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**PARKING LEASE AGREEMENT  
FOR PARKING IN THE NORTH PARKING GARAGE BETWEEN  
  
THE CITY OF DURHAM  
  
AND  
  
AMERICAN CAMPUS, LLC**

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*Parking Lease Agreement for Parking in the North Parking Garage between the City of Durham and American Campus, LLC*

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97                   **PARKING LEASE AGREEMENT FOR PARKING FOR THE NORTH GARAGE**  
98

99                   **THIS AGREEMENT** (this “Lease” or this “Lease Agreement”) is dated, made, and entered into  
100 as of \_\_\_\_\_, 20\_\_ (“Effective Date”), by and between the **CITY OF DURHAM**, a North  
101 Carolina municipal corporation (“Landlord”), and **AMERICAN CAMPUS, LLC**, a North Carolina  
102 limited liability company (“Tenant”).  
103

104   **WITNESSETH:**  
105

106                   **WHEREAS**, Landlord is owner of a multi-story parking facility known as the North Garage and  
107 located at 305 Pettigrew St. in the downtown area of the City of Durham (the “Parking Facility”);  
108

109                   **WHEREAS**, Landlord and American Campus, LLC entered into a certain “Parking Lease  
110 Agreement for the North Garage,” dated August 22, 2003 (the “2003 Parking Lease Agreement”),  
111 pursuant to which American Campus, LLC leased from the City approximately 569 parking spaces in the  
112 Parking Facility (the “2003 Parking Lease Agreement Leased Spaces”);  
113

114                   **WHEREAS**, Landlord wishes to enter into this Lease to lease certain parking spaces in the  
115 Parking Facility to Tenant;  
116

117                   **WHEREAS**, the acceptance of this Lease for and on behalf of Landlord has been duly approved  
118 by the Durham City Council.  
119

120                   **NOW THEREFORE**, in consideration of the mutual covenants and promises contained in this  
121 Lease and for other good and valuable consideration, the parties agree as follows:  
122

123   **ARTICLE I**  
124

125   **DEFINITIONS**  
126

127                   **Section 1.1     Defined Terms.** Capitalized terms used in this Lease shall have the following  
128 meanings:

129  
130                   (a)     “American Tobacco Complex” means that group of buildings, other improvements and  
131 that land formerly used by the American Tobacco Company for the manufacture, distribution and sale of  
132 various tobacco products and other products located in Durham, North Carolina, including buildings  
133 known as the Fowler, Crowe, Strickland, Reed, Washington, Old Bull, Lucky Strike, Noell and Hill  
134 buildings and as the Power Plant and Coal Shed which complex is bounded by Julian Carr (or the former  
135 public right-of-way known as Julian Carr Street), Pettigrew, Blackwell and Willard Streets, including the  
136 land which is contiguous to such buildings. The American Tobacco Complex also includes a 1.48 acre  
137 tract of land bordered on three sides by Jackson, Carr and Pettigrew Streets.

138                   (b)     “Development Agreement” means that certain “Development Agreement By and Among  
139 American Campus, LLC, Capitol Broadcasting Company, Inc., the City of Durham, and Bovis Lend  
140 Lease, Inc.,” dated June 16, 2003, as amended from time to time.

141                   (c)     “Exclusive Times” means 24-hours per day, 7 days per week exclusive of Special Events  
142 Hours.

*Parking Lease Agreement for Parking in the North Parking Garage between the City of Durham and American Campus, LLC*

143 (d) “Leased Spaces” means the parking spaces in the Parking Facility that are leased to  
144 Tenant pursuant to this Lease. The Leased Spaces include the entire inventory of parking spaces in the  
145 Parking Facility, exclusive of the TTA Spaces, the Lucky Strike/City Existing Leased Spaces, and the  
146 Visitor Spaces. The Leased Spaces also will include the Lucky Strike/City Existing Leased Spaces, if  
147 either the City assigns the City/SBER Lucky Strike Parking Lease to Tenant or if SBER Lucky Strike,  
148 LLC accepts Tenant’s offer to sublease parking spaces to SBER Lucky Strike, LLC pursuant to  
149 Subsection 2.3(d) (ii).

150 (e) “Lucky Strike Owner” means the owner of the Lucky Strike building within the  
151 American Tobacco Complex (currently SBER Lucky Strike, LLC).

152 (f) “Lucky Strike Owner/City Existing Parking Lease” means that certain “Parking Lease  
153 Agreement between the City of Durham and SBER Lucky Strike, LLC,” dated February 1, 2008, which  
154 agreement leases thirty (30) parking spaces in the Parking Facility to the Lucky Strike Owner. These  
155 parking spaces are referred to herein as the “Lucky Strike/City Existing Leased Spaces”.

156 (g) “Lucky Strike Owner/AC LLC Existing Parking Sublease” means that certain “Parking  
157 Sublease,” dated December 29, 2005, between American Campus, LLC and the Lucky Strike Owner for  
158 use of ninety (90) of the 2003 Parking Lease Agreement Leased Spaces in the Parking Facility.

159 (h) “Old Bull/Noell Owner” means, collectively, the owner of the Old Bull building within  
160 the American Tobacco Complex (currently SBER Old Bull, LLC) and the owner of the Noell building  
161 within the American Tobacco Complex (currently SBER Noell, LLC).

162 (i) “Old Bull/Noell Owner/AC LLC Existing Parking Sublease” means that certain “Parking  
163 Sublease,” dated December 29, 2005, between Tenant and the Old Bull/Noell Owner for use of ninety  
164 (90) of the 2003 Parking Lease Agreement Leased Spaces in the Parking Facility, which agreement was  
165 later amended pursuant to that certain “First Amendment to the Parking Sublease,” dated December 19,  
166 2007, and later amended to increase the number of 2003 Parking Lease Agreement Leased Spaces to one  
167 hundred fifteen (115) pursuant to that certain “Second Amendment to Parking Sublease,” dated June 29,  
168 2011.

169 (j) “Parking Charge” or “Parking Charges” means all rates, fees, charges, interest, penalties,  
170 and other amounts charged for or arising out of the use of the parking spaces in the Parking Facility.

171 (k) “Parking Facility” means the approximately 1,311-space multi-story parking facility  
172 owned by Landlord located at 305 Pettigrew Street, Durham, N. C.

173 (l) “Parking Manager” means American Campus, LLC, or its successor.

174 (m) “Residential Hours” means from 6:30 p.m. through 7:00 a.m., Monday through Thursday  
175 and beginning at 6:30 p.m. on Friday through Monday at 7:00 a.m.

176 (n) “Residential Leased Spaces” means parking spaces available for residents of downtown  
177 Durham during the Residential Hours.

178 (o) “Residential Permits” means permits that allow residents to use the Parking Facility  
179 during the Residential Hours.

180 (p) “Rules and Regulations” means the rules and regulations established by Landlord  
181 governing use of the Parking Facility by Tenant and members of the general public, as amended or  
182 modified from time to time by Landlord.

183 (q) “Special Events” means events occurring in the vicinity of the Parking Facility where  
184 attendance is expected to exceed 1,000 people.

185 (r) “Special Events Hours” means between the hours 6:30 p.m. through 7:00 a.m., Monday  
186 through Thursday, and from 6:30 p.m. Friday through 7:00 a.m. Monday.

187 (s) “TTA Spaces” means the approximately 150 parking spaces in the Parking Facility that  
188 will be the subject of an agreement between Landlord and the Research Regional Public Triangle Transit  
189 Authority or the Triangle Transit Authority.

190 (t) “Visitor Spaces” means the parking spaces located on the 1<sup>st</sup> level of the Parking Facility,  
191 which are made available for general public visitor parking.

192  
193 **ARTICLE II**

194  
195 **GRANT OF RIGHTS**

196  
197 **Section 2.1 Grant.** Landlord hereby leases to Tenant, and Tenant hereby leases from  
198 Landlord, during the Term, the Leased Spaces in accordance with this Lease, together with the right to  
199 use (if part of the subject Parking Facility) all driveways, aisles, elevators, stairways, lanes, sidewalks,  
200 entrances, curb cuts and other areas of the Parking Facility reasonably necessary or desirable for the use  
201 of the Leased Spaces and for pedestrian and vehicular ingress, egress, and regress to and from the Parking  
202 Facility. The term of this Lease shall commence on the first day of the first full month following the date  
203 upon which the parties have fully executed this Lease (the “Commencement Date”). The rights and  
204 obligations of the parties under this Lease shall not commence until the Commencement Date, including  
205 Tenant’s obligations hereunder to pay Rent. During the Term, Tenant shall, and may peacefully have,  
206 hold and enjoy the Leased Spaces and the other rights granted to Tenant hereunder, subject to the other  
207 terms of this Lease. The commitment from the City to lease these spaces will end upon the expiration of  
208 the Term.  
209

210 **Section 2.2 Subject to 2003 Parking Lease Agreement.**

211 (a) If this Lease is executed by American Campus, LLC and the City of Durham, the 2003  
212 Parking Lease Agreement shall be terminated and replaced in its entirety with this new Lease Agreement  
213 upon the Effective Date. Notwithstanding the foregoing, if the Lucky Strike Owner does not accept the  
214 offer to sublease ninety (90) parking spaces as provided in Subsection 2.3(d), then the 2003 Parking Lease  
215 Agreement will remain in effect, but for the limited purpose of allowing American Campus, LLC to fulfill  
216 its existing obligations to the Lucky Strike Owner pursuant to the Lucky Strike Owner/AC LLC Existing  
217 Parking Sublease. In addition, if the Lucky Strike Owner does not accept the offer to sublease thirty (30)  
218 parking spaces as provided in Subsection 2.3(d), then the Lucky Strike Owner/City Existing Parking  
219 Lease will remain in effect unless earlier terminated in accordance with the Lucky Strike Owner/City  
220 Existing Parking Lease. Further, if the Old Bull/Noell Owner does not accept the offer to sublease  
221 parking spaces as provided in Subsection 2.3(e), then the 2003 Parking Lease Agreement will remain in  
222 effect, but for the limited purpose of allowing American Campus, LLC to fulfill its existing obligations to  
223 the Old Bull/Noell Owner pursuant to the Old Bull/Noell Owner/AC LLC Existing Parking Sublease.

224 (b) Alternatively, if the City were to execute this Lease with an individual or entity other  
225 than American Campus, LLC as a result of a successful upset bid during the Upset Bid process, which  
226 individual or entity would therefore become the Tenant under this Lease, then the City will assign the  
227 2003 Parking Lease Agreement to Tenant and the Tenant shall accept an assignment of the 2003 Parking  
228 Lease Agreement from the City, provided, however, such assignment shall not relieve City of its duties or  
229 obligations under the 2003 Parking Lease Agreement. In addition, beginning with the effective date of  
230 any such assignment, American Campus, LLC, as tenant under the 2003 Parking Lease Agreement, shall  
231 pay any rent due under the 2003 Parking Lease Agreement to Tenant. Further, if the Lucky Strike Owner  
232 does not accept the offer to sublease parking spaces as provided in Subsection 2.3(d) as to the Lucky  
233 Strike/City Existing Leased Spaces, then the Lucky Strike Owner/City Existing Parking Lease will  
234 remain in effect unless earlier terminated in accordance with the Lucky Strike Owner/City Existing  
235 Parking Lease.

236 **Section 2.3 Leased Spaces.**

237  
238  
239 Tenant shall have exclusive use of and access to the Leased Spaces during the Exclusive Times  
240 subject to the Special Events parking needs of the Landlord as described in Subsection 2.3(b).

241  
242 (a) Tenant Rights in Leased Spaces – Tenant shall have the right (without the consent of  
243 Landlord) to grant licenses (or parking permits or subleases, as applicable) to third parties for the use of  
244 the Leased Spaces during the Exclusive Times. (hereinafter any such third party will be referred to as  
245 “Sublessee”). Except as provided in Subsections 2.3(c)(iii)(z), 2.3(d)(ii), and 2.3(e)(ii), Tenant will have  
246 the right in its sole discretion to determine the parking rate, if any, it will charge third (3<sup>rd</sup>) parties for use  
247 of the Parking Facility, provided, however, that the parking rate shall not exceed the Basic Rent Tenant is  
248 required to pay to Landlord under this Lease. Tenant will retain any revenues collected as a result of such  
249 subleases or permits. Tenant will have the right to grant licenses (or parking permits or subleases, as  
250 applicable) to Sublessees for the use of the Leased Spaces in an amount that exceeds the number of  
251 Leased Spaces. In addition, in granting licenses (or parking permits or subleases) to third parties, at least  
252 seventy percent (70%) of the licenses (or parking permits or subleases), will be used by the Tenant,  
253 Tenant’s employees, residents, or tenants or tenant employees of Property Owned by Tenant. For the  
254 purpose of this requirement, the term “Property Owned by Tenant” means property then owned by Tenant  
255 or a Tenant Affiliate (as defined below), or property that Tenant or a Tenant Affiliate previously owned  
256 and had transferred or had conveyed to a third party. For the purpose of this requirement, the term  
257 “Tenant Affiliate” means any parent or subsidiary of Tenant, or any subsidiary of Tenant’s parent or a  
258 Tenant subsidiary.

