

NORTH CAROLINA

DURHAM COUNTY

CONTRACT

This is a Contract between the City of Durham, a North Carolina Municipal Corporation, (hereinafter called "City") and the County of Durham, a political subdivision of the State of North Carolina (hereinafter called "County"). This Contract is an Interlocal Cooperation Agreement and is made pursuant to North Carolina General Statutes Part 1, Article 20, of Chapter Section 160A, Section 153A-445(a)(7), Section 153A-164, Section 153A-149(c)(6B) and (17), Section 153A-13, Section 160A-17, Section 160A-274, Section 160A-489, and other applicable provisions of law including statutory authorization for the City and County to, among other things, participate jointly with private developers in the construction, operation, and ownership of Urban Development Projects. An Urban Development Project is defined as a capital project comprised of both public and private facilities, or other improvements which for the purposes of this Contract include a publicly owned plaza, civic center, and related improvements, and a privately owned hotel.

For the purpose of this Contract, the term "Project" as used herein shall mean the publicly owned plaza, civic center, and related improvements, including those to the area generally referred to as the "Kimbrell Site", but excluding the site generally referred to as the "Palms Restaurant", all as provided in the Sale, Development and Repurchase Agreement as hereinafter described.

1.

Purpose. The purpose of this Contract is to provide for the respective interests, responsibilities, and obligations of the City and County of Durham as the Public Sector in the construction, ownership, maintenance, repair, and operation of the civic center and plaza portion of the Urban Development Project. The actual construction, ownership, maintenance, repair, and operation of the Urban Development Project are otherwise provided for in the Sale, Development, and Repurchase Agreement; the Six-Party Agreement; the Air Lease Agreement; the Civic Center Management Agreement; and the Civic Center Catering Agreement; all of which shall be executed by the various parties respective thereto, coincidentally with the execution of this Contract. These documents are herein incorporated by reference, the same as if fully set forth, and shall hereinafter be referred to as Project Agreements.

The City and County have determined that the construction of the Project will stimulate private investment in the downtown area of the City, will assist in avoiding the growth of conditions of deterioration and blight in the downtown area, will promote economic and cultural development and rejuvenation of the area, and will enhance the public welfare and the public use and enjoyment of the area. A hotel consisting of approximately 190 rooms will be built coincidental with the civic center on a leasehold interest in the air space above the civic center. The hotel, which is expected to add significantly to the tax bases of the City and County, and other private investments resulting from the Urban Development Project, will inure to the benefit of the public.

Except as is otherwise expressly provided for to the contrary in this Contract, it is the intention of the City and County to bear equally the cost of the Project and to share equally the revenues therefrom in the manner prescribed by this Contract.

2.

Method of Financing. The estimated cost of the Project which the City and County have found to be reasonable, is \$16,779,039.00. Except as is otherwise expressly provided for to the contrary in this Contract, it is the expressed intent of the City and the County to equally share the cost of the Project. Financial participation by the City and the County subsequent to the execution of this Contract shall be in accordance with the provisions of this Contract and the Project Agreements.

The City agrees to establish and maintain an escrow account for the purpose of receiving revenues for the Project and to make disbursements pursuant to the Project Agreements, Sections 5, and 6, below, and for the purpose of meeting any other costs of the Project.

The County agrees to contribute \$3,000,000.00 to the City for deposit to the escrow account upon the execution of this agreement. The City agrees to deposit to the escrow account \$10,941,561.00 (which includes \$2,020,600.00 for the sale of the civic center site to the Developer), upon execution of this Contract.

The City agrees to invest the funds so deposited in a manner consistent with North Carolina law and the City's investment policies. Investment income earned on funds in the escrow account will accrue to this account for the purpose of supplementing those funds initially deposited.

The City and County agree to equally share this investment income in determining each body's respective share of the cost of the Project.

The City and County agree to equally share the rental income earned on properties purchased for the Project in determining each body's respective share of the cost of the Project, and to deposit such income into the escrow account.

The City and County agree to equally share the funds representing the purchase price for the land (\$2,020,600.00) received from the Developer pursuant to the Sale, Development and Repurchase Agreement for the purpose of determining each governing body's respective share of the cost of the Project, and to deposit these funds into the escrow account. The County's remaining interest in the cost of the Project shall be satisfied by means of an annual payment to the City for the purpose of acquiring additional equity in the Project as set forth in Section 4 below and described in Attachment One.

