

**AGREEMENT TO RESCIND PROPOSED LEASE OF PARKING SPACES  
IN THE NORTH GARAGE**

**THIS AGREEMENT** (the "Agreement") is dated, made and entered into as of the 20<sup>th</sup> day of February 2012 by and between **THE CITY OF DURHAM**, a North Carolina municipal corporation (the "City") and **AMERICAN CAMPUS OPERATING COMPANY, LLC**, a North Carolina limited liability company ("ACOC").

**WITNESSETH:**

**WHEREAS**, previously ACOC submitted to the City an offer to lease at least 149 parking spaces in the City's North Garage at 305 Pettigrew Street, Durham, N.C., for a term of fifteen (15) years, with an option to renew for five (5) years (the "Proposed Lease");

**WHEREAS**, ACOC paid to the City a required deposit in the sum of \$88,047.00 in connection with its offer to enter into the Proposed Lease;

**WHEREAS**, after receipt of the above-described offer, the City Council adopted, on November 3, 2008, Resolution 9611 authorizing the Proposed Lease through the upset bid procedure of N.C.G.S. § 160A-269, titled "Resolution Authorizing Upset Bid Process to Lease Parking Spaces in North Garage to American Campus Operating Company, LLC" (the "Authorizing Resolution");

**WHEREAS**, subsequent to the expiration of the time period for any qualifying upset bids to be received, the City and ACOC never finalized the Proposed Lease or executed a lease agreement and effectively agreed not to finalize or execute a lease agreement for the spaces described in the Proposed Lease; and

**WHEREAS**, the City Council has authorized the execution of a more comprehensive lease of parking spaces at the North Garage with American Campus, LLC, a limited liability company affiliated with ACOC; and

**WHEREAS**, the City and ACOC now desire to memorialize, ratify and confirm that the Proposed Lease was never finalized, that all rights or obligations, if any, of the City and ACOC pursuant to the Proposed Lease have been rescinded and terminated, and that the above-described deposit will be returned to ACOC.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the parties hereby agree as follows:

1. Withdrawal of Offer for Proposed Lease. The City and ACOC hereby ratify, confirm and agree that the offer to enter into the Proposed Lease from ACOC, and the City's acceptance of said offer, have been withdrawn, rescinded and terminated. Neither party shall have any rights or obligations pursuant to the offer made by ACOC, the Proposed Lease, or the City's acceptance of said offer, except as provided in Section 2 below.

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between the City of Durham and American Campus Operating Company, LLC, page 2*

2. Return of Deposit. The City agrees to return to ACOC its \$88,047.00 deposit, to be made within a reasonable time after the execution and delivery of this Agreement.

3. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous oral or written agreements or instruments with respect to the subject matter hereof are merged in this Agreement.

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

City:

ATTEST:

CITY OF DURHAM

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

Preaudit certificate, if applicable \_\_\_\_\_

ACOC:

AMERICAN CAMPUS OPERATING COMPANY, LLC

By: American Campus Management Company, LLC, its  
Manager

By: Capitol Broadcasting Company, Incorporated, its  
Manager

By:  \_\_\_\_\_  
Michael J. Goodmon, Sr., Vice President