259  
260 (b) Special Events Use -- (i) Landlord will have the right to use the Parking Facility to satisfy  
261 the reasonable parking requirements of Special Events. During the Special Events Hours, the parking  
262 needs of Special Events will take priority over Tenant’s parking needs and Tenant or its Sublessees will  
263 be entitled to use the Parking Facility only to the extent parking spaces are available and likely not to be  
264 required for the Special Event, except that Landlord will continue to make available during the Special  
265 Events Hours a number of parking spaces for residents with a Residential Permit for the Parking Facility,  
266 which number will be equal to the lesser of (a) the number of Residential Permits then being used by  
267 Tenant or Tenant’s Sublessees, or (b) 300.

268 (ii) If a Special Event is scheduled to start during the Exclusive Times, Landlord will be entitled  
269 to use the Parking Facility for the Special Event, but only to the extent it can reasonably be expected that  
270 Tenant and its Sublessees will not have a need to use all of the Leased Spaces, which number of available  
271 Leased Spaces Landlord and Tenant will agree upon in advance of the Special Event. Tenant’s parking

272 needs will take priority over Landlord's Special Events needs if the Special Event is scheduled during  
273 times other than the Special Event Hours.

274 (iii) When Landlord anticipates it will require use of the Parking Facility for a Special Event, it  
275 will provide to Tenant as much notice as reasonably possible given the circumstances of the Special  
276 Event. Landlord and Tenant acknowledge that patrons of Special Events likely will seek access to the  
277 Parking Facility for up to two hours prior to the start time of the Special Event (the "Pre-Event Time  
278 Period"). Landlord will have the right to commence parking operations for Special Events at any time  
279 during the Pre-Event Time Period, provided, however, that (a) Tenant and Tenant's Sublessees will be  
280 entitled to access the Parking Facility during the Pre-Event Time Period without the payment of  
281 additional parking fees, and (b) neither Tenant nor any Sublessee of Tenant will be required to move any  
282 vehicle parked in a Leased Space merely because the Special Event commences. Members of the general  
283 public using the Parking Facility for a Special Event will be entitled to remain in the Parking Facility for  
284 up to two (2) hours after a Special Event concludes.

285 (c) Residential Use –(i) If equipment, hardware and software is installed in the Parking  
286 Facility that allows the Landlord or Parking Manager to control access to the Parking Facility and to track  
287 the time when vehicles enter and exit the Parking Facility, which equipment, hardware and software  
288 Landlord and Tenant must agree upon (the "Parking Control Equipment"), Tenant will have the right for  
289 no additional Rent to 300 Residential Permits for use of the Parking Facility during the Residential Hours.  
290 Tenant will have the right to grant Residential Permits to Sublessees in a number that does not exceed the  
291 300 Residential Permits to which Tenant is entitled (i.e. no oversubscription) (the "Residential Leased  
292 Spaces"). Except as provided in Subsection 2.3(c)(iii)(z), Tenant will have the right in its sole discretion  
293 to determine the parking rate, if any, it will charge third (3<sup>rd</sup>) parties for Residential Permits, provided,  
294 however, Tenant will not charge a parking rate that will exceed the monthly rate established by the City  
295 of Durham for residential users of the Parking Facility, or, if the City has not established any such rate for  
296 the Parking Facility, then the rate established by the City of Durham for residential users of other City-  
297 owned parking facilities during hours similar to the Residential Hours. If the City has not established a  
298 monthly rate for residential users in either the Parking Facility or other City-owned parking facilities, then  
299 the monthly parking rate will be the same as the Basic Rent. Tenant will retain any revenues generated by  
300 the 300 Residential Permits to which it is entitled.  
301

302 (ii) Within thirty (30) days of the date the Parking Control Equipment is operational, Tenant  
303 will offer to the Old Bull/Noell Owner the opportunity to sublease one hundred, sixty-six (166)  
304 Residential Leased Spaces (from the 300 Residential Permits allotted to Tenant) for use of persons  
305 residing in the Old Bull or Noell buildings (the "Old Bull/Noell Residential Leased Spaces") during the  
306 Residential Hours. The offer will provide to the Old Bull/Noell Owner sixty (60) days in which to accept  
307 the offer in writing. If the Old Bull/Noell Owner provides to Tenant a timely written acceptance, Tenant  
308 will enter into a sublease with the Old Bull/Noell Owner, which sublease will be in a form substantially  
309 similar to Exhibit A (the "Old Bull/Noell Residential Parking Sublease") and will incorporate the terms of  
310 this subparagraph and subparagraph (iii). If the Old Bull/Noell Owner fails to provide to Tenant a written  
311 acceptance within sixty (60) days, Tenant shall have no obligation to enter into a sublease with the Old  
312 Bull/Noell Owner for the Old Bull/Noell Residential Leased Spaces.

313 (iii) Any sublease granted pursuant to subsections (i) or (ii) above shall be on the same terms and  
314 conditions as this Lease Agreement except as provided in subsections (i) and (ii) and the following:

315 (x) the Residential Leased Spaces and the Old Bull/Noell Residential Leased  
316 Spaces shall be on a non-reserved and non-exclusive basis, and any sublessness of the  
317 Residential Leased Spaces and the Old Bull/Noell Owner will have no right to grant

318 Residential Permits to third parties for the use of the Leased Spaces in an amount that  
319 exceeds the number of Residential Permits Tenant issues to the Residential sublessee or  
320 the Old Bull/Noell Owner

321 (y) the Residential Leased Spaces and the Old Bull/Noell Residential Leased  
322 Spaces shall be subject to the Special Event needs of Landlord as specified in Subsection  
323 2.3(b); and

324 (z) the Parking Charge for the Old Bull/Noell Residential Leased Spaces  
325 will be the monthly rate established by the City of Durham for residential users of the  
326 Parking Facility, or, if the City has not established any such rate for the Parking Facility,  
327 then the rate established by the City of Durham for residential users of other City-owned  
328 parking facilities during hours similar to the Residential Hours. If the City has not  
329 established a monthly rate for residential users in either the Parking Facility or other City-  
330 owned parking facilities, then the monthly parking rate will be the same as the Basic  
331 Rent. .

332 (iv) Nothing contained in this Lease Agreement shall be construed as limiting the right of Tenant,  
333 in its capacity as sublandlord to the Old Bull/Noell Owner, to exercise all rights and remedies provided at  
334 law or in equity, without limitation, including the right to terminate the Old Bull/Noell Residential  
335 Parking Sublease, in the event the Old Bull/Noell Owner commits a material breach of the Old Bull/Noell  
336 Residential Parking Sublease. In addition, nothing contained in this Lease Agreement, shall be construed  
337 as limiting the right of Tenant to terminate the parking privileges or the parking permit of any person who  
338 fails to comply with the Rules and Regulations.  
339

340 (d) Lucky Strike Owner Sublease – (i) Landlord and Tenant acknowledge that Landlord and  
341 the Lucky Strike Owner previously entered into the Lucky Strike Owner/City Existing Parking Lease.  
342 Landlord and Tenant further acknowledge that American Campus, LLC and the Lucky Strike Owner  
343 previously entered into the Lucky Strike Owner/AC LLC Existing Parking Sublease. It is the intent of the  
344 Landlord and Tenant that Tenant will offer to the Lucky Strike Owner the option to replace the Lucky  
345 Strike Owner/City Existing Parking Lease with a new sublease of this Lease Agreement. It is the  
346 additional intent of the Landlord and Tenant that Tenant will offer to the Lucky Strike Owner the option  
347 to replace the Lucky Strike Owner/AC LLC Existing Parking Sublease with a new sublease of this Lease  
348 Agreement.  
349

350 (ii) Tenant shall offer to the Lucky Strike Owner the opportunity to sublease thirty (30) of the  
351 Leased Spaces on the same terms and conditions of this Lease except that the hours of usage for these  
352 parking spaces will be Monday through Friday, 7:00 a.m. to 6:30 p.m. and Saturday, 9:00 a.m. through  
353 12:00 p.m. and the Lucky Strike Owner will have no right to grant licenses (or parking permits or  
354 subleases, as applicable) to third parties for the use of the Leased Spaces in an amount that exceeds the  
355 number of permits Tenant issues to the Lucky Strike Owner. Tenant will provide to the Lucky Strike  
356 Owner a written offer within thirty (30) days of the Effective Date, which offer will provide to the Lucky  
357 Strike Owner sixty (60) days in which to accept the offer in writing. If the Lucky Strike Owner provides  
358 to Tenant a timely written acceptance, Tenant will enter into a sublease with the Lucky Strike Owner,  
359 which sublease will be in a form substantially similar to Exhibit B (the “Lucky Strike Parking Sublease”),  
360 and the City and the Lucky Strike Owner will terminate the Lucky Strike Owner/City Existing Parking  
361 Lease. In addition, Tenant shall offer to the Lucky Strike Owner the opportunity to sublease ninety (90) of  
362 the Leased Spaces on the same terms and conditions of this Lease except that the hours of usage for these  
363 parking spaces will be Monday through Friday, 7:00 a.m. to 6:30 p.m. and Saturday, 9:00 a.m. through  
364 12:00 p.m. and the Lucky Strike Owner will have no right to grant licenses (or parking permits or

365 subleases, as applicable) to third parties for the use of the Leased Spaces in an amount that exceeds the  
366 number of permits Tenant issues to the Lucky Strike Owner. Tenant will provide to the Lucky Strike  
367 Owner a written offer within thirty (30) days of the Effective Date , which offer will provide to the Lucky  
368 Strike Owner sixty (60) days in which to accept the offer in writing. If the Lucky Strike Owner provides  
369 to Tenant a timely written acceptance, Tenant will enter into a sublease with the Lucky Strike Owner,  
370 which sublease will be in a form substantially similar to Exhibit B (the “Lucky Strike Parking Sublease”),  
371 and the Lucky Strike Owner will terminate the Lucky Strike Owner/AC LLC Existing Parking Sublease.  
372 If the Lucky Strike Owner fails to provide to Tenant a written acceptance of either offer within sixty (60)  
373 days, Tenant shall have no obligation to enter into the new sublease with the Lucky Strike Owner as  
374 anticipated by this subparagraph.

375  
376 (iii) Nothing contained in this Lease Agreement shall be construed as limiting the right of  
377 Tenant, in its capacity as sublandlord to the Lucky Strike Owner pursuant to the Lucky Strike Parking  
378 Sublease, to exercise all rights and remedies provided at law or in equity without limitation, including the  
379 right to terminate the Lucky Strike Parking Sublease, in the event the Lucky Strike Owner commits a  
380 material breach of the sublease. In addition, nothing contained in this Lease Agreement, shall be  
381 construed as limiting the right of Tenant to terminate the parking privileges or the parking permit of any  
382 person who fails to comply with the Rules and Regulations.  
383

384 (e) Old Bull/Noell Owner Sublease – (i) Landlord and Tenant acknowledge that American  
385 Campus, LLC and the Old Bull/Noell Owner previously entered into the Old Bull/Noell Owner/AC LLC  
386 Existing Parking Sublease. It is the intent of the Landlord and Tenant that Tenant will offer to the Old  
387 Bull/Noell Owner the option to replace the Old Bull/Noell Owner/AC LLC Existing Parking Sublease  
388 with a new sublease of this Lease Agreement.  
389

390 (ii) Tenant shall offer to the Old Bull/Noell Owner the opportunity to sublease one hundred  
391 fifteen (115) of the Leased Spaces, on the same terms and conditions of this Lease except that the hours of  
392 usage for these parking spaces will be Monday through Friday, 7:00 a.m. to 6:30 p.m. (the “Old  
393 Bull/Noell Commercial Spaces”), and the Old Bull/Noell Owner will have no right to grant licenses (or  
394 parking permits or subleases, as applicable) to third parties for the use of the Leased Spaces in an amount  
395 that exceeds the number of permits Tenant issues to the Old Bull/Noell Owner. Tenant will provide to the  
396 Old Bull/Noell Owner a written offer for the Old Bull/Noell Commercial Spaces within thirty (30) days  
397 of the Effective Date, which offer will provide to the Old Bull/Noell Owner sixty (60) days in which to  
398 accept the offer in writing. If the Old Bull/Noell Owner provides to Tenant a timely written acceptance,  
399 Tenant will enter into a sublease with the Old Bull/Noell Owner, which sublease will be in a form  
400 substantially similar to Exhibit B (the “Old Bull/Noell Commercial Parking Sublease”), and the Old  
401 Bull/Noell Owner will terminate the Old Bull/Noell Owner/AC LLC Existing Parking Sublease. If the  
402 Old Bull/Noell Owner fails to provide to Tenant a written acceptance within sixty (60) days, Tenant shall  
403 have no obligation to enter into a new sublease with the Old Bull/Noell Owner.  
404

405 (iii) Nothing contained in this Lease Agreement shall be construed as limiting the right of  
406 Tenant, in its capacity as sublandlord to the Old Bull/Noell Owner, to exercise all rights and remedies  
407 provided at law or in equity, without limitation, including the right to terminate the Old Bull/Noell  
408 Commercial Parking Sublease, in the event the Old Bull/Noell Owner commits a material breach of the  
409 Old Bull/Noell Commercial Parking Sublease. In addition, nothing contained in this Lease Agreement,  
410 shall be construed as limiting the right of Tenant to terminate the parking privileges or the parking permit  
411 of any person who fails to comply with the Rules and Regulations.  
412

413 (f) The rights of Tenant under this Section 2.3 are subject to Landlord’s rights under Section  
414 6.3 of this Lease.

