

Drawn by and Mail To:
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STATE OF NORTH CAROLINA
COUNTY OF DURHAM

**SECOND NOTICE OF EXTENSION
OF DEED OF TRUST
TO ADDITIONAL PROPERTY**

THIS SECOND NOTICE OF EXTENSION (this "*Second Notice*") is given as of the 8th day of March, 2016, by the **CITY OF DURHAM, NORTH CAROLINA**, a municipal corporation regularly created and validly existing under the laws of the State of North Carolina (the "*Grantor*"), to **ASHLEY L. HOGWOOD, JR.**, as Trustee (the "*Trustee*") for the benefit of **NEW DURHAM CORPORATION**, a nonprofit corporation duly created, existing and in good standing under the laws of the State of North Carolina (the "*Corporation*" and together with its successors and assigns, the "*Beneficiary*"), and assigned by the Corporation as grantor under the Indenture of Trust dated as of January 1, 2007 (the "*2007 Indenture*"), between the Corporation and Deutsche Bank National Trust Company ("*Deutsche Bank*"), the successor to which is U.S. Bank National Association ("*U.S. Bank*");

WITNESSETH:

WHEREAS, Grantor previously executed and delivered to the Trustee, for the benefit of the Beneficiary, a Deed of Trust and Security Agreement dated as of January 1, 2007 (the "*2007 Deed of Trust*") and duly recorded in Book 5487, Pages 199-219 in the office of the Register of Deeds, Durham County, North Carolina (the "*Registry*"), encumbering the Premises (as defined in the 2007 Deed of Trust) and securing the Indebtedness (as defined in the 2007 Deed of Trust) under an Installment Purchase Contract dated as of January 1, 2007 (the "*2007 Contract*") between the Corporation and the Grantor and the 2007 Deed of Trust, including future advances which may be made from time to time;

WHEREAS, Grantor has also previously executed and delivered to the Trustee, for the benefit of the Beneficiary, a Notice of Extension of Deed of Trust to Additional Property dated as of January 13, 2014 (the "*First Notice*") and duly recorded in Book 7435, Page 425 in the Registry, encumbering Additional Premises (as defined in the First Notice) and securing the Indebtedness (as defined in the 2007 Deed of Trust) under the 2007 Contract and the 2007 Deed of Trust, including future advances which may be made from time to time;

WHEREAS, Grantor has also previously executed and delivered a Deed of Partial Release dated as of January 13, 2014 (the "*Release Deed*") and duly recorded in Book 7435, Page 415 in the office of the Registry, releasing certain property from the Premises (as defined in the 2007 Deed of Trust);

WHEREAS, Grantor has also previously executed and delivered a Modification of Deed of Trust and Security Agreement dated as of March 1, 2015 (the "*Modification*," and together with the 2007 Deed of Trust, the First Notice and the Release Deed, the "*Deed of Trust*") and duly recorded in Book 7654, Page 991 in the Registry, making certain amendments to the terms of the 2007 Deed of Trust in connection with the execution and delivery of a future advance under the 2007 Contract;

WHEREAS, the 2007 Deed of Trust contains an "*after acquired property*" clause; and

WHEREAS, Grantor entered into an Agreement for the Construction of an Annex and Wrapper Building Adjacent to the Durham Performing Arts Center dated November 8, 2013 (the "*Development Agreement*") with various legal entities owned and/or controlled by Capital Broadcasting Company, Incorporated ("*CBC*"). Such entities are collectively hereinafter referred to as the "*Developer*." In connection with the execution and delivery of the Development Agreement, the Developer constructed a condominium building adjacent to the original Premises and, pursuant to the First Notice, extended the lien of the 2007 Deed of Trust to cover small portions of adjoining properties and various easement rights sufficiently related or appurtenant to original Premises in connection with the development of the condominium building;

