

ORDINANCE NO.: 2013-035

ORIGINAL  
STAMPED IN RED

*Authorizing the City Manager to execute an Amendment of License and Memorandum of Lease Agreement between the City of Columbia and Core Campus Columbia I, LLC and City's Consent to an Assignment of Amendment of License and Memorandum of Lease Agreement with regard to the property known as the Sumter Street Parking Garage located at 1400 Sumter Street*

BE IT ORDAINED by the Mayor and City Council this 26th day of March, 2013, that the City Manager is authorized to execute the attached Amendment of License and Memorandum of Lease Agreement between the City of Columbia and Core Campus I, LLC and City's Consent to an Assignment of Amendment of License and Memorandum of Lease Agreement with regard to the property known as the Sumter Street Parking Garage located at 1400 Sumter Street.

Requested by:

Mayor Benjamin \_\_\_\_\_

  
MAYOR

Approved by:

  
City Manager

Approved as to form:

  
City Attorney

ATTEST:

  
City Clerk

Introduced: 3/19/2013

Final Reading: 3/26/2013

**ASSIGNMENT OF LEASE AGREEMENT  
AND CITY'S CONSENT**

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned ("**Borrower**"), as additional security for the payment and performance of the covenants, agreements and obligations of Borrower arising under that certain Loan Agreement dated as of March 22, 2013, between Borrower, U.S. BANK NATIONAL ASSOCIATION, a national banking association, as Administrative Agent under the Loan Agreement, defined below ("**Administrative Agent**") and Lenders party thereto (said agreement, as amended, restated or modified from time to time, is referred to hereinafter as the "**Loan Agreement**"), and under all of the documents or instruments described in the Loan Agreement as the "**Loan Documents**", hereby grants a security interest in, and sells, transfers, assigns and sets over, to Administrative Agent, its successors and assigns, all of Borrower's title and interest in and to, and Borrower's rights, benefits and privileges under, that certain Lease Agreement between Borrower's predecessor in interest (Core Campus Investment Partners LLC, a Delaware limited liability company) and the City of Columbia, South Carolina, a body politic of the State of South Carolina (the "**City**") dated as of December 19, 2012, as amended by that certain Amendment of License Agreement and Memorandum of Lease dated as of March \_\_, 2013 (said lease, as so amended and as may be further amended, restated or modified from time to time, is referred to hereinafter as the "**Lease Agreement**"), relating to Borrower's leasehold rights to use and occupy certain parking, amenity and support spaces in the Sumter Street Garage located at 1400 Sumter Street, Columbia, South Carolina. A true and correct copy of the Lease Agreement is attached hereto as **Exhibit A** and made a part hereof. In furtherance of the foregoing, Borrower hereby agrees that this Assignment of Lease Agreement and City's Consent (this "**Assignment**") is made upon the following terms and conditions:

1. Borrower shall pay and perform all of Borrower's covenants, agreements and obligations under the Lease Agreement and shall promptly notify Administrative Agent in writing of any default under or termination of the Lease Agreement. Borrower hereby covenants and agrees not to (i) modify, amend or change the Lease Agreement, (ii) terminate or otherwise cancel the Lease Agreement, (iii) take any action or exercise any right or option which would permit any party thereto other than Borrower to terminate or otherwise cancel the Lease Agreement, or (iv) further assign or create any further encumbrance or hypothecation of Borrower's interest in the Lease Agreement, without the prior written consent of Administrative Agent.
2. Upon the occurrence of an "**Event of Default**" by Borrower under and/or as defined in the Loan Agreement or any of the other Loan Documents (as used herein, collectively referred to as an "**Event of Default**"), Administrative Agent may elect, in its sole discretion, to exercise, in the name of Borrower, all of Borrower's rights, benefits and privileges under the Lease Agreement. Administrative Agent shall not be required to give any notice of any such election to Borrower. Borrower hereby covenants and agrees to pay to Administrative Agent promptly upon demand any and all reasonable costs and expenses, including, without limitation, attorneys' fees and expenses, incurred by Administrative Agent in connection with such an election by Administrative Agent to exercise its rights under this Assignment. Furthermore, promptly upon demand by Administrative Agent, Borrower shall take such actions and execute such documents as may be necessary to facilitate Administrative Agent's exercise of rights hereunder.
3. Borrower shall indemnify, defend and hold Administrative Agent and its Affiliates (as defined in the Loan Agreement) (collectively, the "**Indemnified Parties**") harmless from and against any and all losses, liabilities, obligations, penalties, claims, fines, demands, litigation, defenses, costs, judgments, suits, proceedings, damages, disbursements or expenses of any kind or nature whatsoever (including,