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(g) Visitor Spaces

(i) Landlord and Tenant agree that the Visitor Spaces will remain free public parking available to the general public on a first-come, first-served basis. Landlord and Tenant also agree that the Visitor Spaces will be maintained for short-term use only and shall not be subject to long-term leases or month to month leases.

(ii) Notwithstanding the foregoing, if the Parking Manager purchases or installs, at its sole cost and expense, the necessary parking equipment that would be needed to allow the Parking Manager to track the time when vehicles park in the Visitor Spaces and to charge for the Visitor Spaces, which equipment is subject to the City’s reasonable approval, then the Parking Manager shall have the right to assess Parking Charges on vehicles parking in the Visitor Spaces using the short-term parking rates established by the City for the Parking Facility.

**ARTICLE III**

**TERM**

**Section 3.1 Term.** The term of this Lease shall commence at 12:01 A.M. on the Commencement Date, defined in Section 2.1, and shall continue for 10 years, ending at 11:59 P.M. on the day preceding the tenth anniversary of the Commencement Date, unless earlier terminated in accordance with the terms of this Lease, together with any and all renewals of the initial 10-year term (the “Term”).

**Section 3.2 Renewal.** This Lease shall automatically renew for six (6) additional five (5) year terms unless (i) an Event of Default has occurred that has not been cured at the time of such renewal, or (ii) Tenant provides to Landlord written notice that it desires not to renew this Lease, which notice Tenant shall provide at least 180 days prior to the expiration of the current Term. Unless otherwise specified herein, such renewal shall be on the same terms and conditions as this Lease.

**ARTICLE IV**

**RENT**

**Section 4.1 Basic Rent and Additional Rent.** Tenant covenants and agrees to pay to Landlord all of the following (all of which is collectively referred to as “Rent”):

(a) Monthly basic rent (“Basic Rent”) in the sum of \$55.00 for each Leased Space, to be paid in advance on the first day of each month during the Term for the upcoming month or portion thereof, provided that Rent for the last calendar month of the Term or portion thereof shall be due and payable on the last day of the Term.

(b) Additional rent (“Additional Rent”) in the amount of any payment referred to as such in any portion of this Lease that accrues while this Lease is in effect, which shall include any and all charges or other amounts that Tenant is obligated to pay Landlord under this Lease other than Basic Rent.

(c) This Section 4.1 is subject to Section 4.5(b).

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**Section 4.2 Adjustment of Basic Rent.** Landlord may, in its sole discretion, change the Basic Rent at any time during the Term by giving Tenant no less than thirty (30) days prior written notice. In addition, Landlord may, in its discretion, establish a Basic Rent for rooftop parking in the Parking Facility that is equal to or less than the Basic Rent for covered parking in the Parking Facility, and Landlord may, in its discretion, establish a Basic Rent for reserved or assigned parking spaces that is equal to or greater than the Basic Rent for similar spaces that are not reserved or assigned. Notwithstanding the foregoing, no Basic Rent established by Landlord will exceed the lesser of (i) the Maximum Parking Rate, which rate is shown for each applicable year of the Term in attached Exhibit C, (the “Maximum Parking Rate”), or (ii) Fair Market Value, which is defined below in Section 4.3 of this Lease. Notwithstanding anything to the contrary in this Lease, changes to the Basic Rent made pursuant to this Section shall not require a written amendment to this Lease and shall be deemed effective upon Tenant’s receipt of Landlord’s notice as required in this Section.

**Section 4.3 Nondiscriminatory Pricing; Fair Market Value.** In the exercise of its discretion in establishing the Basic Rent, Landlord shall not discriminate against Tenant by establishing Parking Charges that are inconsistent with or different from the monthly parking charges levied by Landlord for other structured parking facilities in the City of Durham that are owned or operated by Landlord. If the City of Durham ever sells the Parking Facility and ceases to be the Landlord hereunder, then during the time period that the City of Durham is not the owner of the Parking Facility, “Fair Market Value”, for the purpose of Sections 4.2 and 4.3 means the parking rate set by the City of Durham for monthly parking in other parking facilities owned by or operated by the City of Durham.

**Section 4.4 Payment of Rent.**

(a) Tenant shall pay the Basic Rent and all Additional Rent promptly when due, in cash or by check, in lawful money of the United States of America on the first day of each month during the Term, without notice or demand, payable to Landlord and delivered to its offices at the address as stated in this Lease or to such other person and place as may be designated by written notice from Landlord to Tenant from time to time. The amount paid by Tenant shall be without deduction, diminution, abatement, counterclaim, or set-off of any amount or for any reason whatsoever, except as permitted by the terms of this Lease. If Tenant presents to Landlord more than twice during the Term checks or drafts not honored by the institution upon which they are issued, then Landlord may require that future payments of Rent and other sums thereafter payable be made by certified or cashier’s check.

(b) If the Commencement Date is other than the first day of a calendar month or if this Lease terminates on other than the last day of a calendar month, then the Rent for such month or months shall be prorated and paid in advance. The payment for such prorated month shall be calculated by multiplying the Rent for such month by a fraction, the numerator of which shall be the number of days of the Term occurring during said commencement or termination month, as the case may be, and the denominator of which shall be 30.

**Section 4.5 Late Charges.** Other remedies for non-payment of Rent notwithstanding, any Rent that is not paid within 10 days after the due date shall accrue interest at the rate of two percent (2%) higher than the rate announced by Bank of America (or its successor) from time to time as its prime rate (but in no event higher than the maximum rate allowed by law), until paid in full, which interest shall be deemed Additional Rent. If there is no prime rate announced by Bank of America or its successor that can reasonably be used to derive the interest rate for purpose of this Section, then the interest rate on said late installments shall be ten percent (10%) per year but not exceeding the maximum rate allowed by law.



563 to any obligation on Tenant’s behalf to repair or maintain the Parking Facility or any of the Leased  
564 Spaces.

565  
566 **Section 6.2 Services.** Landlord shall operate the Parking Facility or cause the Parking  
567 Facility to be operated in a first-class, efficient and proper businesslike manner consistent with industry  
568 standards for the operation of comparable parking facilities in the Raleigh-Durham area that are operated  
569 as monthly and/or hourly parking facilities.

570  
571 **Section 6.3 Right of Access; Duty to Provide Substitute Parking.**(a) Landlord may  
572 enter the Leased Spaces at any time during the Term to perform Landlord’s obligations under this Lease,  
573 to repair and maintain the Parking Facility and Leased Spaces, to exercise Landlord’s rights under this  
574 Lease, and to enforce Tenant’s obligations under this Lease. In addition to the rights of Landlord  
575 specified in this Section 6.3, Landlord shall also have the right to close Leased Spaces on a temporary  
576 basis in order to accommodate improvements to the Parking Facility, provided, that if Landlord closes  
577 any Leased Spaces (temporarily) as is permitted under this Section 6.3, then Landlord shall be obligated  
578 to provide an equal number of replacement spaces reasonably near the Parking Facility subject to  
579 availability.

580  
581 (b) If Landlord requires the closure of any portion of the Parking Facility on a temporary  
582 basis in order to perform its obligations under this Lease or to repair and maintain the Parking Facility or  
583 to exercise its rights under subsection (a) above, so that Tenant is unable to use, in a commercially  
584 reasonable manner, the leasehold interest granted to Tenant by Section 2.1 of this Lease, Landlord shall  
585 (i) provide Tenant with as much prior notice as is practical under the circumstances, but, except in case of  
586 emergency, at least twelve (12) hours, (ii) use commercially reasonable efforts to complete its work as  
587 expeditiously as reasonably possible and to restore Tenant’s use of the Parking Facility and Leased  
588 Spaces, and (iii) Landlord will use all reasonable efforts to provide substitute spaces in an alternate  
589 location, in structured parking facilities or on surface lots, reasonably near the Parking Facility (any such  
590 substitute or alternate space shall hereinafter be called a “Substitute Space”). To the extent any such  
591 Leased Spaces are closed for the reasons described in this Section 6.3(b), then Rent shall abate with  
592 respect to any such Leased Space; provided, however, that to the extent Landlord provides Tenant with  
593 Substitute Spaces, then Rent shall not abate. This Section 6.3(b) does not apply to closure resulting from  
594 damage caused by fire or other casualty.

595  
596 **Section 6.4 Covenants Not Covenants of Officials Individually.** No covenant, stipulation,  
597 obligation, or agreement by Landlord contained in this Lease shall be deemed to be a covenant,  
598 stipulation, obligation, agreement, or personal liability of any present or future officer, official, agent, or  
599 employee of Landlord in such person’s individual capacity.

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## ARTICLE VII

602

### TENANT’S COVENANTS

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605 **Section 7.1 Claims and Demands.** Tenant shall notify Landlord of any claim, demand, or  
606 charge asserted or proposed to be asserted against or upon the Parking Facility or Leased Spaces within  
607 five (5) days of receiving notice thereof.

608

609           **Section 7.2     Compliance with Laws and Contracts.** Tenant shall comply with all applicable  
610 federal, State, and local statutes, regulations, ordinances, orders, permits, licenses, and requirements, as  
611 they may be amended, changed, or adopted from time to time, relating to Tenant's duties and obligations  
612 under this Lease. Tenant shall comply with the Rules and Regulations.

613  
614           **Section 7.3     Alterations.** Tenant shall not make any alteration, additions, or other  
615 improvement in or to the Parking Facility or Leased Spaces or install equipment of any kind in the  
616 Parking Facility without Landlord's prior written consent. Any such alterations, additions, or other  
617 improvements that are approved by Landlord shall become fixtures to the Parking Facility and the  
618 property of Landlord immediately upon their installation or attachment to the Parking Facility except for  
619 any parking control or parking monitoring equipment, including hardware and software, paid for by  
620 Tenant.

621  
622           **Section 7.4     Subordination.** (a)       This Lease shall be subject and subordinate at all times  
623 to the lien of any deed of trust or other encumbrance(s) that may now or at any time be made upon the  
624 Parking Facility or Landlord's interest in the Parking Facility. Tenant shall execute and deliver any  
625 instrument(s) required in connection with subordinating this Lease to the lien of any such deed of trust or  
626 other encumbrance(s) as shall be desired by any party secured thereby. If Landlord's interest under this  
627 Lease is transferred by reason of foreclosure or other enforcement proceedings, Tenant shall be bound to  
628 the transferee under the terms, covenants and conditions of this Lease for the remainder of the Term and  
629 agrees to attorn to the transferee.

630  
631           (b)       So long as no Event of Default has occurred, this Lease shall remain in full force and  
632 effect for the full Term hereof, and Tenant's occupancy of and rights to use the Leased Space shall not be  
633 disturbed by any termination of any such mortgage, deed of trust, or ground lease or by any foreclosure  
634 proceeding or any deed in lieu of foreclosure or other such transfer, and the subordination set forth in  
635 Section 7.4(a) is made subject to Tenant's non-disturbance rights under this Section 7.4(b). Landlord  
636 shall cause its mortgagee and/or ground lessor to execute and deliver a subordination, non-disturbance  
637 and attornment agreement, in form and substance reasonably acceptable to all parties, as soon as  
638 reasonably possible after the execution hereof.

639  
640           **Section 7.5     Estoppel Certificate.** (a)       Tenant shall, without charge, at any time and  
641 from time to time, within twenty (20) days after request by Landlord or Landlord's mortgagee, certify by  
642 written instrument, duly executed, acknowledged and delivered, addressed to Landlord or any party  
643 designated by Landlord, that (i) this Lease is unmodified and in full force and effect (or if there shall have  
644 been modifications that the same is in full force and effect as modified and stating the modifications) and  
645 the dates to which the rent and other charges have been paid, (ii) the date of expiration of the Term, (iii)  
646 the Rent then payable under this Lease, (iv) whether or not, to the best knowledge of the officer executing  
647 such certificate on behalf of Tenant, Landlord is in default in performance of any covenant, agreement or  
648 condition contained in this Lease and, if so, specifying each such default of which the person executing  
649 such certificate may have knowledge, and (v) any other matter reasonably requested by Landlord.

650  
651           (b)       Landlord shall, without charge, at any time and from time to time, within twenty (20)  
652 days after request by Tenant or Tenant's mortgagee, certify by written instrument, duly executed,  
653 acknowledged and delivered, addressed to Tenant or any party designated by Tenant, that (i) this Lease is  
654 unmodified and in full force and effect (or if there shall have been modifications that the same is in full  
655 force and effect as modified and stating the modifications) and the dates to which the rent and other  
656 charges have been paid, (ii) the date of expiration of the Term, (iii) the Rent then payable under this  
657 Lease, (iv) whether or not, to the best knowledge of the officer executing such certificate on behalf of  
658 Landlord, Tenant is in default in performance of any covenant, agreement or condition contained in this

659 Lease and, if so, specifying each such default of which the person executing such certificate may have  
660 knowledge, and (v) any other matter reasonably requested by Tenant.

