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**ORDINANCE NO.: 2013-051**

APPROVING THE USE OF CERTAIN FUNDS OF THE CITY OF COLUMBIA, SOUTH CAROLINA, IN ORDER TO CREATE AN ECONOMIC DEVELOPMENT FUND AND USE SUCH FUNDS TO FINANCE THE ACQUISITION, RENOVATION AND REDEVELOPMENT OF THE LAND AND BUILDING KNOWN AS THE PALMETTO COMPRESS AND WAREHOUSE COMPANY BUILDING AND PAY CERTAIN COSTS ASSOCIATED WITH THE REDEVELOPMENT THEREOF AND ON-GOING OPERATING AND MAINTENANCE COSTS RELATED THERETO; AND OTHER MATTERS RELATING THERETO

WHEREAS, the City is an incorporated municipality located in Richland County and Lexington County, and as such possesses all powers granted to municipalities by the Constitution and general laws of this State; and,

WHEREAS, pursuant to Section 5-5-10, Code of Laws of South Carolina, 1976, as amended (the "SC Code"), the City has selected the City Council-Manager form of government and is governed by a Council (the "City Council") composed of a Mayor and six council members which constitute the governing body of the City; and,

WHEREAS, Section 5-7-30 of the South Carolina Code provides, in part, that municipalities may enact ordinances, not inconsistent with the Constitution and general law of the State, respecting any subject which appears necessary and proper for the security, general welfare, and convenience of the municipality and for the preservation of the general health, peace, order and good government in the municipality, and further, under the case of Williams v. Town of Hilton Head, 429 S.E.2d 802 (1993), a municipality may enact regulations (ordinances) without the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the State; and,

WHEREAS, the City proposes to fund the acquisition of certain land located in downtown Columbia (the "Land"), and certain buildings, improvements, facilities and other appurtenances located on portions of the Land, known generally as the "Palmetto Compress and Warehouse Company Building"(collectively, the "Palmetto Compress Building"), and foster and/or facilitate the adaptive re-use and development thereof; and,

WHEREAS, the following information was presented to the City Council:

- (a) the Palmetto Compress Building is an approximately 320,000-square foot, iconic brick structure that was built in 1918 and later renovated in 1923;
- (b) the Palmetto Compress Building was originally used as a cotton warehouse and was designed by locally renowned architect James Urquhart; it is one of only four surviving compress facilities in the Southeast and the only remaining example in South Carolina;
- (c) the Palmetto Compress Building is a singular reminder of the historically significant Ward One neighborhood, is registered on the National Register for Historic Places and is featured on Historic Columbia Foundation's Eligible Local Landmark List;
- (d) presently, the Palmetto Compress Building is dilapidated and run-down, and its appearance is blighted, unattractive and not characteristic of many of the neighboring structures; and,
- (e) the Palmetto Compress Building is of great historical significance as an example of the textile industry which was prominent in Columbia's history, such significance being demonstrated in part by the proximity of the Palmetto Compress Building to other textile-related facilities and structures, including the South Carolina State Museum (a former cotton mill and the first totally electric textile mill in the world), the Olympia and Granby Mill buildings which have now been renovated and re-adapted to other uses, and the nearby railroad and canal facilities.

WHEREAS, the benefits to the City as a result of the acquisition, renovation, redevelopment, upfitting and improvement of the Land and the Palmetto Compress Building (collectively, the "Project") are set forth, in part, herein:

- (1) the current blighted conditions of the Palmetto Compress Building would be remediated and addressed, which would enhance the aesthetic qualities of the surrounding areas;

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(2) the improved and renovated facilities would promote interest from visitors, tourists and City residents who want to study and/or learn about this architecturally and historically significant building and other surrounding historic facilities within the City, which may include exhibits, presentations or museum areas located in or near to the facilities, and would be promoted and marketed by area tourism businesses and nonprofit organizations in their advertisements, on the Internet and in materials provided for tours and/or self-guided tours of the City;

(3) the City and its citizens have invested and continue to invest significant funds in and to promote its Downtown area, the Congaree Vista Area and the riverfront area, and the Palmetto Compress Building serves as a connection between the Congaree Vista Area and the riverfront area;

(4) the improved and renovated Palmetto Compress Building would also foster and encourage tourists, visitors, residents and businesses to locate in or patronize such facilities or the surrounding area (including tourism-generating facilities in close proximity to the Palmetto Compress Building like the South Carolina State Museum, EdVenture Children's Museum, the Three Rivers Greenway extension, Granby Riverwalk, Canal Front Park and the proposed Riverfront Park), which enhances the economic viability of the City (including particularly the Congaree Vista Area and the area surrounding these facilities) through the redevelopment of nearby properties, the imposition and collection of additional ad valorem property taxes and increased commercial activity that would generate additional sales taxes and personal property taxes, hospitality fees, accommodations fees, tourism development fees, business license fees and other fees, as well as additional jobs and capital investment;

