

ORDINANCE NO.: 2014-022

*Authorizing the City Manager to execute an Easement Agreement
between the City of Columbia and USC Alumni Center Corporation
for the AC Corp Building to the Parking Facility*

ORIGINAL
STAMPED IN RED

BE IT ORDAINED by the Mayor and City Council this 8th day of April, 2014, that the City Manager is authorized to execute the attached Easement Agreement between the City of Columbia and USC Alumni Center Corporation for the AC Corp Building and the Parking Facility.

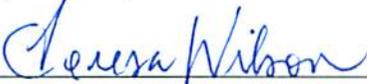
Requested by:

Parking Services _____



Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 4/1/2014
Final Reading: 4/8/2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is entered into as of this _____ day of _____, 2014, by and between the City of Columbia, a municipality of the State of South Carolina ("City") and USC Alumni Center Corporation, a South Carolina not-for-profit corporation ("AC Corp" and, together with City, the "Parcel Owners" and each a "Parcel Owner");

WITNESSETH:

Recitals:

- A. City owns the parcel of land located in the City of Columbia, Richland County, South Carolina, described in Exhibit A attached hereto and made a part hereof (the "City Parcel"), upon which is located a multi-story parking facility (the "Parking Facility");
- B. AC Corp owns the parcel of land located in the City of Columbia, Richland County, South Carolina, described in Exhibit B attached hereto and made a part hereof (the "AC Corp Parcel"), the AC Corp Parcel being north of and contiguous to the City Parcel;
- C. AC Corp intends to construction an alumni center building on the AC Corp Parcel (the "AC Corp Building");
- D. AC Corp and City desire and agree that the AC Corp Building be connected to the Parking Facility by a covered pedestrian access way, to be constructed at AC Corp's expense;
- E. The City Parcel and the AC Corp Parcel each are sometimes referred to herein as a "Parcel."

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements set forth herein, the sum of Ten and No/100ths Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parcel Owners agree as follows:

1. **Construction, Encroachment and Access Easements.** AC Corp will construct a covered pedestrian connection from the AC Corp Building on the AC Corp Parcel to the Parking Facility on the City Parcel. The improvements to be constructed for such pedestrian connection are shown generally on Exhibit C attached hereto and made a part hereof (the "Construction Site Plan"). Such improvements will include all elements shown on the Construction Site Plan, including without limitation the covered walk, entrance into the Parking Facility, ramp, stormwater drains, gravel and fence. Such improvements will also include widening one opening and creating one new opening in the northern wall of the Parking Facility and may include a canopy and other esthetic improvements on the interior of the Parking Facility at the door openings to the pedestrian connection. All of such improvements will be more fully shown on construction plans that will be subject to the City's approval (the "Final Construction Plans"), and all such improvements are referred to collectively herein as the "Improvements". In connection therewith, City hereby grants to AC Corp the following easements:

(a) A temporary construction easement across the northern portion of the City Parcel, outside the northern wall of the Parking Facility, for the construction of the Improvements in accordance with the Final Construction Plans. This construction easement will terminate upon completion of the Improvements, but in no event later than December 31, 2016.

(b) A temporary construction easement within the Parking Facility as reasonably necessary for construction of the entrance way into the Parking Facility as shown on the Final Construction Plans. This construction easement will terminate upon completion of the Improvements, but in no event later than December 31, 2016.

(c) An encroachment easement for all Improvements that will be located on the City Parcel.

(d) An easement for pedestrian ingress and egress from the AC Corp Building to the Parking Facility over and through the Improvements, for the benefit of AC Corp and its board members, officers, employees, agents, contractors, tenants, guests and invitees (the "Permitted Users").

(e) An easement for the cleaning and maintenance of the Improvements as required herein and for the repair and restoration of the Improvements from time to time.

The easements established in subsections (c), (d) and (e) are perpetual, provided that they shall terminate if the Parking Facility shall no longer exist on the City Parcel (excluding damage to the Parking Facility which is to be repaired) or the AC Corp Building shall no longer exist on the AC Corp Parcel (excluding damage to the AC Corp Building which is to be repaired).