661  
662 **Section 7.6 Surrender of Possession; Holding Over.** Upon the expiration or earlier  
663 termination of the Term, Tenant shall surrender the Leased Spaces and all keys, gate cards, parking  
664 passes, security cards, and locks to Landlord in good order and repair, ordinary wear and tear excepted. If  
665 Tenant does not surrender possession of the Leased Spaces at the expiration or earlier termination of the  
666 Term, Landlord shall be entitled to recover compensation for such use and occupancy at one hundred fifty  
667 percent (150%) of the Rent payable prior to the expiration or earlier termination of the Term, and Tenant  
668 shall be liable to Landlord for any loss or damage it may sustain by reason of Tenant's failure to surrender  
669 possession of the Leased Spaces immediately upon the expiration or earlier termination of the Term.

670  
671 **Section 7.7 Additional Covenants.** Tenant covenants and agrees: (i) that its use of the  
672 Parking Facility, including the Leased Spaces and all other parking spaces in the Parking Facility used by  
673 Tenant, its licensees and sublessees, will not constitute a nuisance and will not interfere, in any material  
674 and adverse manner, with the use of the Parking Facility by Landlord, its licensees and sublessees, (ii) to  
675 use the Leased Spaces only for the parking of automobiles, passenger trucks, delivery vans, and other  
676 private vehicles; (iii) not to strip, damage, or deface the Parking Facility or store vehicles or equipment in  
677 the Parking Facility; (iv) not to use the Parking Facility in any manner that is unlawful, noisy, offensive,  
678 or injurious to any person or property and shall prohibit such use in all licenses or subleases of any  
679 Leased Space; (v) not to place upon the interior or exterior of the Parking Facility any placard, sign,  
680 lettering, or covering, except for any such signage Landlord has approved (subject to Section 7.3); and  
681 (vi) not to cause in the Parking Facility the generation, treatment, storage, or disposal of any hazardous  
682 substances or materials or toxic substances of any kind as described in the Comprehensive Environmental  
683 Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the  
684 Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901 et seq.), any regulations adopted  
685 under these acts, or all other applicable federal, State, and local statutes, regulations, ordinances, orders,  
686 permits, licenses, and requirements, as they may be amended, changed, or adopted from time to time,  
687 concerning environmental protection.

688  
689 **ARTICLE VIII**

690  
691 **INDEMNIFICATION**

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693 **Section 8.1 Tenant Indemnity.** Tenant shall indemnify and save harmless Landlord against  
694 and from all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and expenses,  
695 including, without limitation, attorneys' fees and disbursements, that may be imposed upon or asserted  
696 against, or reasonably incurred by, Landlord or any agency or subdivision thereof or its respective agents,  
697 employees, officers, or officials (the "Tenant Indemnitees") by reason of the acts or omissions of Tenant  
698 or its affiliates in the performance of each of their obligations under this Lease or by reason of the acts or  
699 omissions of Sublessees as defined in Section 2.2(d) above, except to the extent that such liability or other  
700 loss is caused proximately, in whole or in part, by the negligent or willful acts of Tenant Indemnitees.  
701 Tenant shall defend any and all legal proceedings commenced against any Tenant Indemnitee arising  
702 under Tenant's obligations under this Article using legal counsel satisfactory to Landlord. Landlord shall  
703 use its best efforts to give Tenant reasonable notice of any legal proceeding of which it has actual  
704 knowledge. Tenant shall deliver to Landlord copies of documents served in any legal proceeding arising  
705 in connection with the Parking Facility and, whenever requested by Landlord, shall advise Landlord as to  
706 the status of such legal proceeding; provided, however, that any such consultation shall not cause Tenant  
707 to waive any claim of privilege, including, without limitation, attorney-client privilege. If Tenant fails to  
708 defend any such legal proceeding, Landlord shall have the right (but not the obligation) to defend the

709 proceeding at Tenant’s expense. Tenant shall not settle any such legal proceeding without Landlord’s  
710 prior written consent unless the effect of such settlement shall be to release all Tenant Indemnitees from  
711 all liability with respect to such legal proceeding (and all claims and liabilities asserted therein). For  
712 purposes of this Section, “legal proceedings” includes legal actions and administrative proceedings.  
713

714 **Section 8.2 Landlord Indemnity.** Landlord shall indemnify and save harmless Tenant  
715 against and from all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and  
716 expenses, including, without limitation, attorneys’ fees and disbursements, that may be imposed upon or  
717 asserted against, or reasonably incurred by, Tenant or any agency or subdivision thereof or its respective  
718 agents, employees, officers, or officials (the “Landlord Indemnitees”) by reason of the acts or omissions  
719 of Landlord or Landlord’s agents, employees, officers, or officials in the performance of each of their  
720 obligations under this Lease, except to the extent that such liability or other loss is caused proximately, in  
721 whole or in part, by the negligent or willful acts of Landlord Indemnitees. Landlord shall defend any and  
722 all legal proceedings commenced against any Landlord Indemnitee arising under Landlord’s obligations  
723 under this Article using legal counsel satisfactory to Tenant. Tenant shall use its best efforts to give  
724 Landlord reasonable notice of any legal proceeding of which it has actual knowledge. Landlord shall  
725 deliver to Tenant copies of documents served in any legal proceeding arising in connection with the  
726 Parking Facility and, whenever requested by Tenant, shall advise Tenant as to the status of such legal  
727 proceeding; provided, however, that any such consultation shall not cause Landlord to waive any claim of  
728 privilege, including, without limitation, attorney-client privilege. If Landlord fails to defend any such  
729 legal proceeding, Tenant shall have the right (but not the obligation) to defend the proceeding at  
730 Landlord’s expense. Landlord shall not settle any such legal proceeding without Tenant’s prior written  
731 consent unless the effect of such settlement shall be to release all Landlord Indemnitees from all liability  
732 with respect to such legal proceeding (and all claims and liabilities asserted therein). For purposes of this  
733 Section, “legal proceedings” includes legal actions and administrative proceedings.  
734

735  
736 **ARTICLE IX**

737  
738 **INSURANCE**

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740 **Section 9.1 Insurance.** Tenant shall maintain insurance not less than the following:

741  
742 **Commercial General Liability,** covering

- 743 • Broad form general liability coverage, including XCU hazards and contractual liability
- 744 • City of Durham must be named additional insured, and an original of the endorsement to effect the  
745 coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in  
746 the GL section of the certificate, in lieu of an original endorsement)
- 747 • Combined single limit not less than \$1,000,000 per occurrence

748  
749 **Automobile Liability Insurance,** covering

- 750 • Owned, hired, or borrowed vehicles
- 751 • Employee vehicles, if used in the conduct of tenant’s business
- 752 • Combined single limit not less than \$1,000,000 per occurrence

753  
754 **Insurance shall be provided by:**

- 755 • Companies authorized to do business in the State of North Carolina
- 756 • Companies with Best rating of A or better

757

758 **Insurance shall be evidenced by a certificate:**

- 759 • Tenant will provide a new certificate each time a policy is renewed or replaced with a new policy
- 760 • Certificates shall be addressed to:
- 761 City of Durham, North Carolina
- 762 Attention: Finance Director
- 763 101 City Hall Plaza
- 764 Durham, NC 27701
- 765 • Both the insurance certificate and the designated insured endorsement must be originals and must be
- 766 approved by the City's Finance Director before tenant may occupy the leased parking space.
- 767
- 768
- 769

770 **ARTICLE X**

771 **DEFAULT AND REMEDIES**

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773

774 **Section 10.1 Tenant's Default.** The following shall be deemed defaults by Tenant under this

775 Lease:

776

777 (a) Tenant's failure to pay Rent or make any other payment under this Lease when it

778 becomes due;

779

780 (b) The failure or refusal of Tenant to perform fully and promptly any act, covenant,

781 or obligation required under this Lease or to comply otherwise with any provision of this Lease;

782

783 (c) If Tenant's leasehold estate is taken by execution or other process of law;

784

785 (d) The entry of an order of relief for Tenant by a court of competent jurisdiction

786 under any bankruptcy or insolvency laws;

787

788 (e) The entry of an order of appointment by any court or under any law of a receiver,

789 trustee or other custodian of the property, assets or business of Tenant;

790

791 (f) The assignment by Tenant of all or any part of its property or assets for the

792 benefit of creditors other than its stock or other equity interest in an unregulated subsidiary or joint

793 venture; or

794

795 (g) The levy of execution, attachment, or other taking of property (other than

796 Tenant's stock or other equity interest in an unregulated subsidiary or joint venture), assets, or interest

797 under this Lease of Tenant by process of law or otherwise in satisfaction of any judgment, debt, or claim,

798 unless postponed by appeal, furnishing of bond, or other contest by Tenant as permitted by law.

799

800 **Section 10.2 Tenant's Opportunity to Cure.** Upon the occurrence of an event of default

801 contained in Section 10.1(a) above, if Landlord shall provide to Tenant written notice of such default,

802 Tenant shall have fifteen (15) days from the date that Tenant receives the notice to cure the default;

803 provided, however, that Landlord shall not be obligated to provide Tenant with a notice of a default under

804 Section 10.1(a) more frequently than two (2) times in any twelve (12) month period. Upon the

805 occurrence of an event of default contained in Section 10.1(b) above, if Landlord shall provide to Tenant

806 written notice of such default, Tenant shall have thirty (30) days to cure such default from the date that

807 Tenant receives the notice to cure such default. If the nature of the event of default under Section 10.1(b)

808 (which shall in no event be the payment of money) is such that Tenant reasonably cannot cure the default  
809 within the cure period, then Tenant shall have an additional reasonable amount of time to cure the event  
810 of default provided that Tenant has begun its efforts to cure the event of default within the cure period and  
811 Tenant continues its efforts to cure the event of default in a commercially reasonable manner. In addition,  
812 the provisions of Section 11.17(d) are incorporated herein as fully as if they were set forth herein  
813 verbatim. Upon the occurrence of the events described in Section 10.1(c), (d), (e), (f), or (g) or upon the  
814 failure by Tenant to cure the defaults in Section 10.1 (a) or (b) within the time periods described in this  
815 Section 10.2, an event of default shall occur (hereinafter an “Event of Default”).

816  
817 **Section 10.3 Landlord’s Remedies.** This Lease shall be enforceable by actions for specific  
818 performance or injunction in addition to any other remedies available at law or in equity, including  
819 recovery of all attorneys’ fees and court costs. If an Event of Default has occurred, then, subject to the  
820 requirements of Section 11.17, Landlord may, without further notice or demand, terminate this Lease, and  
821 Tenant immediately shall surrender the Leased Spaces to Landlord; and, if Tenant fails to do so, Landlord  
822 shall have the right, without waiving any other remedy for possession or arrears in payments, to enter  
823 upon and take control of the Leased Spaces and to expel or remove Tenant and any other person who may  
824 be occupying the Leased Spaces Pursuit of any remedy available in law or at equity, shall not preclude  
825 the pursuit of any other remedy provided for in this Lease or any other remedy provided in law or equity,  
826 nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any amounts  
827 due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of  
828 any of the terms, provisions, and covenants contained in this Lease. In the event of any early termination  
829 of this Lease by Landlord, Tenant shall remain liable for the Rent to the date of such termination.

830  
831 **Section 10.4 Re-letting Leased Spaces.** If Landlord reenters or retakes the Leased Spaces, all  
832 rents received by Landlord for re-letting the Leased Spaces after Tenant’s default shall be applied first to  
833 the payment of such expenses as Landlord may have incurred in recovering possession of and re-letting  
834 the Leased Spaces (including brokerage fees) and second to the payment of any costs and expenses  
835 incurred by Landlord, either for making the necessary repairs to the Leased Spaces or in curing any  
836 default on the part of Tenant of any covenant or condition under this Lease. Any remaining rent shall be  
837 applied toward the payment of Rent due from Tenant, and Tenant expressly agrees to pay any deficiency  
838 then remaining. Landlord shall in no event be liable (nor shall Tenant be entitled to any set off) for  
839 Landlord’s failure to re-let the Leased Spaces, and Landlord, at its option, may refrain from terminating  
840 Tenant’s right of possession, and in such case may enforce the provisions of this Lease against Tenant for  
841 the full Term.

842  
843 **Section 10.5 Landlord’s Default.** Landlord shall be in default of its obligations under the  
844 Lease if Landlord fails to perform any of its obligations under this Lease.

845  
846 **Section 10.6 Landlord’s Opportunity to Cure.** Upon the occurrence of an event of default  
847 by Landlord contained in Section 10.5, Landlord shall have thirty (30) days to cure such default from the  
848 date it receives notice from Tenant of the event of default. If the nature of the event of default is such that  
849 Landlord reasonably cannot cure the default within that thirty (30) day period, then Landlord shall have  
850 an additional reasonable amount of time to cure the event of default provided that Landlord has begun its  
851 efforts to cure the event of default within that thirty (30) day period and Landlord continues its efforts to  
852 cure the event of default in a commercially reasonable manner. If Landlord fails to cure the default in the  
853 time provided in this Section 10.6 such failure shall constitute an event of default (a “Landlord Default”).