(5) the historic and architectural characteristics of the Palmetto Compress Building would be significantly preserved and, like the nearby South Carolina State Museum and the Confederate Printing Plant (now Publix), serve as examples of successful preservation, rehabilitation, redevelopment and re-adaptation, all three of which are recognizable, signature properties that provide a gateway into the City of Columbia and the arts and entertainment district known as the Congaree Vista Area; and,

(6) the Land is available to be used for several purposes, including the development of parking lots, parking structures or other buildings, facilities and improvements, to support the Palmetto Compress Building, to otherwise serve demand created by tourism-related facilities and businesses in downtown Columbia, such as the Colonial Life Arena, the University of South Carolina baseball stadium and other commercial activities within the Congaree Vista Area or for other purposes.

WHEREAS, the City Council recognizes that the expenditure of public funds for economic development must be for a public purpose in accordance with the applicable provisions of the South Carolina Constitution and decisions of the South Carolina Supreme Court. Specifically, the cases of *Byrd v. County of Florence*, 315 S.E.2d 804 (1984) and *Nichols v. The South Carolina Research Authority*, 351 S.E.2d 155 (1986), formulate a four-point standard by which undertakings for financing economic development are tested for constitutionality. The City Attorney has reviewed this standard with the members of the City Council. In *WDW Properties v. City of Sumter*, 535 S.E.2d 631 (2000), the *Byrd/Nichols* test was applied by the Court to uphold the issuance by South Carolina Jobs-Economic Development Authority of tax-exempt industrial revenue bonds to finance a portion of the costs of renovation of existing buildings located within the Columbia/Sumter SC Empowerment Zone. In that case, the Court noted that the redevelopment projects were intended to be leased for commercial office and retail space, that the developer expected to create 20 full-time jobs and that the project would "serve as the cornerstone for the revitalization of downtown Sumter and the surrounding communities"; and,

WHEREAS, the City Council is advised that the current owner of the Land and the Palmetto Compress Building (the "Owner") has owned such Land and Palmetto Compress Building for more than 20 years; and,

WHEREAS, the City is aware of certain tax credits which may be available under federal and South Carolina law, relating to the rehabilitation and redevelopment of historic structures, including but not limited to textile mill and related properties (collectively, the "Tax Credits"), the benefits of which Tax Credits the City may desire to transfer or assign to one or more developers of the Project or to directly take advantage of such Tax Credits; and,

WHEREAS, the City Council is advised that, provided eligible rehabilitation or redevelopment expenditures are made to the Project, the Owner (or its successor as owner of the Project) may qualify for the Tax Credits; however, it is believed that the Tax Credits may be significantly limited and/or unavailable if the assets comprising the Project (rather than the outstanding stock of the Owner) were acquired by the City; and,

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WHEREAS, the City proposes that Columbia Development Corporation, or a single-member limited liability company owned by it (the "Company"), take steps to acquire, renovate, redevelop, upfit and improve the Project, either through the acquisition of all of the outstanding stock of the Owner or, in the alternative, the acquisition of the property comprising the Project in fee simple, as the Company deems most advantageous and appropriate in its sole and exclusive discretion; and,

WHEREAS, after taking into consideration information presented to the City (including but not limited to those supporting the findings set forth above), the City Council makes the following additional findings and determinations with respect to the acquisition, renovation, redevelopment, upfitting and improvement of the Project:

(1) The ultimate benefits to the public are multiple: to increase the number of available jobs, to improve the appearance and enhance the aesthetic character of the Palmetto Compress Building and surrounding properties, to positively influence real property values of surrounding properties, to attract new businesses, to reinvigorate a downtown area that has been classified by the local and federal governments as economically distressed and to protect and preserve historically and architecturally significant features and encourage others to undertake historic preservation that would benefit downtown Columbia.

(2) The public will be the primary beneficiary of the development of the Project, although one or more developers of the Project may also benefit from the possible availability of the Tax Credits.

(3) The Project is not so speculative as to violate the public purpose doctrine based on the success of similar historic properties being redeveloped, like the South Carolina State Museum, the Confederate Printing Plant (now Publix) and the 701 Whaley Arts Center, all of which serve as examples of successful preservation, rehabilitation, redevelopment and re-adaptation.

(4) The public interest is likely to be served to a substantial degree through the creation of jobs, the improvement and enhancement of the appearance and aesthetic character of downtown Columbia, the reinvigoration of that downtown area, the preservation of historical and architecturally significant features and the benefits, both tangible and intangible, that should result from that reinvigoration.