3.

Project Construction.

(a) The Project shall be designed, constructed and repurchased by the City and County in accordance with the Project Agreements between the City, the County and the Developer executed coincidental with this Contract. Upon repurchase, the joint property interests of the City and County in the Project shall be as provided for herein, and in the Project Agreements.

Sale Of An Interest In The Project To County.

(a) Immediately upon the payment of the \$3,000,000.00 specified in Section 2, above, the City shall convey to the County title to the Kimbrell Site. In addition to that immediate interest acquired upon said payment, the County shall also acquire a right to an undivided interest in the remainder of the Project equal to the respective initial investments of the City and County in the escrow account reserved for the purchase of the Project. The respective initial interests shall be 18.65 percent for the County and 81.35 percent for the City. These respective interests will change as the County purchases additional equity interest upon payments to be made according to the Schedule attached hereto as Attachment 1, which is incorporated herein by reference the same as if full set forth. The respective interests of the City and County existing at the completion and repurchase of the Project shall vest immediately upon repurchase, and shall be reflected in the deed of conveyance from the Developer of the civic center and plaza to the City and County at that time. If, for whatever reason, said deed does not reflect those interest, then the City and/or County, as appropriate, shall promptly record deeds in the Durham County Registry to accomplish such result.

(b) Subsequent to the repurchase, the City agrees to sell to the County and the County agrees to buy from the City an interest over and above its interest vesting at the time of repurchase until its final share in the completed Project is a one-half undivided interest. To effectuate this purchase and sale, the County agrees to make annual payments to the

City in the amounts and at the times specified in the Schedule of Payments attached hereto as Attachment One. Upon the making of each such annual payment, the City's undivided interest in the Project which exceeds a one-half undivided interest therein shall be reduced, and the County's undivided interest in the Project shall be increased by those amounts reflected in the Schedule of Payments in Attachment One. It is the intention of the City and County that, upon completion of the nineteen payments prescribed, the City and County shall each own a one-half undivided interest in the Project. The City shall convey to the County at any time, upon request of the County, legal title to the County's undivided interest in the said Project acquired up to the time of such demand.

(c) Upon completion of the nineteen payments prescribed in this section without demand otherwise having been made, the City shall convey to the County legal title to a one-half undivided interest in the Project. The respective property interests of the City and County shall survive the expiration or termination of this Contract.

(d) The County represents and warrants that it presently receives non-tax revenues each year from sources such as the distribution of ABC system gross receipts under Chapter 18B of the North Carolina General Statutes, sufficient to pay the amounts prescribed by this section. The County also represents that it shall receive other non-tax revenues each year during the term of this contract which may be lawfully applied to the payments prescribed by this section in amounts sufficient to meet such prescribed payments. Nothing in this Contract is intended nor shall anything herein be construed to constitute a pledge of the taxing power of

the County, however, if a court of competent jurisdiction decides that a county lawfully may pledge its taxing power to secure payment of money due under a continuing contract as described in G.S. 153A-13, then the taxing power of the County shall be pledged thereafter to secure the payments required under this section. The County shall take any action required by Article 8 of Chapter 159 of the North Carolina General Statutes to effectuate the provisions of this Contract.

e) Subsequent to the repurchase of the Project pursuant to the terms of the Sale, Development and Repurchase Agreement, or the Six-Party Agreement, as applicable, neither the City nor the County shall convey any interest, legal or equitable, in the Project without the prior written consent of the other.

5.

Adjustment for Change Orders. The City and County agree to equally share the cost of any approved change order and any other cost of the Project which may be incurred by the City or County in connection with the Project Agreements. Appropriations made for the purpose of authorizing a change order or paying other Project costs shall be deposited into the escrow account within 15 days of the action appropriating those funds.

6.

Adjustment for Final Project Cost. Upon final completion of the Project pursuant to the Project Agreements, the final cost of the Project shall be computed. To the extent that the final cost of the Project exceeds the revenues available (including investment income) in the escrow account, the City and County each agree to appropriate funds equal to

one-half of the deficit and transfer these additional funds to the escrow account within 30 days of the computation of the final cost of the Project. To the extent that the final cost of the Project is less than the revenues available (including investment income) in the escrow account, the City shall return to the County an amount equal to one-half of the excess remaining in the escrow account at that time. Such payment shall be made within 15 days of the computation of the final cost of the Project.