WHEREAS, pursuant to the Development Agreement, the Grantor and the Developer agreed to construct a restroom facility and a new President's Club, both to be used in connection with the original Premises, within the condominium building;

WHEREAS, pursuant to a Declaration of Condominium dated November 10, 2015 and recorded in Book 7821, Page 702, in the Registry, the Developer has created a condominium unit within the condominium building which consists of a restroom facility and certain common elements (the "*Restroom Unit*") and a condominium unit located within the condominium building which consists of the President's Club and certain common elements (the "*DPAC Club Unit*");

WHEREAS, the Developer has transferred ownership of the Restroom Unit to the Grantor pursuant to a Special Warranty Deed dated December 3, 2015 and recorded in Book 7834, Page 854, in the Registry and the Developer has granted a leasehold interest in the DPAC Club Unit to the Grantor pursuant to the Lease Agreement dated January 20, 2014, as amended by First Amendment to a Lease Agreement dated September 23, 2015, Second Amendment to a Lease Agreement dated November 16, 2015, and Third Amendment to a Lease Agreement dated December 3, 2015 (collectively, the "*Lease Agreement*") and memorialized in a Memorandum of Lease recorded in Book 7834, Page 872 in the Registry;

WHEREAS, Grantor's real property interests in the Restroom Unit is sufficiently related or appurtenant to the original Premises that, pursuant to the Deed of Trust, it must be made subject to the lien created thereunder and treated as "*Additional Premises*" under the Deed of Trust;

WHEREAS, the Lease Agreement for the DPAC Club Unit authorizes execution and delivery of a collateral assignment of lease assigning the Grantor's rights and responsibilities under the Lease Agreement to U.S. Bank, as assignee for the Beneficiary by instrument dated on or about even date herewith (the "*Collateral Assignment of Lease*");

WHEREAS, Grantor acknowledges that this Second Notice confers a substantial benefit on it and is supported by good and valuable consideration.

NOW, THEREFORE, in consideration of the premises and for the purposes aforesaid, and in further consideration of the sum of Ten Dollars (\$10.00) paid to the Grantor by the Trustee and other valuable considerations, receipt of which is hereby acknowledged, the Grantor has given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the Trustee, its heirs, successors and assigns for the benefit of Beneficiary, the following property interests lying and being in Durham County, North Carolina of the Grantor, referenced herein as Additional Premises, more particularly described on Exhibit A, attached hereto.

FURTHER, in consideration of the Indebtedness of Grantor to Beneficiary, the recitals set forth above (which are an integral part of this Second Notice and are not mere recitals), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The foregoing recitals are true and correct.
2. The term Premises as defined in the Deed of Trust is hereby amended to include the Additional Premises, and the lien of the Deed of Trust is hereby extended, modified and spread to cover and include the Additional Premises as described herein and the Premises so as to constitute a single lien upon the Additional Premises described herein and the Premises.
3. All references to the Premises in the Deed of Trust shall hereinafter be deemed to include the Premises and the Additional Premises described herein.
4. Grantor hereby agrees that all terms, representations, warranties, covenants and agreements contained in the Deed of Trust shall hereinafter be deemed to apply to the Premises and the Additional Premises described herein.
5. Grantor ratifies and confirms the lien and security interests of the Deed of Trust on the Premises and the Additional Premises described herein, and in any and all property, real, personal or mixed, tangible or intangible, and fixtures, now or hereafter acquired by Grantor and encumbered by the Deed of Trust and Grantor transfers, assigns, grants to Beneficiary the benefit of a lien on and security interest in all such property now owned or hereafter acquired as security for the Indebtedness.
6. Grantor hereby covenants, represents and warrants that Grantor has good and clear record and marketable title to the Additional Premises described herein, subject to the Permitted Encumbrances (as defined in the Deed of Trust) and the “*Additional Permitted Encumbrances*” (as set forth on Exhibit B attached hereto).
7. Grantor hereby represents and warrants that it has good right and lawful authority to provide this Second Notice and to mortgage and convey the Additional Premises as described herein, as provided herein.
8. This Second Notice is binding on and inures to the benefit of the successors and assigns of the parties hereto.
9. Except as specifically modified herein, the terms and conditions of the Deed of Trust remain in full force and effect as executed. Nothing herein contained in any way impairs the Deed of Trust, or alters, waives, annuls, varies or affects any provision, condition or covenant therein, except as herein provided, nor affect or impair any rights, powers or remedies thereunder provided.

