

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

**COLLATERAL ASSIGNMENT  
OF LEASE**

THIS COLLATERAL ASSIGNMENT OF LEASE (this "*Assignment*") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF DURHAM, NORTH CAROLINA**, a municipal corporation regularly created and validly existing under the laws of the State of North Carolina ("*Lessee*"), and U.S. Bank National Association, a national banking association ("*Assignee*").

**WITNESSETH**

**WHEREAS**, Lessee granted to Ashley L. Hogewood, 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 the Assignee.

**WHEREAS**, Lessee 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 (as modified and extended, the "*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 Deed of Trust) and securing the Indebtedness (as defined in the Deed of Trust) under an Installment Purchase Contract dated as of January 1, 2007

(as amended, the “*Contract*”) between the Corporation and the Lessee and the Deed of Trust, including future advances which may be made from time to time;

**WHEREAS**, Lessee entered into an Agreement for the Construction of an Annex and Wrapper Building Adjacent to the Durham Performing Arts Center (the “*DPAC*”) 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 “*Lessor*.” In connection with the execution and delivery of the Development Agreement, the Lessor constructed a condominium building adjacent and connecting to the DPAC;

**WHEREAS**, pursuant to the Development Agreement, the Lessee and the Lessor agreed to construct a restroom facility and a new President’s Club, both to be used in connection with the DPAC, 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 Lessor 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 Lessor has transferred ownership of the Restroom Unit to the Lessee pursuant to a Special Warranty Deed dated December 3, 2015 and recorded in Book 7834, Page 854, in the Registry, and the Lessor has granted a leasehold interest in the DPAC Club Unit to the Lessee 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*”) and memorialized in a Memorandum of Lease recorded in Book 7834, Page 872 in the Registry. The legal description of the property covered by the Lease is further described on Exhibit A, attached hereto (such unit and improvements being herein referred to collectively as the “*Subject Property*”); and

**WHEREAS**, the Lessee has agreed to assign to Assignee, and Assignee has agreed to take from Lessee, an assignment of the Lease for collateral purposes, on the terms and conditions set forth herein,

**NOW, THEREFORE**, the parties hereto agree as follows:

1. Assignment. Lessee, for and in consideration of the premises and for the purposes aforesaid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged pursuant to the Collateral Assignment Provisions in Section 33 of the Lease, the Lessee does hereby grant, convey, assign, transfer and set over unto Assignee all

rights, interests and estates of Lessee in, to and under the Lease and the Subject Property, together with all renewals and extensions of the Lease and other agreements and all other leases or agreements that may hereafter be entered into which cover all or any portion of the Subject Property. This is a present transfer to Assignee of all of Lessee's rights to collect and receive rents and charges from approved users, operators, sublessees and permittees. To have and to hold the Lease, and the estate of Lessee thereunder, and the Subject Property, unto Assignee for and during the remainder of the unexpired term thereunder and in any renewals thereof, subject, however, to the rents, covenants, conditions and provisions in the Lease.

2. Representations and Warranties of Lessee. Lessee hereby represents and warrants to Assignee that:

- (a) Lessee has the right to assign the Lease and the rents hereby assigned and no other person or entity has any right, title or interest therein, subject to the provisions of Section 33 of the Lease;
- (b) Lessee has performed and will duly and punctually perform all of the terms, covenants, conditions and warranties of the Lease;
- (c) Lessee has not at any time prior to the date hereof exercised any right to subordinate any Lease to any deed of trust or mortgage or any other encumbrance of any kind;
- (d) Lessee has not executed any prior assignments of the Lease or the rents;
- (e) Lessee has performed no act or executed any other instrument which might prevent Assignee from enjoying and exercising any of its rights and privileges evidenced hereby;
- (f) The Lease is valid and subsisting and in full force and effect and unmodified;
- (g) There are no rent receipts owed to Lessee under the Lease with Lessor; and
- (h) There are no defaults now existing under the Lease and no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a default.

3. Limitation of Assignee's Liability. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Lease by reason of this Assignment or the exercise of rights or remedies hereunder. This Assignment shall not operate to place responsibility upon Assignee for the control, care, management or repair of the Subject Property, nor for the carrying out of any of the terms and conditions of the Lease; nor shall it operate to make Assignee responsible or liable for any waste committed on the Subject Property or for any dangerous or defective condition of the Subject Property, or for any negligence in the

management, upkeep, repair, or control of the Subject Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger.