A "cost of the Project" means any cost or expense incurred by the City or County related to or in connection with the Project up to the final completion and computation of the final cost of the Project, whether such cost or expense was incurred before or after execution of this Contract. A "cost of the Project" includes but is not limited to: (i) sums previously paid or to be paid by the City or County to developers, consultants, architects, attorneys, agents or independent contractors, both in connection with prior proposals for development of a civic center and hotel and the Project as provided herein, except that the City will assume sole responsibility for the contract with Economics Research Associates, dated July 10, 1986, and the County will assume sole responsibility for the agreement with Stephen W. Brener and Associates, dated May 28, 1986; (ii) sums previously paid or to be paid in connection with acquisition of real property and any other real property interests including leaseholds, both in connection with prior proposals for development of a civic center and hotel and the Project as provided herein, except with respect to the site generally referred to as the Palms Restaurant, the City will assume all costs related to the acquisition thereof, and will not convey to the County

any portion of the City's interest therein, and with respect to the site generally referred to as the Kimbrell Site, the County will reimburse to the City the costs of acquisition of the site at closing, acquire title, and will thereafter assume responsibility for all costs of any Project improvements thereto (which are anticipated to be approximately \$25,000.00); and (iii) the repurchase price for the Project and any additional costs or expenses arising or resulting from change orders, overruns or otherwise for which the City or County is responsible pursuant to the Sale, Development and Repurchase Agreement or Six-Party Agreement, as applicable. Provided, however, that the cost of issuing the City's civic center bonds is not a cost of the Project and is not to be considered as a cost of the Project.

7.

Costs of Operation and Maintenance of the Project; Project Revenues.

All costs arising out of the management, operation, ownership, maintenance, and repair, and other costs, if any, of the Project, whether prior to or subsequent to the final completion of the Project as provided for in the Project Agreements shall be equally divided between the City and County. All revenues from the Project shall be shared equally by the City and County.

8.

Personnel. The City Manager shall designate such City personnel and the County Manager shall designate such County personnel as may be necessary to carry out the responsibilities of the City and County respectively, under this Contract.

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Establishment of Joint Agency. The City and County hereby agree that they may hereafter establish, by amendment to this Contract, a joint agency and to confer upon said joint agency such powers as may be necessary and reasonable for the management, operation, ownership, maintenance, and repair of the Project if the City and County should determine that it is in the best interests of the public to do so. Provided, that in any agreement by which the joint agency is created, it shall be provided that all costs of the management, operation, ownership, maintenance, and repair, and other cost, if any, of the Project shall be equally shared by the City and County.

10.

Contract Not Divisible. This Contract is not divisible. The obligations exchanged by the City and County under each part of this Contract constitute consideration for each and every part of this Contract.

11.

Fire or Casualty Loss. In the event the Project is destroyed in whole or in part, it is agreed that the proceeds from any insurance policy received in payment of any such loss shall be applied to the repair and reconstruction of the Project, unless the City and County shall agree, to the extent permitted by the Project Agreements, that some other disposition of such proceeds shall be made.

12.

Duration of Contract. The term of this Contract shall begin on the date of this Contract and shall expire coincidentally with the expiration

or termination of the lease of the air space as provided for in the Air Lease Agreement.

13.

Amendments. This Contract may be amended by the City and County at any time by execution of a written agreement.

14.

General Provision. The City and County oppose the practice of apartheid in the Republic of South Africa or Namibia, and urge all contractors of either or both to refrain from investing or doing business in the Republic of South Africa or Namibia.

15.

Termination. This Contract may only be terminated by written agreement of the City and County, but not otherwise.

WHEREFORE, the parties having reached an agreement, this Contract is executed by the City and County on the date first recited by the following officials whose signatures have been duly authorized by the Governing Boards of the City and County respectively.

