

RESOLUTION NO.: R-2010-097

*Authorizing and the City Manager to execute an Agreement of Purchase and Sale between the City of Columbia and 1620 Main, LLC for the purchase of 1620-4 Main Street, Richland County TMS #09014-04-17 and the adjacent alleyway*

BE IT RESOLVED by the Mayor and City Council this 16th day of November, 2010 that the City Manager is authorized to execute the attached Agreement of Purchase and Sale between the City of Columbia and 1620 Main, LLC for the purchase of 1620-4 Main Street, Richland County TMS #09014-04-17 and the adjacent alleyway for the sum of Seven Hundred Twenty-Five Thousand and no/100 (\$725,000.00) Dollars.

Requested by:

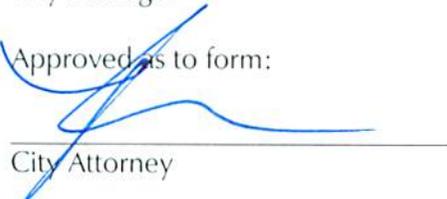
John Spade, Parking Services

  
MAYOR

Approved by:

  
City Manager

Approved as to form:

  
City Attorney

ATTEST:

  
City Clerk

Introduced: 11/16/2010

Final Reading: 11/16/2010

ORIGINAL  
STAMPED IN RED



shall be refunded to Purchaser. In such event, this Agreement shall be deemed terminated, and neither Purchaser nor Seller shall have any further obligation under this Agreement. In the event Purchaser does not terminate this Agreement within said time period, this Agreement shall remain in full force and effect and the Earnest Money shall become non-refundable.

5. Title and Survey Review. In addition to the Survey, Purchaser may obtain a title insurance commitment at its expense (the "**Title Commitment**") issued by a Title Company selected by Purchaser (the "**Title Company**"). Purchaser shall notify Seller during the Inspection 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 fifteen (15) 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 notifies 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 in accordance with the terms of Section 4 (Inspection Period) hereof. If Purchaser does not give such notice of termination prior to the expiration of the Inspection Period, Purchaser shall be deemed to have waived such Title Exceptions and Survey Exceptions.

6. Condition of Property.

a. Seller represents and warrants to Purchaser that, to the best of its knowledge, the Property is in compliance with all applicable permits, regulations, ordinances, and other requirements of any governmental or quasi-governmental agency having jurisdiction over the Property.

b. 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 ACKNOWLEDGES THAT DURING THE INSPECTION PERIOD PURCHASER WILL SATISFY ITSELF ON ALL SUCH MATTERS.

7. Closing. Closing (the "**Closing**") shall be held thirty (30) days following expiration of the Inspection Period. Purchaser shall provide Seller no less than five (5) days notice of the date of Closing. Closing shall take place at a location mutually agreed to by the parties.

8. Closing Documents. At Closing, Seller shall deliver good and marketable title to Purchaser by a limited warranty deed upon payment of the Purchase Price as set forth hereinabove; however, no warranty whatsoever will be given with respect to Parcel 2 as described on the attached "Exhibit A". The deed shall be in proper form for recording and shall be duly executed and acknowledged with revenue stamps in the proper amount affixed thereto by Seller (or credited to Purchaser), all at Seller's expense. Seller represents and warrants that the title to the Property shall be good and marketable title in fee simple, free and clear of all tenancies and other liens and encumbrances except: (i) real estate taxes for the year 2010 and subsequent years, (ii) conditions, covenants, restrictions and easements of record, including any shown on a recorded plat, (iii) governmental statutes, ordinances rules, and regulations, including without limitation any limitations imposed by the zoning ordinances of the City of Cayce, South Carolina and any limitations imposed by the United States Army Corps of Engineers or any other regulatory agency having jurisdiction over wetlands. Seller shall also execute and deliver to Purchaser at Closing, all at Seller's expense, the following:

(a) No Lien Affidavit. An affidavit and indemnification agreement, 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 with respect to the Property.

(b) Owner's Affidavit. An affidavit and indemnification agreement, for the benefit of Purchaser and Purchaser's title insurance company (in the form required by the title insurance company), that there are no tenants or others claiming interests in the Property.

(c) Residency Certificates. Certificates, certifying under oath, that the Seller is not a "non-resident" within the meaning of S.C. Code § 12-9-510 nor a "foreign person" as defined in Section 1445 of the U.S. Internal Revenue Code.

9. Closing Costs, Taxes and Assessments. Each of the parties shall pay its own attorney's fees and other expenses arising from this transaction. Purchaser shall pay for preparation of the deed. Purchaser shall pay all documentary stamp taxes and state, county and local transfer fees of every nature, and Purchaser shall pay the recording fee formerly known as deed stamps. Purchaser shall pay all rollback taxes in connection with the Property. As of the date of Closing, ad valorem taxes for the year of Closing shall be prorated on a calendar year basis.

10. Easements and Rights-of-Way. Seller will convey to Purchaser any and all right, title and interest which Seller has in and to land underlying any roads adjacent to or crossing the Property and all right, title and interest of Seller in and to any easements or rights-of-way adjacent to or benefiting the Property.

11. Inspections. Upon written request by Purchaser, Purchaser and its agents may enter upon the Property for purposes of inspection and testing during reasonable hours or other testing or inspections as provided for in Section 4 (Inspection Period).