WHEREAS, in order to ensure the development and utilization of the Project, and to promote and enhance the economic development within the City, and in consideration of the direct and indirect benefits, some of which are set forth herein, afforded to the City by the adaptive re-use and redevelopment of the Project, it is necessary and in the best interests of the City to fund the acquisition, renovation, redevelopment, upfitting and improvement of the Project, as herein approved and authorized; and,

WHEREAS, the undertaking authorized by this Ordinance is necessary and in the best interest of the City and will assist and enhance the economic development of the City. The funding by the City of the acquisition, renovation, redevelopment, upfitting and improvement of the Project, as authorized by this Ordinance, will be undertaken for a public purpose of the City. NOW, THEREFORE,

BE IT ORDAINED by the Mayor and City Council of the City of Columbia this 23rd day of April, 2013 as follows:

Section 1. Recitals and Authority for Ordinance. It is hereby declared and found that the recitals of this Ordinance set forth herein are in all respects true and correct.

Section 2. Approval of an Economic Development Fund. On the basis of the benefits of economic development in the City, City Council does hereby approve the creation of an Economic Development Fund which may be funded from time to time from the City's GASB 45 reserves or from other such sources as City Council may from time to time determine as appropriate for the uses described herein or such other economic development projects which City Council may approve from time to time.

Section 3. Initial Funding of Economic Development Fund and Future Repayment. The City Manager is hereby authorized to initially transfer up to \$7,000,000.00 from the City's GASB 45 reserves to the Economic Development Fund for the purposes contained in this Ordinance. Upon redevelopment and/or sale by the Company of the Project (or any portion thereof), all of the net proceeds received by the Company shall be paid to the City and the City Manager shall cause such funds to be returned to the City's GASB 45 reserve account.

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Section 4. Approval of Funding of Project. On the basis of the benefits (both direct and indirect) that the adaptive re-use and redevelopment of the Project will have to the economic development of the City, the City Council does hereby approve funding the acquisition, renovation, redevelopment, upfitting and improvement of the Project. The City Manager is hereby approved to transfer to the Company, from time to time, an amount up to and not to exceed \$7,000,000.00 in the aggregate from the Economic Development Fund for the purposes described in this Ordinance, including but not limited to the acquisition, renovation, redevelopment, upfitting and improvement of the Project (either through the acquisition of all of the outstanding stock of the Owner or, in the alternative, the acquisition of the property comprising the Project in fee simple, as the Company deems most advantageous and appropriate in its sole and exclusive discretion), and the payment of certain on-going operation and maintenance expenses and certain marketing and development expenses relating thereto. It is the City's expectation that the funding approved hereby will be loaned by the City to the Company pursuant to a loan arrangement to be executed by such parties and that, when the Project (or any portion thereof) is subsequently sold by the Company, such loan will be repaid to the City from the net proceeds of such sale.

Section 5. Official Action. It is the intention of the City that this Ordinance shall constitute an official intent of the City to issue tax-exempt obligations in the future in a maximum amount not to exceed \$7,000,000 (the "Bonds") and to be reimbursed with and for up to the maximum amount of the expenditures made by the City and the Company with respect to the Project incurred no earlier than 60 days prior to the date of this Ordinance within the meaning of Treas. Reg. Section 1.150-2 and all other applicable regulations of the United States Treasury Department relating to the issuance of tax-exempt obligations; provided, however, that nothing herein shall commit the City to issue the Bonds (or any portion thereof) in the future.

Section 6. Authorization. The City Manager, for and on behalf of the City, is fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be necessary to effect the transaction contemplated hereby, and the action of such officers in executing and delivering any necessary documents, in such form as the City Manager shall approve, is hereby fully authorized.

Section 5-7. Severability. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 6-8. Effective Date of Ordinance. This Ordinance shall take effect and be in full force from and after the date of its enactment.

This Ordinance is contingent upon the Company entering into a contract to acquire all of the outstanding stock of the Owner or, in the alternative, to acquire the property comprising the Project in fee simple, as the Company deems most advantageous and appropriate in its sole and exclusive discretion.

Requested by:

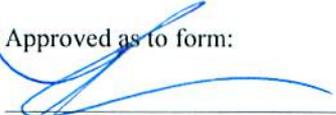
Mayor and City Council

  
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Mayor

Approved by:

  
\_\_\_\_\_  
City Manager

Approved as to form:

  
\_\_\_\_\_  
City Attorney

ATTEST:  
  
\_\_\_\_\_  
City Clerk

Introduced: 4/16/2013  
Final Reading: 4/23/2013