10. Grantor and Beneficiary acknowledge and agree that this Second Notice does not constitute a novation of the Indebtedness, but is intended only to be an extension, amendment and modification of the Deed of Trust for the purposes specifically noted herein.

11. Nothing contained herein constitutes a waiver, release, or limitation of any right, remedy, privilege, or default under the Deed of Trust.

12. The execution hereof by Beneficiary is for the sole purpose of evidencing its consent hereto as required by N.C. Gen. Stat. §47-20.5.

13. This Second Notice is executed subject to the Additional Permitted Encumbrances.

14. The filing of this Second Notice constitutes a financing statement and fixture filing for all purposes of N.C. Gen. Stat. §25-9-512. All or part of the Additional Premises as described herein is or will become fixtures or other personalty requiring the filing of a financing statement; information concerning the security interest herein granted may be obtained at the addresses set forth on the first page hereof. The address of the Secured Party (Beneficiary) and the address of the Debtor (Grantor) is the address set forth in the Contract. Grantor is the record owner of the Additional Premises covered hereby.

IN WITNESS WHEREOF the parties have caused this Second Notice to be executed under seal effective the day and year first above written.

GRANTOR:

CITY OF DURHAM, NORTH CAROLINA

[SEAL]

By: _____
City Manager

ATTEST:

By: _____
City Clerk

STATE OF NORTH CAROLINA)
)
COUNTY OF DURHAM)

I, a Notary Public of the County and State aforesaid, certify that _____ (the "Signatory") personally came before me this day and acknowledged that she is the City Clerk of the City of Durham, North Carolina and that by authority duly given and as the act of said City, the foregoing instrument was signed in its name by the City Manager of the City of Durham, North Carolina and attested by her as City Clerk of the City of Durham, North Carolina.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

_____ (I have personal knowledge of the identity of the Signatory); **or**

_____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

___ a driver's license *or*

___ in the form of _____); **or**

_____ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the _____ day of _____, 2016.

Notary Public

Print: Name: _____
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: _____
☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

EXHIBIT A

LEGAL DESCRIPTION OF ADDITIONAL PREMISES

RESTROOM UNIT

Lying and being in Durham County, North Carolina, and being more particularly described as follows:

All of that condominium unit (the "*Restroom Unit*") designated as "*Restroom Unit*" of the Diamond View Hotel Condominium (the "*Condominium*") as created by and described in the Declaration of Condominium for Diamond View Hotel Condominium dated November 10, 2015 (the "*Declaration*") and recorded in Book 7821, at Page 702, in the Durham County Registry (the "*Registry*"). The Restroom Unit is also shown and described on the plat and plans of the Condominium on file in Condominium Book 12, Pages 262-275, in the Registry.

As provided in N.C.G.S. §47C-2-104, the description of the Restroom Unit above shall be deemed to incorporate by reference all rights, obligations and interests appurtenant to the Restroom Unit, including without limitation, an undivided interest in the Common Elements of the Condominium, and the right to use the Limited Common Elements of the Condominium that are appurtenant to the Restroom Unit. Capitalized terms used above shall have the meanings given those terms in the Declaration.

EXHIBIT B

ADDITIONAL PERMITTED ENCUMBRANCES

“*Additional Permitted Encumbrances*” means the exceptions listed on Schedule B of the title insurance policy issued by Chicago Title Insurance Company dated December 3, 2015 which are specifically incorporated herein by reference.