ATTEST:



Margaret M. Bowers
Margaret M. Bowers
City Clerk

CITY OF DURHAM

By Orville W. Powell
ORVILLE W. POWELL
CITY MANAGER

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

This the 9 day of October, 1987
Stephen Edwards
FINANCE OFFICER

COUNTY OF DURHAM

ATTEST:

By *William V. Bell*
WILLIAM V. BELL
CHAIRMAN
COUNTY COMMISSIONERS

Garry E. Umstead
Garry E. Umstead
Clerk to the Board

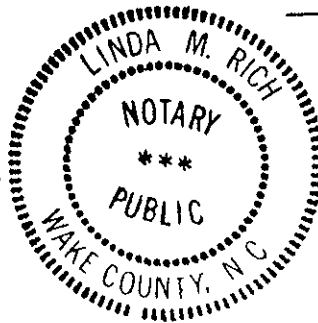
NORTH CAROLINA
DURHAM COUNTY

This is to certify that on this day personally came before me Margaret M. Bowers, with whom I am personally acquainted, who being by me duly sworn, says that Orville W. Powell is the City Manager, and that she, the said Margaret M. Bowers, is the City Clerk of the City of Durham, the municipal corporation named within and which executed the foregoing instrument; that she knows the common seal of said corporation; that the seal affixed to said instrument is said common seal; that the name of the corporation was subscribed thereto by the said City Manager and that the said City Manager and said City Clerk subscribed their names thereto and said common seal was affixed, all by order of the City Council of the City of Durham and that said instrument is the act and deed of said corporation.

Witness my hand and notarial seal, this the 9th day of October, 19 87.

Linda M. Rich
Notary Public

My Commission expires:
4-21-91



NORTH CAROLINA
DURHAM COUNTY

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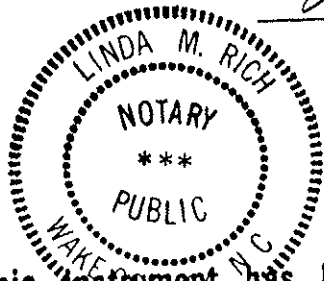
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This is to certify that on this day personally came before me Garry E. Umstead, with whom I am personally acquainted, who, being by me duly sworn, says that William V. Bell is the Chairman of the Board of Commissioners for the County of Durham and that he, the said Garry E. Umstead, is the Clerk to the Board of Commissioners for the County of Durham, a body politic and corporate, described in and which executed the foregoing instrument; that she knows the common seal of said County of Durham; that the seal affixed to said instrument is said common seal; that the name of the County of Durham was subscribed thereto by the said Chairman of the Board of Commissioners for the County of Durham and that the said Chairman of the Board of Commissioners for the County of Durham and said Clerk to the Board of Commissioners for the County of Durham subscribed their names thereto and said common seal was affixed, all by order of the Board of Commissioners for the County of Durham, and that said instrument is the act and deed of said County of Durham.

Witness my hand and notarial seal, this the 9th day of October, 19 87.

Linda M. Rich
Notary Public



My Commission expires:
4-21-91

This instrument has been pre-audited in the manner required by the local government budget and fiscal control act.

[Signature]
Durham County Finance Director

ATTACHMENT ONE

SCHEDULE OF PAYMENTS

1987 Initial Downpayment \$3,000,000 18.65% County Equity
81.35% City Equity

<u>PAYMENT ON JAN. 1ST YEAR</u>	<u>37.99% OF PROJECT COSTS</u>	<u>PURCHASE OF PROJECT ADDITIONAL COSTS</u>	<u>TOTAL</u>	<u>% COUNTY EQUITY</u>	<u>% CITY EQUITY</u>
1988	421,851.00	141,740	\$563,591.00	21.00	79.00
1989	393,011.00	141,740	\$534,751.00	23.35	76.65
1990	393,011.00	141,740	\$534,751.00	25.27	74.73
1991	393,011.00	141,740	\$534,751.00	28.05	71.95
1992	393,011.00	141,740	\$534,751.00	30.40	69.60
1993	393,011.00	---	\$393,011.00	31.80	68.20
1994	393,011.00	---	\$393,011.00	33.20	66.80
1995	393,011.00	---	\$393,011.00	34.60	65.40
1996	393,011.00	---	\$393,011.00	36.00	64.00
1997	393,011.00	---	\$393,011.00	37.40	62.60
1998	393,011.00	---	\$393,011.00	38.80	61.20
1999	393,011.00	---	\$393,011.00	40.20	59.80
2000	393,011.00	---	\$393,011.00	41.60	58.40
2001	393,011.00	---	\$393,011.00	43.00	57.00
2002	393,011.00	---	\$393,011.00	44.40	55.60
2003	393,011.00	---	\$393,011.00	45.80	54.20
2004	393,011.00	---	\$393,011.00	47.20	52.80
2005	393,011.00	---	\$393,011.00	48.60	51.40
2006	393,011.00	---	\$393,011.00	50.00	50.00

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