4. Assignee's Remedies. Lessee will at all times fully perform and comply with all terms, covenants, conditions and warranties imposed on or assumed by it as tenant under the Lease. If Lessee shall fail to do so, Assignee may, but shall not be obligated to, take any action Assignee deems necessary or desirable to prevent or to cure any default by Lessee in the performance of or compliance with any of Lessee's covenants or obligations under the Lease after Assignee has provided Lessee with written notice of the default and a reasonable time within which for Lessee to cure such default. On receipt by Assignee from the Lessor under the Lease of any written notice of default by the tenant thereunder, Assignee may rely thereon and take any action stated above (subject to Assignee's obligation to provide notice to Lessee and an opportunity to cure) to cure the default even though the existence of the default or the nature of the default is questioned or denied by Lessee or by any party on behalf of Lessee. Lessee hereby expressly grants to Assignee, and agrees that Assignee shall have, the absolute and immediate right to enter in and on the Subject Property or any part of them to such extent and as often as Assignee, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Lessee. Assignee may pay and expend such sums of money as Assignee in its sole discretion deems necessary to cure any such default by Lessee, and Lessee hereby agrees to pay to Assignee, promptly following demand by Assignee and reasonable evidence to Lessee of such expenses, and demand, all such sums so paid and expended by Assignee, together with interest thereon from the date of such payment at the default rate for the Indebtedness. All sums so paid and expended by Assignee and the interest thereon shall be added to the balance due on the Indebtedness and be secured by this Assignment.

5. No Waiver. Nothing contained herein and no act done or omitted by Assignee pursuant to the powers and rights granted hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Deed of Trust or the Contract or a waiver or curing of any default hereunder or under the Deed of Trust or the Contract, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Deed of Trust or the Contract.

6. Term of Assignment. If the Indebtedness secured hereby and by the Deed of Trust are paid as the same become due and payable and if all of the covenants, warranties, undertakings and agreements made in the Deed of Trust, the Contract and in this Assignment are kept and performed, this Assignment shall become null and void and of no further force and effect but the affidavit, certificate, letter or statement of any officer, agent or attorney of Assignee showing any portion of the Indebtedness remains unpaid or any of such covenants, warranties, undertakings and agreements have not been kept or performed shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon.

7. Severability. A determination that any provision of this Assignment is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Assignment to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

8. No Merger. Notwithstanding (a) the fact that any Lease or the leasehold estate created thereby may be held, directly or indirectly, by or for the account of any person or entity that shall have an interest in the fee estate of the Subject Property; (b) the operation of law; or (c) any other event, the Lessee's leasehold estate under such Lease shall not merge into the fee estate and the Lessee shall remain obligated under such Lease as assigned by this Assignment.

9. Binding. The terms, provisions, representations, and warranties herein contained shall inure to the benefit of, and bind, the parties hereto and their respective heirs, representatives, successors and assigns. All references in this Assignment to Lessee or Assignee shall be deemed to include all such heirs, representatives, successors and assigns of such respective party.

10. Counterparts. This Assignment may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument.

11. No Third Party Beneficiaries. It is expressly agreed by the parties hereto that this Assignment shall not be construed or deemed made for the benefit of any third party or parties.

*IN WITNESS WHEREOF*, the parties hereto have executed this Assignment as of the date first written above.

*[SIGNATURES APPEAR ON FOLLOWING PAGES]*

LESSEE:

**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)**

ASSIGNEE:

**U.S. BANK NATIONAL ASSOCIATION**, as Trustee

By: \_\_\_\_\_  
Vice President

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ (the "Signatory") personally came before me this day and acknowledged that (s)he is the Vice President of U.S. Bank National Association, and that by authority duly given and as the act of U.S. Bank National Association, the foregoing instrument was signed in its name by him(her).

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 he voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.

Witness my hand and official stamp or seal this \_\_\_\_\_ 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**

#### **DPAC CLUB UNIT**

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

All of that condominium unit (the “*DPAC Club Unit*”) designated as “*DPAC Club 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 DPAC Club 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 DPAC Club Unit above shall be deemed to incorporate by reference all rights, obligations and interests appurtenant to the DPAC Club 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 DPAC Club Unit. Capitalized terms used above shall have the meanings given those terms in the Declaration.