without limitation, attorneys' fees and expenses) (collectively, "Losses"), consequential or otherwise, which are either directly or indirectly imposed upon, incurred by or asserted or awarded against any Indemnified Party in connection with, arising from or relating to any action or actions taken by Administrative Agent pursuant to Section 2 hereof, other than, with respect to any Indemnified Party, any loss, liability, damage, suit, claim, expense, fee or cost arising solely by reason of such Indemnified Party's willful misconduct or gross negligence.

4. So long as no Event of Default has occurred, Borrower may continue to receive and exercise all of its rights, benefits and privileges under the Lease Agreement, except as herein restricted or as provided otherwise in any Loan Document.

5. Neither this Assignment nor, except as provided in Section 2 hereof, any action or actions on the part of Administrative Agent shall constitute an assumption of any of the covenants, agreements or obligations of Borrower by Administrative Agent under the Lease Agreement and Borrower shall continue to be liable for all such covenants, agreements or obligations. Borrower shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all losses, liabilities, obligations, penalties, claims, fines, demands, litigation, defenses, costs, judgments, suits, proceedings, damages, disbursements or expenses of any kind or nature whatsoever (including, without limitation, attorneys' fees and expenses), consequential or otherwise, which are either directly or indirectly imposed upon, incurred by or asserted or awarded against any Indemnified Party in connection with, arising from or relating to any failure of Borrower to perform and observe any of such obligations, other than, with respect to any Indemnified Party, any loss, liability, damage, suit, claim, expense, fee or cost arising solely by reason of such Indemnified Party's willful misconduct or gross negligence.

6. Subject to the provisions of Sections 2 and 7 hereof, Administrative Agent shall have the right, at any time (but shall have no obligation), to take in its name or in the name of Borrower or otherwise, such action as Administrative Agent may at any time or from time to time reasonably determine to be necessary to protect the rights of Administrative Agent as the assignee of Borrower hereunder. Except as provided in Section 2 hereof, Administrative Agent shall not incur any liability on account of any action taken by it or on its behalf pursuant to the foregoing sentence or otherwise hereunder, whether or not the same shall prove to be improper, inadequate or invalid, in whole or in part, provided nothing herein shall relieve Administrative Agent of liability for the willful misconduct or gross negligence of Administrative Agent.

7. Upon the full and complete payment and performance of all of the covenants, agreements and obligations of Borrower to Administrative Agent arising under the Loan Agreement and the other Loan Documents, this Assignment shall become null and void.

8. The rights and remedies of Administrative Agent under this Assignment are cumulative and are not in lieu of, but are in addition to, any other rights or remedies which Administrative Agent may have under any of the Loan Documents.

9. This Assignment may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of the waiver, amendment, change, modification or discharge is sought.

10. This Assignment shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of Administrative Agent and its successors and assigns. Administrative Agent may assign all or any portion of its interest in the Lease Agreement, including without limitation, its rights created hereunder and, in such event, Borrower, at its sole expense, shall promptly execute, acknowledge and

deliver such additional documents, instruments and agreements as may be required by Administrative Agent in connection with any such assignment.

Dated as of the 21 day of March, 2013.