12. Remedies. If Purchaser defaults on any of its obligations under this Agreement, the Escrow Agent shall pay the Earnest Money to Seller as liquidated damages as its sole remedy. If Seller defaults on any of its obligations under this Agreement, Purchaser shall have the option of suing for damages or specific performance, or terminating this Agreement. Upon default by Seller, if Purchaser elects to terminate this Agreement, the Escrow Agent shall return the Earnest Money to Purchaser and the sole obligation of Seller shall be to refund to Purchaser all sums paid hereunder and to reimburse Purchaser for actual costs of Purchaser's survey, if any, appraisals, inspections, title examination, copies and reasonable attorney's fees. Upon the making of such refund and reimbursement, this Agreement shall wholly cease and terminate and neither party shall have any further claim against the other by reason of this Agreement.

13. Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. Purchaser may assign this Agreement with Seller's written approval, which shall not be unreasonably withheld.

14. Commissions. Seller warrants that it has taken no action that would result in a real estate commission being due on behalf of Purchaser or to be paid by Purchaser. Purchaser confirms that it has not separately engaged a broker in this matter.

15. Entire Agreement. It is understood and agreed that this Agreement constitutes the entire agreement of the parties, all prior or contemporaneous agreements and representations, whether

oral or written, being merged herein and superseded hereby, and neither party shall rely upon any statement or representation made by the other not embodied in this Agreement. The covenants and warranties contained herein shall survive the Closing.

16. 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.

17. Possession. Possession of the Property will be delivered at Closing.

18. Severability. In the event any provision in this Agreement shall be held by a court of competent jurisdiction after final appeal (if any) to be illegal, unenforceable or contrary to public policy, then such provision shall be stricken and the remaining provisions of this Agreement shall continue in full force and effect; provided, however, that if such provision embodies a condition of Purchaser's obligation to close, Purchaser may at its option terminate this Agreement and receive a refund of all Earnest Money, and further provided if such stricken provision shall serve to reduce the Purchase Price to Seller or delay the Closing, then Seller may at its option terminate this Agreement and refund the Earnest Money.

19. Time of Essence. Time is of the essence to the parties with respect to this Agreement and closing of the sale provided for herein.

20. Paragraph Headings. The paragraph headings contained herein are for convenience only, and should not be construed as limiting or altering the terms hereof.

21. Governing Law. This Agreement shall be construed and enforced according to the laws of the State of South Carolina.

22. Notices. All notices required or permitted to be given hereunder shall be in writing and either hand delivered or sent by certified mail, return receipt requested, to the party to be notified at its address set forth above. Notice by mail shall be effective on the date placed in the mail.

23. Escrow Agent. In the event the Escrow Agent determines in its discretion that there is a bona fide dispute between the parties as to who is entitled to the Earnest Money, and that the rights of the parties as to the Earnest Money are unclear under this Agreement, the Escrow Agent may file an action for interpleader or otherwise seek a judicial determination as to the rights of the parties. In such event, the parties shall share equally any expenses of Escrow Agent in connection with such action. Seller acknowledges that Escrow Agent may also act as Purchaser's attorney with respect to the transaction contemplated by this Agreement.

24. Condemnation. Seller acknowledges that Purchaser has the authority to institute condemnation proceedings under state law in order to acquire title to the Property for a public purpose. Seller has agreed to sell the Property to Purchaser at the price stated herein under threat of condemnation to avoid the institution of condemnation proceedings by Purchaser. Seller acknowledges that Seller has had full opportunity to seek the advice of legal counsel and/or tax adviser concerning the ability of Purchaser to acquire the Property by condemnation and the legal and/or tax consequences of this provision and its efficacy.

25. City Council. This Agreement is contingent upon and shall not be binding upon the City of Columbia unless and until Columbia City Council adopts a resolution authorizing the City Manager to execute the Agreement on behalf of the City of Columbia.

IN WITNESS WHEREOF, this Agreement has been duly signed, sealed and delivered by the parties hereto the day and year first above written.

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

Cari J. Quinn  
Dee Dee Janning

SELLER:

1620 MAIN, LLC

By: \_\_\_\_\_ (SEAL)  
Its: \_\_\_\_\_

PURCHASER:

CITY OF COLUMBIA

By: SA Gantt  
Name: Steven A. Gantt  
Title: City Manager



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Parcel 1:

All that certain piece, parcel, and tract of land, with improvements thereon, situate, lying and being in the State of South Carolina, County of Richland, City of Columbia, presently known as **1620-1624 Main Street**, located on the Eastern side of Main Street, between Taylor and Blanding Streets, being in shape a rectangle, commencing one hundred sixty-one feet and one quarter inches (161' ¼") North of Taylor Street, measuring on the Northern and Southern sides two hundred seventy five (275') feet, and on its Eastern and Western sides fifty-one feet and one inch (51' 1"), more or less, being bounded on the North by lot now or formerly of Haverty's Furniture Company and property of Theodore Dehon; on the East by the property described as Item (2) in the Deed recorded in Book 645 at page 265; on the South by a public alleyway eleven feet, seven and three-fourths inches, more or less, in width, extending from Main Street to Sumter Street, and on the West by Main Street.

Richland County TMS #09014-04-17

Parcel 2:

That certain alleyway located in Columbia, South Carolina, eleven feet, seven and three-fourths inches, more or less, in width, extending from Main Street to Sumter Street, located immediately South of and adjacent to the property described as Parcel 1 above.

Both of these parcels being the same property conveyed to WHM Properties, LLC by deed of Rachel H. Monckton dated April 15, 2002 and recorded on April 19, 2002 in the Office of the Register of Deeds for Richland County in **Record Book 652 at page 1143**.

Parcel 2 also being the same property conveyed to WHM Properties by quit-claim deed of Curran Littleton Jones dated June 9, 2005 and recorded on June 23, 2005 in the Office of the Register of Deeds for Richland County in **Record Book 1066 at page 3080**.