

AGREEMENT: 431 Meeting Street

This AGREEMENT: 431 Meeting Street (this "Agreement"), dated as of the _____ day of _____, 2017, is made by and between the **CHARLESTON SCHOOL OF LAW, LLC**, an institution of higher learning organized and existing under the laws of the State of South Carolina ("Charleston School of Law") and the **CITY OF CHARLESTON** ("City of Charleston"). The Charleston School of Law and the City of Charleston are sometimes referred to individually as a "Party" and sometimes referred to collectively as the "Parties."

1. RECITALS.

- 1.1. Charleston School of Law owns and operates the Charleston School of Law in Charleston, South Carolina; and
- 1.2. On or about July 1, 2005, the City of Charleston (1) sold to the Charleston School of Law for a purchase price of Eight Hundred Sixty Five Thousand and No/100 Dollars (\$865,000) certain real property (the "**Property**") located at 431 Meeting Street, Charleston, South Carolina TMS#459-09-01-049, and in connection therewith, (2) executed and delivered to the Charleston School of Law a quitclaim deed (the "**Quitclaim Deed**") recorded in Book J-543 at Page 031 to the Property which Quitclaim Deed reserved a possibility of a reverter ("**Possibility of Reverter**") which provides for title to the Property to revert to the City of Charleston as follows:

In the event that the Property is not used solely for Law School Purposes at any point within the six (6) year period beginning as of the date this Deed is recorded in the RMC Office for Charleston County and in addition the permanent development construction to facilitate such usage is not commenced within six (6) years of the date this Deed is recorded in the RMC Office for Charleston County, all right title and interest to the Property shall automatically revert to the Grantor.

and

- 1.3. On July 1, 2005, The Charleston School of Law executed and delivered to the City of Charleston a Promissory Note in the amount of Eight Hundred Sixty Five Thousand and No/100 Dollars (\$865,000.00)(the "**Note**"); and
- 1.4. The repayment of the indebtedness evidenced by the Note is secured by that certain Mortgage of Real Estate recorded in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, in Book J543 at Page 889 (the "**Mortgage**"); and

- 1.5. Pursuant to that certain Modification of Promissory Note dated November 16, 2009, the repayment of the indebtedness evidenced by the Note was extended from July 1, 2015 to July 1, 2017 (the "**Modification of Promissory Note**"); and
- 1.6. Pursuant to that certain Mortgage Modification Agreement dated November 16, 2009 and recorded in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina in Book 99 at Page 354 (the "**Mortgage Modification Agreement**"), any reference in the Mortgage to the deadline for repayment of the indebtedness evidenced by the Note was modified to July 1, 2017; and
- 1.7. Pursuant to the Extension of Possibility of Reverter as Contained in the Deed Recorded in Book J-543, at Page 031, which Extension is recorded in the RMC Office for Charleston County in Book 0117 at Page 547, the last date by which to satisfy the conditions of the Possibility of Reverter was extended to July 1, 2017; and
- 1.8. The consideration for the sale of the Property to the Charleston School of Law was below market, as the intent of the conveyance was to provide the Charleston School of Law land to be used for Law School Purposes (as defined in the Quitclaim Deed).
- 1.9. The Possibility of a Reverter was included in the Quitclaim Deed to provide assurances that the Property would be used for Law School Purposes.
- 1.10. The Parties enter into this Agreement to assist the Charleston School of Law's efforts to remain in the City of Charleston by setting forth terms to accommodate a sale or exchange of the Property by The Charleston School of Law:
 - 1.10.1. For the sale of the Property and division of the proceeds with the City of Charleston to facilitate the Charleston School of Law paying the Note, to provide the City of Charleston funds to use for affordable housing and to provide the Charleston School of Law additional capital; or
 - 1.10.2. For the exchange of the Property for other property in the City of Charleston suitable for the Charleston School of Law as a site for its law school, and to amortize and provide for the payment of the Note with interest to the City of Charleston over five years after the exchange is consummated.