854  
855 **Section 10.7 Tenant’s Remedies.** Upon the occurrence and during the continuance of any  
856 Landlord Default, Tenant shall have the right to pursue any remedy available at law or equity including  
857 the right to terminate this Lease or perform Landlord’s obligation or obligations that Landlord has failed

858 to perform and, to the extent allowed by law, receive reimbursement from Landlord for Tenant's actual  
859 costs and expense incurred in connection with performing any such obligation or obligations. Tenant  
860 acknowledges that its right to receive reimbursement from Landlord for any such costs and expenses  
861 incurred may be limited unless Tenant abides by any procurement or contracting requirements that  
862 Landlord is required by law to abide. In case of such termination, all obligations that are still executory on  
863 both sides are discharged except that any right based on prior breach or performance survives, and the  
864 indemnification provisions shall remain in force. Before exercising its right pursuant to this Section 10.7  
865 to terminate this Lease or to perform Landlord's obligations, Tenant shall give Landlord five (5) days  
866 notice of its intention, which notice shall distinctly state the Landlord Default upon which Tenant relies,  
867 and Tenant's right to terminate shall cease if Landlord cures the events of default contained in the notice.  
868 If Tenant fails to receive payment from Landlord for any amount due under this Lease within fifteen (15)  
869 days of the date due, then Tenant shall have the right to offset all such amounts from subsequent  
870 installments of Rent due hereunder until such time as Tenant has received a credit against Rent due  
871 hereunder in an amount equal to the amount due Tenant pursuant to this Lease.  
872

873 In addition to any right or remedy provided in this Lease, during any time that Tenant loses the right to  
874 use any or all of the Leased Spaces, for any reason not caused by Tenant's failure to comply with this  
875 Lease or Tenant's negligence or willful misconduct, Tenant shall be entitled to reduce or abate the  
876 amount of Rent it is obligated to pay to Landlord on a pro rata basis. Tenant's right to reduce or abate its  
877 payment of Rent shall terminate immediately to the extent Tenant's right to use the Leased Spaces is  
878 restored.  
879

880 **Section 10.8 Punitive, Consequential, or Special Damages.** Notwithstanding anything  
881 contained in this Lease to the contrary, in no event shall either Landlord or Tenant or any Person claiming  
882 through Landlord or Tenant be entitled to any special, consequential or punitive damages pursuant to or  
883 as a result of any breach of or default under this Lease by the other party.  
884

885 **Section 10.9 Force Majeure.** If Landlord or Tenant shall be delayed, hindered, or prevented  
886 from performing any act required to be performed under this Lease by reason of fire, accident, casualty,  
887 act of God, strikes, lockouts, unavailability of materials, failure of power, laws or regulations, orders of a  
888 court or governmental agency, riot, insurrection, an act or failure to act of any tenant or subtenant of  
889 parking spaces, adverse weather conditions, war, or any reason beyond such party's reasonable control,  
890 then the time for performance of such act shall be extended for a period equivalent to the period of such  
891 delay, provided that such party has taken steps that are reasonable under the circumstances to mitigate the  
892 effects of such force majeure.  
893

## 894 ARTICLE XI

### 895 MISCELLANEOUS

896  
897  
898 **Section 11.1 Taking.**

899 (a) In the event that the Parking Facility, or any part thereof, or access thereto, shall be taken  
900 in condemnation proceedings or by exercise of any right of eminent domain or by agreement (such as  
901 deed in lieu of an eminent domain action) between Landlord, Tenant, and those authorized to exercise  
902 such right (any such matters being hereinafter referred to as a "taking"), Landlord and Tenant shall have  
903 the right to participate in any such condemnation proceedings or agreement for the purpose of protecting  
904 their interests hereunder. Each party so participating shall pay its own expenses and fees incurred therein.  
905

906 (b) If at any time during the Term of this Lease there shall be a taking of any of the Parking  
907 Facility, so that as a result of the taking, or condemnation or deed in lieu of such taking (the "Taking"),

908 Tenant is unable to use, in a commercially reasonable manner, any portion of the Parking Facility for its  
909 intended purpose, this Lease shall terminate as of the date of the Taking. If the effect of a Taking event is  
910 to cause Tenant to lose the right to use greater than thirty percent (30%) of the Leased Spaces, Tenant will  
911 have the right to terminate this Lease or to keep this Lease in effect and to reduce Rent proportionately in  
912 accordance with the number of Leased Spaces taken or which Tenant does not have use of relative to the  
913 total number of Leased Spaces that existed just prior to the Taking. If the Parking Facility is only  
914 partially usable after any such taking, then the Landlord shall have the authority to reallocate parking  
915 spaces throughout the Parking Facility subject to availability, and to determine which parking spaces in  
916 the Facility will be available for those purposes. Section 11.17(j) shall not apply with respect to an  
917 amendment to effectuate the changes provided for in this subsection (b).  
918

919 (c) If this Lease shall have terminated as a result of a Taking, or if Tenant loses use of any  
920 portion of the Leased Spaces as a result of a Taking, then Tenant shall be entitled to assert and recover an  
921 award from the condemnor for the loss of the value of Tenant's leasehold estate and its other rights under  
922 this Lease. Additionally, in that action Tenant shall be entitled to assert a claim against condemnor and  
923 receive compensation from the condemnor for its other damages incurred as a result of such  
924 condemnation. Landlord shall be entitled to assert and recover an award from the condemnor for the loss  
925 of Landlord's remainder interest in the fee estate and all other damages and amounts allowed by law.  
926

927 **Section 11.2 Assignment.**  
928

929 (a) The rights of Tenant under this Section 11.2 are in addition to Tenant's rights under  
930 Section 2.3 and Section 11.17 of this Lease and shall not in any way restrict or limit Tenant's rights under  
931 Section 2.3 or Section 11.17 of this Lease.  
932

933 (b) Except as permitted in this Section, Tenant shall not assign this Lease or any portion  
934 thereof or any benefit accruing under this Lease to any party without first obtaining the prior written  
935 consent of Landlord. Tenant may assign this Lease or any portion thereof without Landlord's consent to  
936 any party who is not a Prohibited Person. Such assignment shall not relieve Tenant of its duties or  
937 obligations, including indemnity obligations, arising out of or pursuant to this Lease, unless Landlord  
938 consents in writing to release Tenant from any further obligations under this Lease. Notwithstanding the  
939 foregoing, Tenant may assign all or a portion of this Lease without Landlord's consent to (i) an entity that  
940 is wholly owned or controlled by Tenant and be relieved of the obligations under this Lease occurring  
941 after the date of the assignment by providing to Landlord an instrument in form and substance reasonably  
942 satisfactory to Landlord under which the assignee expressly assumes in writing all obligations and  
943 provisions of this Lease assigned to such entity, or (ii) to Tenant's first mortgage holder.  
944

945 (c) "Prohibited Person" shall mean any of the following:  
946

947 (i) Any Person (A) that is in default or in breach of its obligations under any written  
948 agreement (including, but not limited to, any ground lease, any loan agreement or mortgage, or regulatory  
949 agreement) with Landlord, or (B) that directly or indirectly controls, is controlled by, or is under common  
950 control with a Person that is in default or in breach of its obligations under any written agreement with  
951 Landlord, unless this default or breach has been waived in writing by Landlord.  
952

953 (ii) Any Person (A) that has been convicted in a criminal proceeding of a felony for  
954 any crime involving moral turpitude or that is an organized crime figure or is reputed (as determined  
955 according to the criteria specified in the next paragraph) to have substantial business or other affiliations  
956 with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under  
957 common control with a Person that has been convicted in a criminal proceeding of a felony for any crime

958 involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or  
959 other affiliations with an organized crime figure.

960  
961 The determination as to whether any Person is an organized crime figure or is reputed to  
962 have substantial business or other affiliations with an organized crime figure or directly or indirectly  
963 controls, is controlled by, or is under common control with a Person that is an organized crime figure or is  
964 reputed to have substantial business or other affiliations with an organized crime figure shall be within the  
965 sole discretion of Landlord.

966  
967 (iii) Any “enemy” or “ally of enemy” with which trading is prohibited by the Trading  
968 with the Enemy Act, codified at 50 USCS Appendix Section 3, as amended.

969  
970 **Section 11.3 No Warranty.**  
971 Except as provided in Section 6.1, Tenant accepts the Leased Spaces from Landlord “As Is.” TENANT  
972 AND LANDLORD EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED  
973 WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR  
974 PURPOSE OR ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO  
975 WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS LEASE.

976  
977 **Section 11.4 Survival.** It is understood and agreed that whether or not specifically provided  
978 herein, any provision of this Lease that by its nature and effect is required to be kept, observed, or  
979 performed after the expiration or early termination of this Lease shall survive the expiration or early  
980 termination of this Lease and shall remain binding upon and for the benefit of the parties until fully  
981 observed, kept, or performed.

982  
983 **Section 11.5 Notices.** All notices, demands, and requests required or permitted under the  
984 provisions of this Lease shall, unless otherwise specified, be in writing, sent to the following addresses or  
985 to such other address as the party to whom the notice is sent shall have designated in writing in  
986 accordance with the provisions of this Section:

987  
988 As to Landlord: Mr. Thomas J. Bonfield, City Manager  
989 City of Durham  
990 101 City Hall Plaza  
991 Durham, North Carolina 27701  
992 Facsimile: 919-560-4949

993  
994 In addition, notices of pending or threatened litigation involving Landlord and notices of alleged  
995 defaults by Landlord under this Lease shall also be sent to:

996  
997 Patrick Baker, City Attorney  
998 City of Durham  
999 101 City Hall Plaza  
1000 Durham, North Carolina 27701  
1001 Facsimile: 919-560-4660

1002  
1003 In addition, notices sent pursuant to Section 7.1 (which Section is titled “Claims and Demands”),  
1004 Article IX (“Insurance”), Section 10.6 (“Landlord’s Opportunity to Cure”) or Section 11.17 shall also be  
1005 sent to:

1006  
1007 Mark Ahrendsen, Director of Transportation

1008 City of Durham  
1009 101 City Hall Plaza  
1010 Durham, North Carolina 27701  
1011 Facsimile: 919-560-4561  
1012

1013 In addition, if Landlord requests Tenant to do so, then notices to Landlord under Section 7.1 shall  
1014 also be sent to Landlord's Parking Manager at the address provided to Tenant by Landlord.

1015  
1016 As to Tenant:  
1017

1018  
1019  
1020 With a copy to:  
1021

1022  
1023 With copies to holders of mortgages as required by Section 11.17.  
1024

1025 Notices, demands, or requests delivered pursuant to this Section shall be deemed to have been  
1026 properly given and provided if delivered by one of the following methods: (i) hand delivery, (ii)  
1027 delivered by express, registered, or certified mail of the United States Postal Service, return receipt  
1028 requested, postage prepaid, (iii) delivered by United Parcel Service or Federal Express or (iv) by facsimile  
1029 transmission with a copy delivered by one of the options contained in (i) through (iii). Each such notice,  
1030 demand, or request shall be deemed to have been received upon the earlier of (w) the actual receipt  
1031 (including receipt by fax for which there is a confirmation), (x) refusal by the addressee, (y) three (3)  
1032 business days after deposit in the custody of the United States Postal Service or (z) the next business day  
1033 after deposit with the courier if sent pursuant to (iii) but only if next day delivery is selected. A party  
1034 shall give the other party notice of any change in address, which notice shall not be effective until five (5)  
1035 days after it is given. If an address is no longer valid so that a notice is not delivered when sent by a  
1036 method described above, but the party has not given notice of the new address, then that notice sent to  
1037 that address is deemed delivered by that method three (3) days after it is given.  
1038

1039 **Section 11.6 Successors.** This Lease shall be binding upon and inure to the benefit of each of  
1040 the parties hereto and its respective successors and assigns.  
1041

1042 **Section 11.7 Severability.** If any term, condition or provision of this Lease is unenforceable,  
1043 the remainder of this Lease shall be enforceable to the extent permitted by law.  
1044

1045 **Section 11.8 Execution in Counterparts.** This Lease may be executed in multiple  
1046 counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same  
1047 instrument.  
1048

1049 **Section 11.9 Applicable Law.** This Lease shall be governed by and construed in accordance  
1050 with the laws of the State of North Carolina. The exclusive forum and venue for all actions arising out of  
1051 this Lease shall be the North Carolina General Court of Justice in Durham County. Such actions shall not  
1052 be commenced in nor removed to federal court. This Section shall not apply to subsequent actions to  
1053 enforce a judgment entered in actions heard pursuant to this Section.  
1054

1055 **Section 11.10 Non-Waiver.** No delay or omission by Landlord to exercise any right or remedy  
1056 accruing under this Lease shall impair such right or remedy or be construed to be a waiver thereof, nor

1057 shall any such delay or omission constitute approval of or acquiescence in a breach under this Lease by  
1058 Tenant.

1059  
1060 **Section 11.11 Entire Agreement; Memo of Lease.** (a) This Lease constitutes the entire  
1061 agreement between the parties, and all prior or contemporaneous oral or written agreements or  
1062 instruments are merged in this Lease.

