parking Garage" dated August 27, 2003 and recorded in Plat Book 159, Page 235, Durham County Registry, to which plat reference is hereby made for a more particular description of same.

STATE OF NORTH CAROLINA)
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CITY OF DURHAM) SS:

I, D. ANN GRAY, City Clerk of the City of Durham, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE CITY OF DURHAM, NORTH CAROLINA REQUESTING A DEED OF PARTIAL RELEASE OF CERTAIN PREMISES RELATED TO AN INSTALLMENT PURCHASE CONTRACT AND AUTHORIZING THE EXECUTION AND DELIVERY OF A MODIFICATION TO THE DEED OF TRUST TO AMEND THE TERMS THERETO**” adopted by the City Council of the City of Durham, North Carolina at a regular meeting held on the 19th day of January, 2016.

D. Ann Gray
City Clerk of the
City of Durham, North Carolina