

RESOLUTION NO.: R-2015-094

Authorizing the City Manager to execute and ratifying the execution of a Contract of Sale and Purchase between the City of Columbia and Edens Properties, LLC for 543-603 Saluda Avenue, Richland County TMS #11308-11-13 and any documents necessary and approved by the City Attorney to consummate the purchase

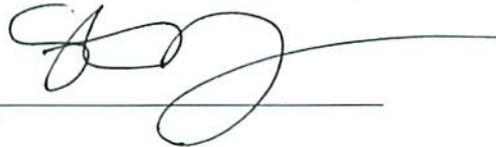
ORIGINAL
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council this 1st day of December, 2015, that the City Manager was authorized to execute and does hereby ratify the execution of the attached Contract of Sale and Purchase and any other documents necessary and approved by the City Attorney to consummate the purchase by the City of Columbia the properties known as 543-603 Saluda Avenue, Richland County TMS #11308-11-13 from Edens Properties, LLC for the sum of Four Hundred Fifty-Seven Thousand Five Hundred and NO/100 (\$457,500.00) Dollars.

(Funding Source: SD8048)

Requested by:

Assistant City Manager Gentry



Mayor

Approved by:



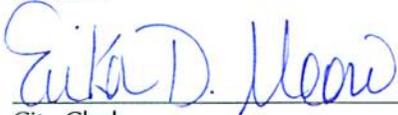
City Manager

Approved as to form:



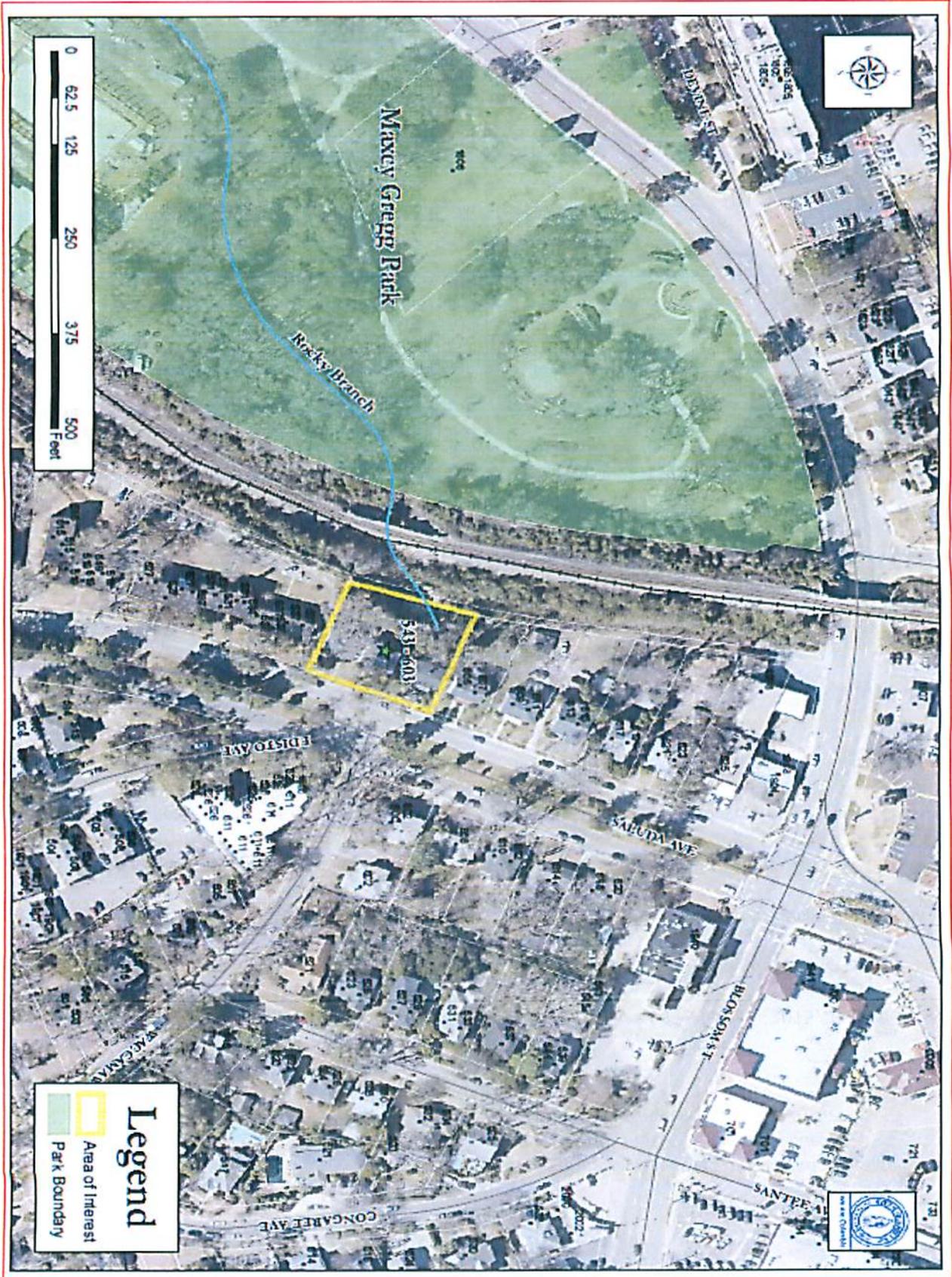
City Attorney

ATTEST:



City Clerk

Introduced: 12/1/2015
Final Reading: 12/1/2015



5. **TITLE AND SURVEY.** Purchaser shall have the right, at its expense, to make such examination of title and survey as it deems necessary or desirable. Purchaser shall notify Seller on or before the end of the Due Diligence Period of its objection to any matters of title (such objections being referred to as the "Title Exceptions") and of its objection to any matters of survey (such objections being referred to as the "Survey Exceptions"). Seller shall notify Purchaser within ten (10) days after receipt of Purchaser's notice whether it will be able to cure or remove the Title Exceptions and Survey Exceptions, as applicable. If Seller shall notify Purchaser that it is unable or unwilling to cure or remove any Title Exceptions or Survey Exceptions, then Purchaser shall have the option to terminate this Agreement, which shall be exercised within ten (10) days after receipt of Seller's notice. If Purchaser does not give such notice of termination within said time, Purchaser shall be deemed to have waived such Title Exceptions and Survey Exceptions. All matters of title and survey as to which Purchaser does not give notice of a Title Exception or Survey Exception within the time period specified above, together with all Title Exceptions and Survey Exceptions which Purchaser is deemed to have waived pursuant to the preceding sentence, and together with the lien for current year property taxes not yet due and payable, are referred to collectively herein as the "Permitted Exceptions".

6. **CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATIONS:** The following items, which may be waived by the Purchaser, are conditions precedent to the obligations of Purchaser hereunder (the "Closing Conditions"):

a. It is a Closing Condition that representations and warranties of the Seller contained in this Contract shall be true on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date, except for changes occurring in the ordinary course of business, none of which changes has been individually or in the aggregate materially adverse, and there shall be no breach of any said representations or warranties.

b. If there is any material casualty loss before the Closing Date, the Purchaser shall have the election to terminate this Contract. If Purchaser does not elect to terminate the Contract, all insurance proceeds shall be paid to Purchaser.

7. **CONDITION OF PROPERTY AND WARRANTIES.**

(a) Seller represents and warrants to Purchaser that, Seller has not received any written notice that the Property is not in compliance with all applicable permits, regulations, ordinances, and other requirements of any governmental or quasi-governmental agency having jurisdiction over the Property.

(b) Seller warrants that the Property is in compliance with local zoning laws and ordinances. Seller further warrants and represents that now and as of the date of closing (A) there is no litigation or proceedings pending against Seller which would affect all or part of the property including its marketability nor does Seller know or have reasonable grounds to know of any basis of such actions; (B) Seller has no notice of any pending condemnation or eminent

domain proceedings which would affect any of the property; and (C) Seller has no knowledge of any environmental law violations.

- (c) EXCEPT AS SPECIFICALLY WARRANTED ABOVE, PURCHASER ACKNOWLEDGES THAT PURCHASER IS PURCHASING THE PROPERTY FROM SELLER "AS IS" AND WITHOUT WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. PURCHASER SHALL HAVE A "DUE DILIGENCE PERIOD" TO SATISFY ITSELF ON ALL SUCH MATTERS PRIOR TO CLOSING.