1063  
1064 (b) At the request of either Landlord or Tenant, the other party shall execute and deliver to  
1065 the other party a Memorandum of Lease, in recordable form and in form and substance reasonably  
1066 satisfactory to all parties and meeting the statutory requirements for a Memorandum of Lease under North  
1067 Carolina law.

1068  
1069 **Section 11.12 Performance of Government Functions.** Nothing contained in this Lease shall  
1070 be deemed or construed to estop, limit, or impair Landlord from exercising or performing any regulatory,  
1071 policing, legislative, governmental, or other powers or functions.

1072  
1073 **Section 11.13 Landlord Policy.** THE CITY OF DURHAM OPPOSES DISCRIMINATION  
1074 ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A  
1075 FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK  
1076 FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CONTRACTS.

1077  
1078 **Section 11.14 No Partnership.** Nothing contained in this Lease shall be construed to create or  
1079 form a partnership or joint-venture between the parties or render either party liable for the debts or  
1080 obligations of the other.

1081  
1082 **Section 11.15 No Third Party Rights Created.** This Lease is intended for the benefit of  
1083 Landlord and Tenant and not any other person. This Lease gives Tenant rights that may be enjoyed by  
1084 Tenant's Sublessee, but Tenant's Sublessees themselves do not have rights under this Lease against the  
1085 Landlord, and Tenant's Sublessees do not have the right to enforce any provisions of this Lease.

1086  
1087 **Section 11.16 Modifications.** A modification of this Lease is not valid unless signed by both  
1088 parties and otherwise in accordance with requirements of law.

1089  
1090 **Section 11.17 Leasehold Mortgage Provisions.** Notwithstanding anything to the contrary  
1091 contained in this Lease, Tenant shall have the absolute right (without Landlord's consent), at any time and  
1092 from time to time, to mortgage the leasehold interest herein demised on such terms, conditions and  
1093 maturity as Tenant shall determine, and to enter into any and all extensions, modifications, amendments,  
1094 replacements, and refinancings of any such leasehold mortgage or mortgages as Tenant may desire. If  
1095 Tenant, or Tenant's successors or assigns shall mortgage said leasehold interest, then as long as any such  
1096 leasehold mortgage or mortgages shall remain unsatisfied of record, the following provisions shall apply,  
1097 notwithstanding anything to the contrary contained in this Lease, and any pertinent provisions of this  
1098 Lease shall be deemed to be amended and modified to the extent necessary so as to provide as follows:

1099  
1100 (a) Landlord's rights to cancel, surrender, accept a surrender, or modify this Lease shall be  
1101 subject to the rights of the leasehold mortgagee under this Section 11.17.

1102  
1103 (b) Landlord, upon serving upon Tenant any notice of default pursuant to the provisions of  
1104 Section 11.17 hereof, or any other notice under the provisions of or with respect to this Lease, shall also  
1105 serve a copy of such notice on the holder of such mortgage, at the address furnished to Landlord by such  
1106 holder, and no notice by Landlord to Tenant hereunder shall be deemed to have been duly given unless

1107 and until a copy thereof has been so served; provided, however, that Landlord's obligation to give or  
1108 provide the holder of any such mortgage with any notice shall be contingent upon such holder providing  
1109 written notice to Landlord of its existence and setting forth the address to which all such notices are to be  
1110 delivered. To be effective, the notice by the holder to Landlord must cite this Lease by its full name and  
1111 its Effective Date (shown on page 1) and must cite this Section 11.17.  
1112

1113 (c) Any holder of such mortgage, in case Tenant shall be in default hereunder, shall, within  
1114 the period and otherwise as herein provided, have the right to remedy such default, or cause the same to  
1115 be remedied, and Landlord shall accept such performance by or at the instance of such holder as if the  
1116 same had been made by Tenant.  
1117

1118 (d) Such holder of a leasehold mortgage, in the event Tenant shall be in default hereunder,  
1119 shall have the right, within the period and otherwise as herein provided, to remedy or cause to be  
1120 remedied such default, and Landlord shall accept such performance by or at the instigation of such  
1121 leasehold mortgage holder as if the same had been performed by Tenant. No default by Tenant in  
1122 performing work required to be performed, acts to be done, or conditions to be remedied, shall be deemed  
1123 to exist, if steps, in good faith, have been properly commenced by Tenant or by said leasehold mortgage  
1124 holder, or by any other party, person, or entity to rectify the same and prosecuted to completion with  
1125 reasonable diligence and continuity.  
1126

1127 (e) Anything herein contained to the contrary notwithstanding, during such time as the  
1128 leasehold mortgage remains unsatisfied of record and unpaid, if an event or events shall occur which shall  
1129 entitle Landlord to terminate this Lease, and if before the expiration of sixty (60) days after the date of  
1130 service of notice of termination under this Lease, such holder of the leasehold mortgage shall have paid to  
1131 Landlord all rent and other payments which are then in default, and shall have complied or shall be  
1132 engaged with good faith in the work of complying with reasonable due diligence with all the other  
1133 requirements of this Lease, if any, then in default, and shall continue to pay rent due hereunder, then  
1134 Landlord shall not be entitled to terminate this Lease and any notice of termination theretofore given shall  
1135 be void and of no effect, provided, however, that nothing herein contained shall in any way affect,  
1136 diminish, or impair Landlord's right to terminate this Lease (if such default is not cured within said sixty  
1137 (60) day period or in the process of being cured with reasonable due diligence) or to enforce any other  
1138 remedy in the event of the nonpayment of any such rent thereafter payable by Tenant or in case of any  
1139 other such default in the performance of any of the obligations of Tenant hereunder in accordance with  
1140 this Lease.  
1141

1142 (f) In the event of the termination of this Lease, prior to the expiration of the Term, whether  
1143 by summary proceedings to dispossess, service of notice to terminate, or otherwise, due to default of  
1144 Tenant under this Lease, Landlord shall serve upon the holder of such mortgage written notice that the  
1145 Lease has been terminated together with a statement of any and all sums which would at that time be due  
1146 under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to  
1147 Landlord. Such holder shall thereupon have the option to obtain a new or direct lease with Landlord upon  
1148 all of the terms and conditions set forth herein provided that such holder has performed all of the  
1149 unperformed obligations of Tenant under this Lease. To exercise that option, the holder must, within  
1150 sixty (60) days after the service by Landlord of the notice and statement required to be given under this  
1151 subsection (f), give notice to Landlord of its intention to exercise the option and perform all of the  
1152 unperformed obligations of Tenant under this Lease.  
1153

1154 (g) Any notice which Landlord shall desire or is required to give to or serve upon the holder  
1155 of a mortgage on this Lease shall be in writing and shall be served by certified mail, addressed to such  
1156 holder at its address as set forth in such mortgage, or in the last assignment thereof delivered to Landlord,

1157 or at such other address as shall be designated by such holder by notice in writing given to Landlord by  
1158 certified mail. Any notice which the holder of a mortgage on this Lease shall desire or is required to give  
1159 to or serve upon Landlord shall be deemed to have been duly given or served if sent by certified mail  
1160 addressed to Landlord at Landlord's addresses as set forth in this Lease or at such other addresses as shall  
1161 be designated by Landlord by notice in writing given to such holder by certified mail.  
1162

1163 (h) Upon the execution and delivery of a leasehold mortgage and upon receipt of written  
1164 request from the holder of a leasehold mortgage, Landlord and Tenant agree to execute and deliver to the  
1165 holder of said leasehold mortgage an estoppel certificate pursuant to Section 7.5(a) and Section 7.5(b)  
1166 confirming said leasehold mortgagee's rights under this Lease, which estoppel certificate shall be in a  
1167 form reasonably acceptable to the leasehold mortgagee.  
1168

1169 (i) Effective upon the commencement of the term of any new or direct lease executed  
1170 pursuant to paragraph (f) of this Section, all subleases and licenses, if any, of Tenant shall be and remain  
1171 subordinate and inferior to the rights of Tenant hereunder and any current or future ground lease and, to  
1172 the extent such rights are held by Landlord, shall be assigned and transferred without recourse by  
1173 Landlord to the tenant under such new or direct lease, and all moneys received or on deposit with  
1174 Landlord which Tenant would have been entitled to use but for the termination or expiration of this Lease  
1175 may be used by the tenant under such new lease for the purposes of and in accordance with the provisions  
1176 of such new or direct lease.  
1177

1178 (j) Landlord and Tenant shall not enter into any agreement modifying, canceling or  
1179 surrendering this Lease without the prior written consent of the leasehold mortgagees.  
1180

1181 (k) No holder of a mortgage on this Lease shall have the rights or benefits mentioned in  
1182 Section 11.17 hereof, nor shall the provisions of said Article be binding upon Landlord, unless and until  
1183 an executed counterpart of such leasehold mortgage and of each assignment thereof or a copy certified by  
1184 the holder of the mortgage or by the recording officer to be true, shall have been delivered to the persons  
1185 designated to receive notice pursuant to Section 11.5.  
1186

1187 (l) In connection with any financing by Tenant, Tenant or its lender shall have the right to  
1188 assign to any lender, without consent of Landlord, all or any portion of Tenant's rights and interests under  
1189 this Lease, including the right to receive payments otherwise due and payable to Tenant from Landlord  
1190 under this Lease; provided, that any such lender, or any successor to any such lender as owner of Tenant's  
1191 interest in this Lease, shall have the right and authority to assign this Lease (in the context of an exercise  
1192 of its remedies under any instrument to which a security interest is granted in this Lease (which includes a  
1193 collateral assignment or leasehold mortgage)) to any other third party which is not affiliated with or  
1194 owned in any way by Tenant or any affiliate of Tenant, provided that such third party expressly assumes  
1195 the obligations of Tenant under this Lease in a written instrument satisfactory in form and substance to  
1196 Landlord. No such assignment shall relieve Tenant of its duties or obligations, including indemnity  
1197 obligations, under this Lease.  
1198  
1199  
1200

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed under seal as of the day and year first above written.

ATTEST: CITY OF DURHAM

\_\_\_\_\_  
By: \_\_\_\_\_

preaudit certificate, if applicable \_\_\_\_\_

**Tenant:**  
AMERICAN CAMPUS, LLC

ATTEST: By: CBC Real Estate Company,  
Inc., its Sole Manager

\_\_\_\_\_  
Secretary By: Michael J. Goodmon  
Title: Vice President

[Affix Corporate Seal]

State of \_\_\_\_\_ ACKNOWLEDGMENT BY AMERICAN CAMPUS, LLC

County of \_\_\_\_\_

I, a notary public in and for said county and state, certify that  
\_\_\_\_\_ personally appeared before me this day, and acknowledged  
that (1) he or she is \_\_\_\_\_ Secretary of CBC Real Estate Company, Inc., a North  
Carolina corporation (the "corporation"), which is an authorized member of American Campus, LLC, a  
North Carolina limited liability company, (2) by authority duly given and as the act of the corporation, the  
foregoing Lease with the City of Durham was signed in the name of the corporation by its Vice President,  
whose name is Michael J. Goodmon, sealed with its corporate seal, and attested by him/herself as its said  
Secretary or Assistant Secretary; and (3) by the aforesaid acts, the foregoing Lease was executed on  
behalf of CBC Real Estate Company, Inc., as the manager of American Campus, LLC. This the \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public

1252 **Exhibit A**

1253  
1254  
1255 **PARKING SUBLEASE**  
1256 **(Old Bull and Noell Buildings -- residential)**  
1257

1258  
1259 **THIS SUBLEASE** (“Sublease”) is dated as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_  
1260 between [Tenant] \_\_\_\_\_, a \_\_\_\_\_ company, having offices at \_\_\_\_\_  
1261 \_\_\_\_\_ (“Sublandlord”), and \_\_\_\_\_, a \_\_\_\_\_  
1262 \_\_\_\_\_ having offices at \_\_\_\_\_ (“Subtenant”).  
1263

1264 **Introduction**

1265  
1266 Sublandlord leases approximately nine hundred and eighty-five (985) parking spaces located in a  
1267 multi-story parking facility (the “**Parking Facility**”) in Durham, North Carolina (the “**Property**”) pursuant to that certain Parking Lease Agreement for the North Garage dated \_\_\_\_\_  
1268 \_\_\_\_\_ 20\_\_\_ (the “**Prime Lease**”) from the City of Durham, a North Carolina municipal corporation (the  
1269 “**City**”) as landlord, to Sublandlord as tenant. Attached as Exhibit A is a copy of the Prime Lease.  
1270  
1271

1272 Subtenant is the owner of the Old Bull and Noell buildings (the “**Property**”) within the American  
1273 Tobacco Complex (as defined in the Prime Lease), which Property has residents residing therein (the  
1274 “Resident” or “Residents”).  
1275

1276 Sublandlord is willing to sublease to Subtenant one hundred, sixty-six (166) parking spaces (the  
1277 “**Spaces**”) in the Parking Facility for use Monday through Thursday, 6:30 p.m. to 7:00 a.m. and beginning  
1278 at 6:30 p.m. on Friday and extending through 7:00 a.m. on Monday (the “Residential Hours”) for use of  
1279 the Parking Facility by the Residents.  
1280

1281 **Agreement**

1282  
1283 **THEREFORE**, in consideration of the rental payments payable pursuant to this Sublease by  
1284 Subtenant to Sublandlord and the mutual provisions of this Sublease, Sublandlord hereby sublets to  
1285 Subtenant, and Subtenant does hereby rent from Sublandlord on a non-exclusive and on a non-reserved  
1286 basis, the Spaces. Subtenant acknowledges and agrees that this Sublease shall be subject to the Special  
1287 Events needs of the City as specified in the Prime Lease.  
1288

1289 This Sublease is subject and subordinate to all provisions set forth in the Prime Lease. Subtenant  
1290 shall perform, or be subject to, the provisions of the Prime Lease, as set forth herein. To the extent this  
1291 Sublease and the Prime Lease may contain provisions that conflict with each other, the Sublease shall  
1292 control.  
1293

1294 1. Term. The term of this Sublease shall commence on \_\_\_\_\_, 20\_\_\_ and  
1295 shall terminate on the expiration date of the initial term under the Prime Lease, unless earlier terminated  
1296 in accordance with the terms of this Sublease, together with any and all renewals of the initial term (the  
1297 “**Term**”).  
1298

1299 2. Renewal. This Sublease shall renew automatically for six (6) periods of five (5) years  
1300 each; provided, however, if the Prime Lease has not been renewed then the Sublease shall not renew.