2. **Maintenance, Indemnification and Insurance.**

(a) AC Corp at its expense shall keep, maintain and repair the Improvements in a safe, clean, sightly, good and functional first-class condition and state of repair; provided, however, that the expense of any repair of the Improvements for damage caused by the acts of City or its employees, agents or contractors shall be borne by the City.

(b) AC Corp agrees to indemnify and hold harmless City and its agents and employees from and against all claims, damages, losses and expenses, including reasonable attorneys' fees, arising out of or resulting from the exercise of the easement rights provided herein, whether such activity is conducted by AC Corp or its agents, employees, contractors, subcontractors, tenants, guests or invitees.

(c) AC Corp shall at all times maintain liability insurance during construction and thereafter in accordance with Section 11-71 of the Code of Ordinances of the City of Columbia, as such may be amended or replaced from time to time.

3. **Emergency Egress.** Any persons in the Parking Facility who need to exit the Parking Facility as a result of an emergency shall be allowed to exit the Parking Facility through the Improvements, proceed through the patio on the Lincoln Street side of the AC Building and use the outdoor steps from the patio down to Lincoln Street. AC Corp may at its option install a gate with emergency hardware on the patio and/or the patio steps. This emergency egress provision fulfills the requirements in the Agreement Concerning Emergency Egress between City and the University of South Carolina Alumni Association dated June 19, 2012, recorded in the Richland County ROD Office in Book 1773 at page 1281. Except for such emergency egress, the Improvements shall be used only by Permitted Users, and not by the public at large; provided, however, City shall not be responsible, under any circumstances, for ensuring that the Improvements be used only by Permitted Users. Without limiting in any way the provisions of Paragraph 2(b) above, AC Corp agrees to hold harmless City and its agents and employees from and against all claims, damages, losses and expenses, including reasonable attorneys' fees, arising out of the use of the Improvements by Permitted Users or members of the public at large. The Parcel Owners shall cooperate in establishing, at AC Corp's expense, attractive directional signage at the exits from the Parking Facility to the Improvements directing the Permitted Users to the AC Corp Building and advising that the exits otherwise are for emergency use only.

4. **General.**

(a) **Recital.** The Recitals on page 1 are made a part of this Agreement.

(b) **No Dedication to Public.** The easements and covenants created, reserved, granted and established in this Agreement do not, are not intended to, and/or shall not be construed to create any easements, rights or privileges in and for the benefit of the general public. Notwithstanding anything to the contrary contained herein, each Parcel Owner shall have the right, to the extent permitted by law, to prohibit or limit any solicitation, petition signing, distribution of literature, collection of money, giving of speeches, leafletting, picketing, carrying of signs, canvassing, demonstrations, or similar activities within the property of such Parcel Owner.

(c) **Covenants Run with the Land.** The easements granted herein shall (i) be non-exclusive, (ii) constitute an easement running with and appurtenant to the AC Corp Parcel and a burden running with and binding upon the City Parcel, and (iii) be binding upon and inure to the benefit of the Parcel Owners and their respective successors and assigns in title.

(d) **Remedies.** The rights established hereunder, and each of them, shall be enforceable at law or in equity, it being fully understood that an action for damages shall not be an adequate remedy for a breach of this Agreement. Without limiting the foregoing, any Parcel Owner shall be entitled to pursue injunctive relief or specific performance with respect to any violation or threatened violation of any party of any of the terms, covenants, or conditions of this Agreement.

(e) **Limitation of Liability.** Upon the conveyance of a Parcel Owner's entire interest in the fee simple title to its Parcel, such Parcel Owner shall thereupon be released and discharged from any and all further liabilities and obligations for the breach of the terms of this Agreement accruing after such conveyance and such liabilities and obligations thereafter accruing shall be binding upon the successor in title to such Parcel Owner.

(f) **Merger of Title.** The covenants, agreements, rights, privileges and easements established herein shall survive any merger of title to the Parcels.