8. ACCESS TO PROPERTY: Seller hereby gives consent to Purchaser, its representatives or appointees, to enter into and upon the property for the purpose(s) of conducting building inspections, roof inspections, environmental inspections, or performing any other missions germane to the intended use of the property.

9. PRORATIONS: Water charges, sewer charges, assessments, property taxes, and rents (if any, as and when collected) shall be adjusted as of the date of delivery of the deed.

10. EXISTING LEASES: All existing leases and security deposits will be assigned to Purchaser at closing. Copies of all existing leases can be provided to Purchaser within ten (10) days after final execution of this Contract. In the event any existing lease expires prior to closing then Purchaser may have the right to approve or disapprove any extension or renegotiation of the lease.

11. REMEDIES: If Purchaser defaults on any of its obligations under this Agreement, Seller may terminate this Agreement as its sole remedy. If Seller defaults on any of its obligations under this Agreement, Purchaser may terminate this Agreement as its sole remedy.

12. CLOSING COSTS: Seller shall pay for deed preparation and the transfer tax on the deed. Purchaser shall pay all other closing costs, including recording fees, prepaid items, or expenses of sale, excluding Seller's attorney's fees.

13. CLOSING DOCUMENTS. Seller shall execute and deliver the following to Purchaser at closing:

- (a) Deed. Seller shall deliver good and marketable title to the Property to Purchaser by limited warranty deed, subject to the following matters:
- (1) the Property shall be conveyed in an "As Is, Where Is and With All Faults" condition, without warranty, express or implied, except for the limited warranty of title;
 - (2) to any matters which an accurate survey or physical inspection of the premises would show;
 - (3) licenses, rights of way and easements, if any for public utilities;
 - (4) valid covenants, easements, conditions, restrictions, encroachments existing against the Property;

- (5) applicable governmental laws, regulations, and zoning; and
- (6) the Permitted Exceptions.

- (b) **Affidavits as to Liens and Possession.** Affidavits for the benefit of Purchaser and Purchaser's title insurance company (in the form required by the title insurance company) that there are no amounts owed for labor, materials or services respecting the Property and that there are no parties in possession except under leases assumed by Purchaser hereunder.
- (c) **Residency Certificate.** Certificates, certifying under oath, that the Seller is not a "non-resident" within the meaning of S.C. Code § 12-5-850 nor a "foreign person" as defined in Section 1445 of the U.S. Internal Revenue Code.
- (d) **Form 1099.** Information for Form 1099 reporting of the sale.

14. **CLOSING:** Closing shall take place on a date to be determined by the parties, but not later than thirty (30) days after the end of the due diligence period (the "Closing Date"). The Closing shall take place in the offices of the Purchaser's closing attorney or such other site as shall be mutually agreed upon between the parties hereto.

15. **BINDING EFFECT:** This instrument represents the entire contract between the Seller and Purchaser and shall be binding upon and shall inure to the benefit of the undersigned parties and their respective heirs, executors, legal representatives, successors and assigns.

16. **TIME:** Time is and shall be of the essence of this Contract.

17. **APPLICABLE LAW:** This Contract shall be governed and construed under and interpreted and enforced in accordance with the laws of the State of South Carolina.

18. **PARAGRAPH HEADINGS:** Captions or headings to paragraphs are for convenience only and shall not be considered in construing this Instrument.

19. **MODIFICATION:** This Agreement may not be modified or amended nor shall any of its provisions be waived except by a written instrument signed by Seller and Purchaser.

20. **CITY COUNCIL APPROVAL.** This Agreement is not effective and shall not be binding upon the City of Columbia until such time as the Agreement is approved by Columbia City Council and the City Manager is authorized by legislative enactment to execute the same on behalf of the City of Columbia.

IN WITNESS WHEREOF, this Agreement is executed by Purchaser this ___ day of July 2015, and by Seller this 21 day of July 2015.

Witnesses:

Richard E. Held

SELLER:

Kellie M. Edens
Edens Properties, LLC

By: _____

Its: Owner/Manager

Witnesses:

Ahley Jones

JD Dnick

PURCHASER:

Teresa Wilson
City of Columbia

By: Teresa Wilson

Its: City Manager