1301 Such renewal(s) shall be on the same terms and conditions as this Sublease. This Sublease shall not  
1302 renew if Subtenant provided Sublandlord with written notice that it desires not to renew this Sublease,  
1303 which notice Subtenant shall provide at least ninety (90) days prior to the expiration of the current Term.  
1304

1305 3. Rent. Subtenant shall pay to Sublandlord during the term of this Sublease all of the  
1306 following:  
1307

1308 (a) Monthly rent equal to the number of Spaces times the Monthly Rate. For the purpose of  
1309 this Sublease, the "Monthly Rate" means the monthly rate established by the City of Durham for  
1310 residential users of the Parking Facility, or, if the City has not established any such rate for the Parking  
1311 Facility, then the rate established by the City of Durham for residential users of other City-owned parking  
1312 facilities during hours similar to the Residential Hours. If the City has not established a monthly rate for  
1313 either the Parking Facility of other City-owned parking facilities, then the monthly parking rate will be  
1314 the same as the Basic Rent (as defined in the Prime Lease).  
1315

1316 (b) Subtenant's proportionate share of Additional Rent (as defined in the Prime Lease), other  
1317 than those costs incurred due to Sublandlord's default or delinquency in payment under the Prime Lease.  
1318 Subtenant's proportionate share shall be calculated as a fraction, the numerator of which shall be 166 and  
1319 the denominator of which shall be the total number of parking spaces Sublandlord leases in the Parking  
1320 Facility.  
1321

1322 Subtenant shall pay each installment of Basic Rent on the first day of each calendar month during  
1323 the term for that month or portion thereof. For each applicable time period for which the City bills  
1324 Sublandlord for Additional Rent, Subtenant shall reimburse Sublandlord for Subtenant's proportionate  
1325 share of Additional Rent within ten (10) days following Subtenant's receipt of an itemized list of  
1326 Additional Rent expenses. Subtenant shall pay Basic Rent and other amounts due to Sublandlord under  
1327 this Sublease to Sublandlord at the address set forth in Section 10 below.  
1328

1329 4. Compliance with Prime Lease.  
1330

1331 (a) Subtenant. Subtenant shall perform with respect to the Spaces all of the obligations  
1332 of the tenant in the Prime Lease and shall not take any action or inaction as to the Spaces which would  
1333 result in a default under the Prime Lease. The parties incorporate in this Sublease by reference all of the  
1334 provisions of the Prime Lease with the same effect as if set forth in this Sublease, subject to the  
1335 provisions of this Section. Wherever the term "Tenant" occurs in the Prime Lease, the parties deem such  
1336 reference to refer to Subtenant. Sublandlord promptly will forward to Subtenant a copy of any notice of  
1337 default relating to the Spaces which Sublandlord receives from the City pursuant to the Prime Lease.  
1338 Subtenant hereby indemnifies and holds Sublandlord harmless from and against any and all actions,  
1339 claims, demands, damages, liabilities and expenses asserted against, imposed upon or incurred by  
1340 Sublandlord by reason of (a) any violation caused, suffered, or permitted by Subtenant, its agents,  
1341 contractors, servants, licensees, employees or invitees, of any of the provisions of this Sublease or the  
1342 Prime Lease, and (b) any damage or injury to persons or property occurring upon or in connection with  
1343 the use or occupancy by Subtenant of the Spaces.  
1344

1345 (b) Default by the City. Sublandlord does not assume any obligation to perform the  
1346 provisions of the Prime Lease to be performed by the City. If the City fails to perform any of the  
1347 provisions set forth in the Prime Lease to be performed by the City, Sublandlord shall be under no  
1348 obligation or liability whatsoever to Subtenant. Sublandlord, however, shall cooperate with Subtenant,  
1349 and will use all reasonable efforts to require performance by the City of the landlord obligations pursuant  
1350 to the Prime Lease. Subtenant also shall have the right to take any action against the City in its own name

1351 and for that purpose, and only to such extent, Sublandlord hereby assigns to Subtenant such of the rights  
1352 of Sublandlord under the Prime Lease as are necessary for such purpose. Subtenant shall be subrogated to  
1353 such rights. If any such action against the City in Subtenant's name is barred by reason of lack of privity,  
1354 non-assignability or otherwise, Sublandlord shall permit Subtenant to take such action in Sublandlord's  
1355 name; provided, however, that Subtenant shall indemnify and hold Sublandlord harmless against all  
1356 liability, loss or damage which Sublandlord may incur or suffer by reason of any such action, and that  
1357 Subtenant will provide to Sublandlord copies of all papers and notices of all proceedings so Sublandlord  
1358 may be kept informed in respect thereof. Sublandlord shall execute any documents reasonably required to  
1359 permit Subtenant to take any such action in Sublandlord's name. Subtenant shall not receive any  
1360 abatement of rent under this Sublease because of the City's failure to perform any of its obligations under  
1361 the Prime Lease, except that if Sublandlord receives an abatement of rent from the City relating to the  
1362 Spaces, Subtenant shall receive the benefit of such abatement of rent on a pro rata basis.

1363  
1364 (c) Sublandlord. Sublandlord will perform all of the obligations of the tenant pursuant to  
1365 the Prime Lease, except those undertaken by Subtenant pursuant to this Sublease, and will indemnify  
1366 Subtenant from any failure of Sublandlord to do so.

1367  
1368 5. Services and Repairs. Sublandlord shall use commercially reasonable efforts to require  
1369 the City to perform the maintenance and repair of the Spaces as provided in the Prime Lease.

1370  
1371 6. Insurance. Subtenant shall carry the insurance required of Sublandlord in the Prime  
1372 Lease naming the City, Sublandlord, and Sublandlord's requested affiliates as additional insureds and  
1373 shall provide Sublandlord with a certificate of insurance each year evidencing such coverage.

1374  
1375 7. Damage and Destruction. If a material portion of the Spaces is damaged or  
1376 destroyed by fire or other cause, and the City fails to repair the portion of the Spaces so damaged or  
1377 destroyed within thirty (30) days following such damage or destruction, or if such damage cannot be  
1378 reasonably be substantially repaired within thirty (30) days following the date of such damage or  
1379 destruction, then Subtenant shall have the right thereafter to terminate this Sublease.

1380  
1381 8. Remedies.

1382  
1383 (a) Sublandlord. If Subtenant defaults in the performance of any of the provisions  
1384 of this Sublease or of the Prime Lease, or of any other agreement between Sublandlord and Subtenant  
1385 concerning the American Tobacco Complex, as such term is defined in the Prime Lease, Sublandlord  
1386 shall be entitled to terminate this Sublease, to exercise any and all of the rights and remedies to which it is  
1387 entitled at law or in equity, and to exercise all of the following: (i) inactivate Subtenant's access cards for  
1388 the Spaces; (ii) terminate this Sublease by sending written notice thereof to Subtenant; and (iii) pursue a  
1389 cause of action against Subtenant for any sums or other liabilities owed to Sublandlord hereunder.

1390  
1391 (b) Subtenant. If Sublandlord defaults in the performance of any of the  
1392 provisions of this Sublease, including but not limited to the failure of Sublandlord to make payment or  
1393 perform any obligation under the Prime Lease, then, in addition to any other remedy available at law or in  
1394 equity, Subtenant shall be entitled to effect a cure of such default and to offset the cost thereof against the  
1395 rent due hereunder.

1396  
1397 9. Assignment and Subletting.

1398 To the extent Subtenant desires to grant one or more licenses (or parking permits or  
1399 subleases, as applicable) to third parties that grant to such third party the right to use one or more Spaces,

1400 Subtenant shall be entitled to do so without Sublandlord's consent; provided, however, that (i) any such  
1401 third party is a resident of the Property, (ii) the number of licenses (or parking permits or subleases, as  
1402 applicable) granted by Subtenant shall not exceed the number of Spaces included in this Sublease, (iii)  
1403 the parking privileges shall include the Residential Hours only (iv) the third party executes  
1404 Sublandlord's standard parking agreement or registration form and abides by Sublandlord's rules and  
1405 regulations, and (v) Subtenant shall remain primarily responsible to Sublandlord to perform all of the  
1406 agreements, covenants and conditions set forth in this Sublease. Upon satisfaction of the conditions  
1407 described herein, Sublandlord shall issue, or cause others to issue, to any such third party(ies) parking  
1408 access cards that will grant access to the Parking Facility. Sublandlord will be entitled to terminate  
1409 without notice any parking privileges or to terminate any access cards of any third party that fails to  
1410 abide by the terms and conditions of this Sublease, Sublandlord's standard parking agreement, or  
1411 Sublandlord's rules and regulations, including but not limited to failure to remove a vehicle from the  
1412 Parking Facility upon expiration of the Residential Hours. In addition, Subtenant shall have the right  
1413 without Sublandlord's prior written consent to assign this Sublease or sublet the Spaces to a parent or  
1414 affiliate of Subtenant or to a lender in connection with any bona fide financing.  
1415

1416 10. Notices. All notices to be given hereunder shall be delivered in the manner set  
1417 forth in Section 11.5 of the Prime Lease addressed  
1418

1419 (a) if to Subtenant:.

1420 (b) if to Sublandlord:

1421  
1422  
1423 11. Quiet Enjoyment. Subtenant, on paying the rent, satisfying all conditions of this  
1424 Sublease, and performing all the provisions of this Sublease applicable to Subtenant, shall and may  
1425 peacefully and quietly have, hold and enjoy the Spaces for the Term, free from any act or hindrance by  
1426 Sublandlord.  
1427

1428 12. Surrender. On the date upon which the term shall end, whether on expiration, by  
1429 lapse of time or otherwise, Subtenant, at Subtenant's sole cost and expense, shall deliver the Spaces to  
1430 Sublandlord in good order and condition, ordinary wear and tear and damage by fire or other casualty  
1431 excepted.  
1432

1433 13. Brokers. Sublandlord and Subtenant each represent and warrant to the other that  
1434 they have not employed any other broker in connection with the subleasing or leasing of the Spaces. The  
1435 representing party agrees to indemnify and hold the other harmless from any loss, liability and expense  
1436 incurred by the other as a result of any claim made against the other which is based upon a breach of such  
1437 representation and warranty by the representing party. The indemnification obligations hereunder shall  
1438 survive the expiration or sooner termination of this Sublease.  
1439

1440 14. Successors. This Sublease shall be binding upon and inure to the benefit of the  
1441 parties and their respective successors and assigns.  
1442

1443 15. Estoppel. Sublandlord hereby represents to Subtenant that (i) the Prime Lease is in  
1444 full force and effect; (ii) Sublandlord has received no notice of default from the City which default  
1445 remains uncured on the date hereof, and (iii) to the best of Sublandlord's knowledge, upon due inquiry,  
1446 Sublandlord is not now in default under the Prime Lease.  
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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement of Sublease as of the day and year first above written.

**SUBLANDLORD:**

\_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SUBTENANT:**

\_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT A**

Prime Lease

A copy of the Prime Lease follows this page.

1496 **Exhibit B**

1497  
1498  
1499 **PARKING SUBLEASE**  
1500 **(commercial)**

1501  
1502  
1503 **THIS SUBLEASE** (“Sublease”) is dated as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_  
1504 between [Tenant] \_\_\_\_\_, a \_\_\_\_\_ company, having offices at \_\_\_\_\_  
1505 \_\_\_\_\_ (“Sublandlord”), and \_\_\_\_\_, a \_\_\_\_\_  
1506 \_\_\_\_\_ having offices at \_\_\_\_\_ (“Subtenant”).

1507  
1508 **Introduction**

1509  
1510 Sublandlord leases approximately nine hundred and eighty-five (985) parking spaces located in a  
1511 multi-story parking facility (the “**Parking Facility**”) in Durham, North Carolina (the “**Property**”) pursuant to that certain Parking Lease Agreement for the North Garage dated \_\_\_\_\_  
1512 20\_\_\_ (the “**Prime Lease**”) from the City of Durham, a North Carolina municipal corporation (the  
1513 “**City**”) as landlord, to Sublandlord as tenant. Attached as Exhibit A is a copy of the Prime Lease.