[SIGNATURE PAGE FOLLOWS]

**BORROWER:**

**CORE CAMPUS COLUMBIA I LLC,**  
a Delaware limited liability company

By: **DRW REAL ESTATE MANAGEMENT I LLC,**  
a Delaware limited liability company,  
its Manager

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_



City of Columbia  
Office of City Attorney  
P.O. Box 667  
Columbia, SC 29202

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received or refused.

Dated as of the 27 day of March, 2013.

[SIGNATURE PAGE FOLLOWS]

**CITY:**

**CITY OF COLUMBIA, SOUTH CAROLINA**

By: Teresa Wilson  
Name: Teresa Wilson  
Its: City Manager

**EXHIBIT A**  
**LEASE AGREEMENT**

[Attached hereto]

This Instrument Prepared By and  
Return after Recording to:

Michael S. Roberts  
Roberts McGivney Zagotta LLC  
55 W. Monroe Street, Suite 1700  
Chicago, Illinois 60603

*This space reserved for Recorders' use only.*

**AMENDMENT OF LICENSE AGREEMENT AND  
MEMORANDUM OF LEASE**

**THIS AMENDMENT OF LICENSE AGREEMENT AND MEMORANDUM OF LEASE** (this "**Amendment and Memorandum**") dated March 26, 2013 is by and between Core Campus Columbia I LLC, a Delaware limited liability company and successor by assignment from Core Campus Investment Partners LLC (together with its successors and assigns, "**Lessee**"), and the City of Columbia, South Carolina, a body politic of the State of South Carolina ("**City**").

**RECITALS:**

- A. Lessee is the record and title owner of the property located at 1426 Main Street, Columbia, South Carolina ("**Lessee's Property**"), on which Lessee and its Affiliates plan to design, construct and develop a student housing project in excess of 150 bedrooms per acre (the "**Project**").
- B. Core Campus Investment Partners LLC, as Lessee's predecessor in interest, and City have entered into that certain License Agreement (the "**License Agreement**") dated as of December 19, 2012 (the "**Effective Date**") to set forth, among other things, the terms and conditions for the licensing and leasing by City (i) to Core Campus Partners LLC and its successors and assigns the exclusive right to alter, use and occupy certain parking, amenity and support spaces in the Sumter Street Garage located at 1400 Sumter Street, Columbia, South Carolina, which is legally described on **Exhibit A** attached hereto and made a part hereto (the "**Sumter Premises**"), including 82 spaces on the top level as substantially depicted on **Exhibit B** attached hereto and made a part hereto, and (ii) to certain Licensee

Parties (defined in the License Agreement) not less than 338 parking spaces located above Level 3-A of the Sumter Premises and up to 26 motorcycle spaces for use by Lessee and its tenants of the Project.

- C. City and Lessee desire to amend the License Agreement to reflect that for all purposes from and after the Effective Date (i) the License Agreement shall be deemed a lease, (ii) City shall be deemed the landlord thereunder, (iii) Core Campus Investment Partners LLC and its successors and assigns shall be deemed lessees thereunder and (iv) the rights granted therein to Core Campus Investment Partners LLC and its successors and assigns are leasehold interests.
- D. This Amendment and Memorandum also provides notice of the License Agreement, as amended by this Amendment and Memorandum, by recording this Amendment and Memorandum.

**NOW, THEREFORE**, for and in consideration of the covenants and conditions set forth in the License Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessee and City hereby agree to and state the following:

1. City and Lessee agree that for all purposes from and after the Effective Date (i) the License Agreement shall be deemed a lease, (ii) City shall be deemed the landlord thereunder, (iii) Core Campus Investment Partners LLC and its successors and assigns shall be deemed lessees thereunder and (iv) the rights granted thereunder to Core Campus Investment Partners LLC and its successors and assigns are leasehold interests.