(g) **Amendments.** This Agreement may be amended only by a written agreement executed by the Parcel Owners and recorded in the Richland County, South Carolina public real estate records. No cancellation or attempted cancellation of this Agreement shall be effective unless the instrument of cancellation is also executed by the Parcel Owners.

(h) **Non-Waiver.** The failure of either Parcel Owner to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which such Parcel Owner may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

(i) **Severability.** All rights provided herein may be exercised only to the extent that the exercise thereof does not violate then applicable law and shall be limited to the extent necessary to render the remaining covenants herein valid and enforceable. If any term, provision, covenant or agreement contained herein or the application thereof to any person or circumstance shall be held illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

(j) **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of South Carolina without regard to the conflicts of law principles thereof.

(k) **Exhibits.** All exhibits referred to herein are attached hereto and made a part hereof.

(l) **Captions.** The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.

(m) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which together shall constitute one and the same agreement of the parties.

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the day and year first above written.

WITNESSES:

Erika D. Moore
St. Daniels

CITY OF COLUMBIA

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

Attest: _____
Name: _____
Its: _____

(SEAL)

STATE OF CAROLINA)
)
COUNTY OF RICHLAND)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that _____, the _____ of the City of Columbia, personally appeared before me this day and acknowledged the due execution of the foregoing instrument by the undersigned in his/her capacity as the _____ of the City of Columbia, and attested by _____, the _____ of the City of Columbia.

Sworn to and subscribed before me this _____ day of _____, 2014.

Notary Public, State of South Carolina (L.S.)

My Commission Expires: _____

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the day and year first above written.

WITNESSES:

USC ALUMNI CENTER CORPORATION

By: _____ **(SEAL)**
Jack W. Claypoole
Executive Director

STATE OF CAROLINA)
)
COUNTY OF RICHLAND)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Jack W. Claypoole, the Executive Director of USC Alumni Center Corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this _____ day of _____, 2014.

Notary Public, State of South Carolina **(L.S.)**

My Commission Expires: _____

EXHIBIT A

City Parcel

All that parcel or parcels of land in the City of Columbia, Richland County, South Carolina, bounded on East by Park Street, on the South by Pendleton Street, on the West by Lincoln Street, and on the North by (i) the parcel of land owned by USC Alumni Center Corporation, consisting of approximately 1.09 acres, as shown and delineated on a plat prepared for University of South Carolina Alumni Association by Florence & Hutcheson Consulting Engineers dated June 17, 2013, last revised October 9, 2013, recorded in the Office of the ROD for Richland County, South Carolina in Plat Book 1901 at page 1389, and (ii) the parcels of land now or formerly owned by Vista Hotel Partners, LLC, shown and delineated as Parcel D, 1.143 acres, and Parcel D-2, 0.015 acres, on a plat prepared for Windsor Aughtry Co.-Hilton by B. P. Barber & Associates, Inc., dated June 21, 2005, revised November 14, 2005, recorded in the Office of the ROD for Richland County, South Carolina in Plat Book 1131 at page 263.

EXHIBIT B

AC Corp Parcel

ALL that piece, parcel or lot of land, with improvements thereon, situate, lying and being at the southeastern corner of the intersection of Lincoln Street and Senate Street, City of Columbia, Richland County, South Carolina, consisting of approximately 1.09 acres, as shown and delineated on a plat prepared for University of South Carolina Alumni Association by Florence & Hutcheson Consulting Engineers dated June 17, 2013, last revised October 9, 2013, recorded in the Office of the ROD for Richland County, South Carolina in Plat Book 1901 at page 1389.

THIS being the property conveyed to Grantor by deed of the City of Columbia dated June 18, 2012, and recorded in Book 1772, Page 2848, and deed of the City of Columbia dated September 20, 2012, and recorded in Book 1798, Page 3398.

TMS # 08916-10-01

EXHIBIT C
CONSTRUCTION SITE PLAN
(SEE ATTACHED)