NOW, THEREFORE, in consideration of the promises set forth in this Agreement, the Recitals which are part of this Agreement and for other good and valuable consideration, the



receipt and sufficiency of which are hereby agreed and acknowledged, the Charleston School of Law and the City of Charleston agree as follows:

2. **Sale or Exchange of the Property.** The Parties, immediately after this Agreement is executed by the City of Charleston, will take the following action:
 - 2.1. The Parties will have the Property appraised by an MAI appraiser mutually agreed to by the Parties. The appraisal will include the assumption that the Possibility of a Reverter and any other restrictions in the Quitclaim Deed imposed by the City of Charleston on the use of the Property will be released. Upon the appraisal being completed, the Property immediately will be marketed for sale or exchange by The Charleston School of Law, in accordance with whatever method The Charleston School of Law deems appropriate to secure the highest price. Should The Charleston School of Law determine to market the Property through a real estate broker or agent, any such agreement shall be approved by the City of Charleston, which approval shall not unreasonably be withheld.
 - 2.2. The Charleston School of Law will pay the interest on the Note to the date of closing.
 - 2.3. Sale. If the Property is sold, at closing,
 - 2.3.1. the proceeds will be distributed
 - 2.3.1.1. first, to pay the real estate commission, the appraiser; and deed stamps,
 - 2.3.1.2. second, to the City of Charleston, the greater of One Million Eight Hundred Sixty Five Thousand and No/100 Dollars (\$1,865,000.00) or twenty-five percent (25%) of the sales price (net of the amounts set forth in Section 2.3.1.1) with Eight Hundred Sixty Five Thousand and No/100 Dollars (\$865,000.00) being paid in satisfaction of all principal and interest on the Note and Mortgage with the balance of the payment to the City of Charleston as the City of Charleston's share of the sale proceeds, and
 - 2.3.1.3. third, to the Charleston School of Law, the balance of the proceeds.
 - 2.3.2. The City of Charleston will satisfy the Note and the Mortgage.
 - 2.4. Exchange. If the Property is exchanged for another property located on the peninsula of Charleston, at closing,

2.4.1. Based on the value of the Property used in the exchange “**Exchange Property Value**”),

2.4.1.1. The Charleston School of Law will pay the real estate broker(s), the appraisers and the RMC office the deed stamps,

2.4.1.2. The Charleston School of Law will deliver to the City of Charleston

2.4.1.2.1. net cash proceeds of sale, if any, from the Exchange, which mean gross cash received, less the real estate commission, the cost of the appraisal and deed stamps up to the amount of the New Note described in Section 2.4.1.2.2;

2.4.1.2.2. an executed note (the “**New Note**”) in an amount equal to the greater of One Million Eight Hundred Sixty Five Thousand and No/100 Dollars (\$1,865,000.00) (net of the amounts, if any, paid per Section 2.4.1.2.1) or twenty-five percent (25%) of the Exchange Property Value (net of the amounts set forth, if any, in Section 2.4.1.2.1) up to two million dollars (\$2,000,000.00), which New Note will bear interest at five percent payable annually with the entire principal and all unpaid interest due and payable on the fifth anniversary of the closing of the exchange, and

2.4.1.3. a mortgage (the “**New Mortgage**”) on the property acquired in the exchange securing the New Note.

2.4.2. The City of Charleston will satisfy the Note and the Mortgage on the Property.

2.5. Subsequent Sale or Exchange. If the Term expires before the Property is sold or exchanged, then at the end of the Term, the Charleston School of Law shall pay the principal and all accrued and unpaid interest on the Note. Thereafter, if the Charleston School of Law transfers the Property, at the closing of such transfer,

2.5.1. the proceeds will be distributed

- 2.5.1.1. first, to pay the real estate commission, the appraiser; and deed stamps,
 - 2.5.1.2. second, to the City of Charleston as the City of Charleston's share of the transfer proceeds, twenty-five percent (25%) of the portion of the sales price attributable to the land (but not the value of any improvements on the land), or twenty-five (25%) of then appraised value of land value of the Property pursuant to an appraisal dated within six months of closing (but not the value of any improvements) less (a) the amounts set forth in Section 2.5.1.1 and (b) Eight Hundred Sixty Five Thousand and No/100 Dollars (\$865,000.00), and
 - 2.5.1.3. third, to the Charleston School of Law, the balance of the proceeds.
 - 2.6. At closing of any sale or exchange, the City of Charleston will execute and file a quit-claim deed
 - 2.6.1. to delete, eliminate and render null and void the Possibility of Reverter and Restriction as contained in Exhibit B of the Quitclaim Deed recorded in Book J-543, at Page 031, and
 - 2.6.2. to acknowledge satisfaction of any and all rights or claims the City of Charleston has under this Agreement.
 - 2.7. The Charleston School of Law will continue to pay interest on the Note until the Note is repaid in full.
3. **Review of Offers:** The Charleston School of Law agrees to immediately share with the City of Charleston the terms of all offers received and proposed contracts for the sale or exchange of the Property.
 - 3.1. If an offer meets or exceeds the appraised value of the Property, the Charleston School of Law shall have the right to accept the offer and close the transaction.
 - 3.2. If an offer *to sell* the Property meets or exceeds the appraised value of the Property, and if the Charleston School of Law intends not to accept the offer, the Charleston School of Law shall give written notice to the City of Charleston that the Charleston School of Law intends not to accept the offer, and within ~~ten~~ ^{ten} business days of receipt of the notice from the Charleston School of Law, the City of Charleston shall have the right to deliver written notice to the Charleston School of Law requiring the Charleston School of Law to accept the offer that meets or exceeds the appraised value of the Property; provided that in lieu of