2. Without limiting the foregoing, City and Lessee agree that Section 1(a) of the License Agreement is amended to delete "City hereby grants to Licensee, and its employees, independent contractors, subcontractors, tenants, customers, invitees, representatives and agents, successors and assigns (collectively, the "Licensee Parties"), a license (the "License) for the right to use and occupy eighty-two (82) parking spaces on the top level of the Sumter Premises" and replace it with "City hereby demises and leases to Lessee, and its employees, independent contractors, subcontractors, tenants, customers, invitees, representatives and agents, successors and assigns (collectively, the "Lessee Parties")", eighty-two (82) parking spaces on the top level of the Sumter Premises (together with each of the other leasehold interests granted by the City to Lessee under the License Agreement, as amended hereby, individually and collectively, the "Leasehold Interest")". For the avoidance of doubt, such Leasehold Interest includes all rights of Lessee under the License Agreement.

3. Without limiting the foregoing, City and Lessee agree that all references in the License Agreement to "License Agreement" are hereby amended to "Lease Agreement"; all references to "Licensee's Property" are hereby amended to "Lessee's Property"; all references to "Licensee" are hereby amended to "Lessee"; all references to "Licensed Area" are hereby amended to "Leased Area"; all references to "License Fee" are hereby amended to "Rent"; all references to "License" are hereby amended to "Leasehold Interest"; and all references to "License Parties" are hereby amended to "Leasse Parties".

4. City leased to Lessee the exclusive right to lease, alter, use and occupy certain parking, amenity and support spaces in the Sumter Premises and to lease certain parking and motorcycle spaces to Lessee and its tenants for the use by Lessee and the tenants of the Project subject to and in accordance with the terms of the License Agreement, the terms of which are hereby incorporated by reference as though fully set forth herein.

5. Without limiting the terms of the License Agreement, the parties hereby acknowledge that the License Agreement grants to Lessee an exclusive option to purchase the Sumter Premises other than the portions of the first floor and basement of the Sumter Premises not owned by the City (the "Purchase Option") upon the terms and conditions set forth in Section 13 of the License Agreement.

6. Without limiting the terms of the License Agreement, the parties hereby acknowledge that the License Agreement grants to Lessee a first right to purchase the Sumter Premises upon the terms and conditions set forth in Section 14 of the License Agreement.

7. The term of the License Agreement commenced on the Effective Date and terminates on the fifty-five (55) year anniversary of the Effective Date thereunder, unless otherwise provided in the License Agreement, or upon Lessee's exercise of the Purchase Option.

**IN WITNESS WHEREOF**, Lessee and City have executed this Amendment and Memorandum as of the date first written above.

<u>LESSEE</u>	<u>CITY</u>
<b>CORE CAMPUS COLUMBIA I LLC,</b> a Delaware limited liability company	<b>CITY OF COLUMBIA, SOUTH CAROLINA</b>
By: <b>DRW REAL ESTATE MANAGEMENT I LLC,</b> a Delaware limited liability company, its Manager	By: 
By: _____	Name: <u>Teresa Wilson</u>
Name: _____	Its: <u>City Manager</u>
Its: _____	

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, the Manager of CORE CAMPUS COLUMBIA I LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing Amendment of License Agreement and Memorandum of Lease, as such Manager, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as a free voluntary act as such Manager and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF South Carolina )  
 ) SS.  
COUNTY OF Richland )

I, Erika D. Moore, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Teresa Wilson, the City Manager of CITY OF COLUMBIA, SOUTH CAROLINA, a body politic of the State of South Carolina, personally known to me to be the same person whose name is subscribed to the foregoing Amendment of License Agreement and Memorandum of Lease, as such Teresa Wilson, appeared before me this day in person, and acknowledged that he/she signed, sealed and delivered the said instrument as a free voluntary act as such Teresa Wilson, City Manager and as the free and voluntary act of said body politic, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of March, 2013.