1514  
1515  
1516 Subtenant is the owner of the \_\_\_\_\_ building(s) (the “**Property**”) within the  
1517 American Tobacco Complex (as defined in the Prime Lease).

1518  
1519 Sublandlord is willing to sublease to Subtenant \_\_\_\_\_ (\_\_\_) parking spaces (the “**Spaces**”) in  
1520 the Parking Facility for use Monday through Friday, 7:00 a.m. to 6:30 p.m. and Saturday from 9:00 a.m.  
1521 to 12:00 p.m.

1522  
1523 **Agreement**

1524  
1525 **THEREFORE**, in consideration of the rental payments payable pursuant to this Sublease by  
1526 Subtenant to Sublandlord and the mutual provisions of this Sublease, Sublandlord hereby sublets to  
1527 Subtenant, and Subtenant does hereby rent from Sublandlord on a non-exclusive and on a non-reserved  
1528 basis, the Spaces.

1529  
1530 This Sublease is subject and subordinate to all provisions set forth in the Prime Lease. Subtenant  
1531 shall perform, or be subject to, the provisions of the Prime Lease, as set forth herein. To the extent this  
1532 Sublease and the Prime Lease may contain provisions that conflict with each other, the Sublease shall  
1533 control.

1534  
1535 1. Term. The term of this Sublease shall commence on \_\_\_\_\_, 20\_\_\_ and  
1536 shall terminate on the expiration date of the initial term under the Prime Lease, unless earlier terminated  
1537 in accordance with the terms of this Sublease, together with any and all renewals of the initial term (the  
1538 “**Term**”).

1539  
1540 2. Renewal. This Sublease shall renew automatically for six (6) periods of five (5) years  
1541 each; provided, however, if the Prime Lease has not been renewed then the Sublease shall not renew.  
1542 Such renewal(s) shall be on the same terms and conditions as this Sublease. This Sublease shall not  
1543 renew if Subtenant provided Sublandlord with written notice that it desires not to renew this Sublease,  
1544 which notice Subtenant shall provide at least ninety (90) days prior to the expiration of the current Term.

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3. Rent. Subtenant shall pay to Sublandlord during the term of this Sublease all of the following:

(a) Monthly rent equal to the Basic Rent (as defined in the Prime Lease), including any adjustments therein, times the number of Spaces.

(b) Subtenant's proportionate share of Additional Rent (as defined in the Prime Lease), other than those costs incurred due to Sublandlord's default or delinquency in payment under the Prime Lease. Subtenant's proportionate share shall be calculated as a fraction, the numerator of which shall be \_\_\_\_\_ and the denominator of which shall be the total number of parking spaces Sublandlord leases in the Parking Facility.

Subtenant shall pay each installment of Basic Rent on the first day of each calendar month during the term for that month or portion thereof. For each applicable time period for which the City bills Sublandlord for Additional Rent, Subtenant shall reimburse Sublandlord for Subtenant's proportionate share of Additional Rent within ten (10) days following Subtenant's receipt of an itemized list of Additional Rent expenses. Subtenant shall pay Basic Rent and other amounts due to Sublandlord under this Sublease to Sublandlord at the address set forth in Section 10 below.

4. Compliance with Prime Lease.

(a) Subtenant. Subtenant shall perform with respect to the Spaces all of the obligations of the tenant in the Prime Lease and shall not take any action or inaction as to the Spaces which would result in a default under the Prime Lease. The parties incorporate in this Sublease by reference all of the provisions of the Prime Lease with the same effect as if set forth in this Sublease, subject to the provisions of this Section. Wherever the term "Tenant" occurs in the Prime Lease, the parties deem such reference to refer to Subtenant. Sublandlord promptly will forward to Subtenant a copy of any notice of default relating to the Spaces which Sublandlord receives from the City pursuant to the Prime Lease. Subtenant hereby indemnifies and holds Sublandlord harmless from and against any and all actions, claims, demands, damages, liabilities and expenses asserted against, imposed upon or incurred by Sublandlord by reason of (a) any violation caused, suffered, or permitted by Subtenant, its agents, contractors, servants, licensees, employees or invitees, of any of the provisions of this Sublease or the Prime Lease, and (b) any damage or injury to persons or property occurring upon or in connection with the use or occupancy by Subtenant of the Spaces.

(b) Default by the City. Sublandlord does not assume any obligation to perform the provisions of the Prime Lease to be performed by the City. If the City fails to perform any of the provisions set forth in the Prime Lease to be performed by the City, Sublandlord shall be under no obligation or liability whatsoever to Subtenant. Sublandlord, however, shall cooperate with Subtenant, and will use all reasonable efforts to require performance by the City of the landlord obligations pursuant to the Prime Lease. Subtenant also shall have the right to take any action against the City in its own name and for that purpose, and only to such extent, Sublandlord hereby assigns to Subtenant such of the rights of Sublandlord under the Prime Lease as are necessary for such purpose. Subtenant shall be subrogated to such rights. If any such action against the City in Subtenant's name is barred by reason of lack of privity, non-assignability or otherwise, Sublandlord shall permit Subtenant to take such action in Sublandlord's name; provided, however, that Subtenant shall indemnify and hold Sublandlord harmless against all liability, loss or damage which Sublandlord may incur or suffer by reason of any such action, and that Subtenant will provide to Sublandlord copies of all papers and notices of all proceedings so Sublandlord may be kept informed in respect thereof. Sublandlord shall execute any documents reasonably required to

1595 permit Subtenant to take any such action in Sublandlord's name. Subtenant shall not receive any  
1596 abatement of rent under this Sublease because of the City's failure to perform any of its obligations under  
1597 the Prime Lease, except that if Sublandlord receives an abatement of rent from the City relating to the  
1598 Spaces, Subtenant shall receive the benefit of such abatement of rent on a pro rata basis.

1599  
1600 (c) Sublandlord. Sublandlord will perform all of the obligations of the tenant pursuant to  
1601 the Prime Lease, except those undertaken by Subtenant pursuant to this Sublease, and will indemnify  
1602 Subtenant from any failure of Sublandlord to do so.

1603  
1604 5. Services and Repairs. Sublandlord shall use commercially reasonable efforts to require  
1605 the City to perform the maintenance and repair of the Spaces as provided in the Prime Lease.

1606  
1607 6. Insurance. Subtenant shall carry the insurance required of Sublandlord in the Prime  
1608 Lease naming the City, Sublandlord, and Sublandlord's requested affiliates as additional insureds and  
1609 shall provide Sublandlord with a certificate of insurance each year evidencing such coverage.

1610  
1611 7. Damage and Destruction. If a material portion of the Spaces is damaged or  
1612 destroyed by fire or other cause, and the City fails to repair the portion of the Spaces so damaged or  
1613 destroyed within thirty (30) days following such damage or destruction, or if such damage cannot be  
1614 reasonably be substantially repaired within thirty (30) days following the date of such damage or  
1615 destruction, then Subtenant shall have the right thereafter to terminate this Sublease.

1616  
1617 8. Remedies.

1618  
1619 (a) Sublandlord. If Subtenant defaults in the performance of any of the provisions of this  
1620 Sublease or of the Prime Lease, or of any other agreement between Sublandlord and Subtenant  
1621 concerning the American Tobacco Complex, as such term is defined in the Prime Lease, Sublandlord  
1622 shall be entitled to terminate this Sublease, to exercise any and all of the rights and remedies to which it is  
1623 entitled at law or in equity, and to exercise all of the following: (i) inactivate Subtenant's access cards for  
1624 the Spaces; (ii) terminate this Sublease by sending written notice thereof to Subtenant; and (iii) pursue a  
1625 cause of action against Subtenant for any sums or other liabilities owed to Sublandlord hereunder.

1626  
1627 (b) Subtenant. If Sublandlord defaults in the performance of any of the  
1628 provisions of this Sublease, including but not limited to the failure of Sublandlord to make payment or  
1629 perform any obligation under the Prime Lease, then, in addition to any other remedy available at law or in  
1630 equity, Subtenant shall be entitled to effect a cure of such default and to offset the cost thereof against the  
1631 rent due hereunder.

1632  
1633 9. Assignment and Subletting.

1634 To the extent Subtenant desires to grant one or more licenses (or parking permits or  
1635 subleases, as applicable) to third parties that grant to such third party the right to use one or more Spaces,  
1636 Subtenant shall be entitled to do so without Sublandlord's consent; provided, however, that (i) any such  
1637 third party is a tenant of the Property or an employee of a tenant of the Property, (ii) any natural person  
1638 to whom parking permits or access cards are provided must work in or occupy space in the Property; (iii)  
1639 the number of licenses (or parking permits or subleases, as applicable) granted by Subtenant shall not  
1640 exceed the number of Spaces included in this Sublease, (iv) the parking privileges shall include during  
1641 each week the hours Monday through Friday, 7:00 a.m. to 6:30 p.m. and Saturday, 9:00 a.m. to 12:00  
1642 p.m., (v) the third party executes Sublandlord's standard parking agreement or registration form and  
1643 abides by Sublandlord's rules and regulations, and (vi) Subtenant shall remain primarily responsible to

1644 Sublandlord to perform all of the agreements, covenants and conditions set forth in this Sublease. Upon  
1645 satisfaction of the conditions described herein, Sublandlord shall issue, or cause others to issue, to any  
1646 such third party(ies) parking access cards that will grant access to the Parking Facility. Sublandlord will  
1647 be entitled to terminate without notice any parking privileges or to terminate any access cards of any  
1648 third party that fails to abide by the terms and conditions of this Sublease, Sublandlord's standard  
1649 parking agreement, or Sublandlord's rules and regulations. In addition, Subtenant shall have the right  
1650 without Sublandlord's prior written consent to assign this Sublease or sublet the Spaces to a parent or  
1651 affiliate of Subtenant or to a lender in connection with any bona fide financing.  
1652

1653 10. Notices. All notices to be given hereunder shall be delivered in the manner set  
1654 forth in Section 11.5 of the Prime Lease addressed

1655 (a) if to Subtenant:

1656 (b) if to Sublandlord:

1657  
1658  
1659 11. Quiet Enjoyment. Subtenant, on paying the rent, satisfying all conditions of this  
1660 Sublease, and performing all the provisions of this Sublease applicable to Subtenant, shall and may  
1661 peacefully and quietly have, hold and enjoy the Spaces for the Term, free from any act or hindrance by  
1662 Sublandlord.  
1663

1664 12. Surrender. On the date upon which the term shall end, whether on expiration, by  
1665 lapse of time or otherwise, Subtenant, at Subtenant's sole cost and expense, shall deliver the Spaces to  
1666 Sublandlord in good order and condition, ordinary wear and tear and damage by fire or other casualty  
1667 excepted.  
1668

1669 13. Brokers. Sublandlord and Subtenant each represent and warrant to the other that  
1670 they have not employed any other broker in connection with the subleasing or leasing of the Spaces. The  
1671 representing party agrees to indemnify and hold the other harmless from any loss, liability and expense  
1672 incurred by the other as a result of any claim made against the other which is based upon a breach of such  
1673 representation and warranty by the representing party. The indemnification obligations hereunder shall  
1674 survive the expiration or sooner termination of this Sublease.  
1675

1676 14. Successors. This Sublease shall be binding upon and inure to the benefit of the  
1677 parties and their respective successors and assigns.  
1678

1679 15. Estoppel. Sublandlord hereby represents to Subtenant that (i) the Prime Lease is in  
1680 full force and effect; (ii) Sublandlord has received no notice of default from the City which default  
1681 remains uncured on the date hereof, and (iii) to the best of Sublandlord's knowledge, upon due inquiry,  
1682 Sublandlord is not now in default under the Prime Lease.  
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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement of Sublease as of the day and year first above written.

**SUBLANDLORD:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SUBTENANT:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT A**

Prime Lease

A copy of the Prime Lease follows this page.

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**EXHIBIT C – MAXIMUM PARKING RATE**

<b><u>Calendar Year</u></b>	<b><u>Maximum Parking Rate (per space)</u></b>
2011	\$55.00
2012	\$55.49
2013	\$56.37
2014	\$57.29
2015	\$61.90
2016	\$63.76
2017	\$65.67
2018	\$67.64
2019	\$69.67
2020	\$71.76
2021	\$73.92
2022	\$76.13
2023	\$78.42
2024	\$80.77
2025	\$83.19
2026	\$85.69
2027	\$88.26
2028	\$90.91
2029	\$93.63
2030	\$96.44
2031	\$99.34
2032	\$102.32
2033	\$105.39
2034	\$108.55
2035	\$111.80
2036	\$115.16
2037	\$118.61
2038	\$122.17
2039	\$125.84
2040	\$129.61
2041	\$133.50
2042	\$137.50
2043	\$141.63
2044	\$145.88
2045	\$150.25
2046	\$154.76
2047	\$159.41
2048	\$164.19
2049	\$169.11
2050	\$174.19
2051	\$179.41

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