accepting the offer, the Charleston School of Law shall have the right to give written notice to the City of Charleston that the Charleston School of Law will pay to the City of Charleston within 90 days an amount in cash equal to the proceeds the City of Charleston would have received if the sale had been consummated, and the Charleston School of Law shall pay the City of Charleston that amount by that deadline.

- 3.3. If an offer *to exchange* the Property meets or exceeds the appraised value of the Property, and the Charleston School of Law notifies the City of Charleston that the Charleston School of Law intends not to accept the offer, the City of Charleston *shall not* have the right to require The Charleston School of Law to accept the offer.
4. **Term:** The term of this Agreement shall be for a period of two (2) years, and shall automatically renew for one additional successive one year term unless a Party gives written notice at least sixty (60) days prior to the expiration of the term that the term will not be renewed for another year. The City of Charleston shall
 - 4.1. modify the Note to extend the maturity date of the Note for two (2) years and one successive one year period to coincide with the Term until the Property is sold or exchanged or the Term expires as provided herein;
 - 4.2. modify the Mortgage to reflect such extension(s); and
 - 4.3. modify the Possibility of Reverter and restrictions as contained in Exhibit B of the Quitclaim Deed recorded in Book J-543, at Page 031 to reflect such extension(s).
5. **Entire Agreement:** This Agreement represents the entire understanding of the parties.
6. **Amendment:** No amendment or modification of this Agreement shall be effective unless reduced to writing and signed by the party against whom such amendment or modification is sought to be enforced.
7. **Governing Law:** This Agreement shall be governed by the laws of the State of South Carolina.
8. **Notices; Time Computation.**
 - 8.1. All notices, demands and communications required or permitted in connection with this Agreement shall be in writing and signed by the party (or its agent) serving the same and shall be deemed to have been given (A) when delivered to the intended party in person or by electronic transmission by facsimile, electronic mail or otherwise with acknowledgment of receipt, (B) at 5:00 P.M. on the third business day after mailed postage prepaid by certified or registered mail, return receipt requested or (C) at 5:00 P.M. on the business day after the date delivered

to any nationally recognized private mail or courier service (e.g., FedEx, Airborne), postage paid or guaranteed and sent for next day delivery, and shall be addressed to each party with copies as indicated in this Agreement or by notice to the other party in compliance with this Agreement:

8.1.1. To the Charleston School of Law, c/o J. Edward Bell, III, president, Charleston School of Law, Suite 300, 385 Meeting Street Charleston, South Carolina 29403 Tel: 843-329-1000, Facsimile: 843- and e-mail: ebell@edbelllaw.com; With a copy to: William E. Craver, III, Craver Law Firm, P. A., 171 Church Street, Suite 120A (29401), P. O. Box 1016, Charleston, SC 29402, Tel: 843/577-7557, Facsimile: 843-577-0811 and e-mail wcraver@craverlawfirm.com.

8.1.2. To the City of Charleston, c/o John Tecklenburg, Mayor, 80 Broad Street, Charleston, SC 29401; Tel: 843-____-____; Facsimile: 843-____-____; and e-mail: TECKLENBURGJ2@charleston-sc.gov; With a copy to: Frances I. Cantwell, Corporation Counsel, City of Charleston, 50 Broad Street, Charleston, S.C. 29401, Tel: 843-724-3730, Fax: 843-724-3706, electronic mail: cantwellf@charleston-sc.gov.

8.2. In computing any period of time prescribed or allowed in this Agreement, the day of the delivery of notices, the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is described as "business days," intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

9. **Counterparts; Execution by Electronic Transmission and Copies.** This document may be executed in any number of counterparts which together shall constitute a fully executed document. For purposes of executing this document, a document signed and transmitted electronically by facsimile, telecopier, e-mail or otherwise and a copy of a document shall be treated as an original document. The signature of any party thereon shall be considered an original signature, and the document transmitted and any such copy shall be considered to have the same binding legal effect as an original signature on an original document.

Signature page is attached.

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