Erika D. Moore  
\_\_\_\_\_  
Notary Public

My Commission Expires:

April 16, 2012

**EXHIBIT A**

**LEGAL DESCRIPTION**

## EXHIBIT A

That certain multilevel parking garage (less and excluding store, office and restaurant spaces on the ground floor) located on the property described as follows:

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being on the western boundary of Sumter Street, in the City of Columbia, County of Richland, State of South Carolina; being shown and designated as Parcel A, 74,224 Sq. Ft on a Boundary Survey prepared for Palmetto Center Associates entitled Palmetto Center, prepared by Cox and Dinkins, Inc., dated July 14, 1980, and recorded in the Office of the Register of Deeds for Richland County on January 8, 1982, in Plat Book Z, at page 1667. Reference is made to said plat for a more complete and accurate description.

### LESS AND EXCEPT:

All those, certain three parcels of property and space with improvements thereon situate on the western side of the 1400 block of Sumter Street between Washington and Hampton Streets in the City of Columbia, County of Richland, State of South Carolina, located above a horizontal plane at the elevation of Three Hundred Seven and five tenths feet (307.5') above sea level and below a horizontal plane at the elevation of Three Hundred Twenty-Six and five tenths feet (326.5') above sea level, determined with reference to the bench mark Coast and Geodetic Survey Monument P-2 at the northeast corner of Main and Washington Streets in the City of Columbia on the southwest corner of the Palmetto Building, the elevation of said Monument P-2 being Three Hundred Fourteen and forty-four hundredths (314.44') feet, within and bounded by surfaces formed by projecting vertically upward and downward the boundaries of the parcels of property with dimensions on the surface of the earth are as shown and designated as Areas A, B & C on plat prepared for the City of Columbia by Lott Parrish and Associates, Engineers, dated November 1, 1983, and recorded in the Office of the Register of Deeds for Richland County in Plat Book Z, Page 7564. Reference is made to said plat for surface area meets and bounds.

### ALSO LESS AND EXCEPT:

All the land, property and space, situate on the east end of the block bounded by Hampton, Sumter, Washington and Main Streets, in the City of Columbia. County of Richland, State of South Carolina, lying above a horizontal plane at elevation Two Hundred Eighty-seven and Seventy-seven hundredths (287.77') feet above mean sea level and below a horizontal plane at elevation Three Hundred Seven and Five-tenths (307.5') feet above mean sea level, determined with reference to the U. S. Coast and Geodetic Survey Monument P-2, mounted vertically in the southwest corner of the Palmetto Building at the intersection of Washington and Main Streets in the City of Columbia, State of South Carolina (the elevation of said monument being Three Hundred Fourteen and Forty-four, hundredths (314.44') feet above mean sea level) within and bounded by the intersection of said horizontal planes with the following perimetric boundaries:

Commencing, as shown on a Boundary and Basement Overlap Diagram dated August 16, 1982, entitled Palmetto Center Parking Facility, and prepared by Stevens & Wilkinson, Inc. at the southeastern corner of the parcel of land shown on said plat, said corner being at the northwesterly corner of the intersection of Sumter and Washington Streets, and running along

Washington Street a total distance of One Hundred Fifteen feet Three and one-half inches (115'3.5") to a point; thence turning and running in a generally north, northwesterly direction for a distance of One Hundred Nine feet Nine inches (109'9") to a point; thence turning and running in a south, southwesterly direction a distance of Forty-five (45') feet to a point; thence turning and running in a north, northwesterly direction for a distance of Fifty-six feet Four Inches (56' 4") to a point; thence turning and running in an east, northeasterly direction a distance of Forty-five (45') feet to a point; thence turning and running in a north, northwesterly direction a distance of Two Hundred Fifty-two feet Eleven inches (252' 11") to the property line separating said tract from Hampton Street; thence turning and running along Hampton Street in an east, northeasterly direction a total distance of One Hundred Fifteen feet Three and one-half inches (115'3.5") to the southwestern corner of the intersection of Hampton and Sumter Streets; thence turning and running along the property line separating said tract from Sumter Street for a total distance of Four Hundred Nineteen (419') feet to the point of commencement, be all measurements a little more or less.

**EXHIBIT B**  
**AMENITY SPACES**

