

ORDINANCE NO.: 2014-077

*Authorizing the City Manager to execute an Agreement between the City of Columbia and Multicon Development Company for the Devine Street Parking Garage and authorizing the City manager to exeute Party Wall Agreements and Easements for Public Pedestrian, Bicycle and Emergency Vehicle Access as Contemplated in the Agreement*

BE IT ORDAINED by the Mayor and Council this 15th day of July, 2014, that the City Manager is hereby authorized to execute the attached Agreement, or on a form approved by the City Attorney, between the City of Columbia and Multicon Development Company for the Devine Street Parking Garage to be constructed on a 0.69 acre parcel (30,063.48 square feet), more or less, located on the northwestern corner of Devine Street and Wayne Street, known as Richland County TMS #08914-02-01, as shown on a plat prepared for Compress Holding Company, LLC by City of Columbia Department of Utilities and Engineering, dated April 10, 2013, CF #251-91; and,

BE IT FURTHER ORDAINED that the City Manager is authorized to execute such party wall agreements and easements as are contemplated in the Agreement including those allowing for public pedestrian, bicycle and emergency vehicle access, on a form or forms to be approved by the City Attorney.

Requested by:

Assistant City Manager Gentry

  
\_\_\_\_\_  
Mayor

Approved by:

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

Approved as to form:

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

ATTEST:

  
\_\_\_\_\_  
City Clerk

Introduced: 6/24/2014  
Final Reading: 7/15/2014

ORIGINAL  
STAMPED IN RED

6/19/14

**AGREEMENT**

Agreement made as of the 22<sup>nd</sup> day of July, 2014, between CITY OF COLUMBIA ("City") and MULTICON DEVELOPMENT COMPANY ("Developer").

1. Definitions. As used herein the following terms shall have the following meanings:

- a. Architect - Lupton Rausch Architects.
- b. Development Agreement - The development services agreement between Developer and City to be prepared pursuant to paragraph 8.
- c. General Contractor - Elford, Inc.
- d. Parcel 1 - A parcel of land on Devine Street, Columbia, SC containing approximately 0.69 acre and being shown or described on the attached **Exhibit "A"**.
- e. Parcel 1 Garage - A parking garage to be constructed on Parcel 1 and above Parcel 2A attaching to the southern wall of the Parcel 2 Garage.
- f. Parcel 1 Public Easement - A perpetual easement for public pedestrian and bicycle access and for fire truck and other emergency vehicle access along the eastern boundary of Parcel 1 from Parcel 2 to Devine Street, being wide enough to allow fire truck and other emergency vehicle access and in no event less than twenty feet (20') in width.
- g. Parcel 2 - A parcel of land in Columbia, SC bounded by Pulaski Street on the west, Greene Street on the north, a railroad right-of-way on the east, and Parcel 1 and other property on the south, and being shown on the attached **Exhibit "B"**.
- h. Parcel 2 Garage - A parking garage to be constructed on a portion of Parcel 2 as generally shown on **Exhibit "B"**.
- i. Parcel 2 Public Easement - A perpetual easement for public pedestrian and bicycle access and for fire truck and other emergency vehicle access along the eastern boundary of Parcel 2 (including Parcel 2A), being wide enough to allow fire truck and other emergency vehicle access and in no event less than twenty feet (20') in width.
- j. Parcel 2A - A portion of Parcel 2 which is a strip of land approximately forty feet (40') wide contiguous to the northern boundary of Parcel 1 and bounded on the north by the southern edge of the Parcel 2 Garage as generally shown on **Exhibit "B"**.
- k. Parcel 2A Easements - Perpetual easements for the benefit of Parcel 2 as follows: (i) vehicular and pedestrian ingress and egress over and across Parcel 2A to and from

the Parcel 2 Garage; (ii) access to the southern wall of the Parcel 2 Garage for repair and maintenance; (iii) access to any landscaped areas within Parcel 2A for maintenance and replacement; (iv) encroachment of underground footings and any related support structures, anchors or the like for the Parcel 2 Garage; and (v) access to Parcel 2A for construction, maintenance, repair, and replacement of the paved drive.

2. Developer owns or shall acquire and/or control Parcel 2 and City owns or shall acquire Parcel 1. Developer has designed the Parcel 2 Parking Garage in connection with the intended development of a student housing on Parcel 2. City desires to construct a separate garage on Parcel 1 but needs to extend its proposed parking garage over Parcel 2A at the second floor level and above in order to make its proposed parking garage feasible (such extension is herein sometimes called the "City's Parcel 2A Parking Garage"). Developer has agreed to convey Parcel 2A to the City provided that, among other things: (i) the conveyance shall be made with limited warranty covenants and it shall reserve for the benefit of Developer and its successors in title to Parcel 2 the perpetual easements as described herein and otherwise satisfactory to Developer for ingress/egress, support and utilities; (ii) the conveyance shall include restrictions that shall prohibit the City and its successors in title to Parcel 2A from permitting any underground construction with respect to Parcel 2A that would in any way impair the structural integrity of the Parcel 2 Parking Garage; (iii) the City and Developer enter into a party wall agreement on terms satisfactory to Developer providing for the maintenance and repair of the common wall that will exist between the Parcel 1 Garage and the Parcel 2 Garage and providing for the maintenance and repair of and City's Parcel 2A Parking Garage; (iv) the Developer is retained by the City to act as developer of the Parcel 1 Garage on terms satisfactory to Developer and in connection therewith is authorized by the City to use the same architect and general contractor that the Developer intends to use for the Parcel 2 Garage with respect to its undertakings related to the Parcel 1 Garage; and (v) the Developer is reimbursed by the City for any and all additional costs incurred by the Developer in the development of the Parcel 2 Parking Garage arising as a result of the construction, installation and attachment of the City's Parcel 2A Parking Garage to the Parcel 2 Garage including the necessary redesign of the same (and to such end the parties agree that such costs shall include a reasonable allocation of overhead) and the costs related to entering into the agreements required to provide for the same.

3. As soon as practical after the execution and full approval by the City of this Agreement the Developer shall cause the Parcel 2 Garage to be redesigned to accommodate the attachment of the Parcel 1 Garage to its southern wall. All of the additional costs incurred by the Developer with respect to the redesign of the Parcel 2 Garage and any additional construction costs that otherwise would not have been incurred but for the attachment of the Parcel 1 Garage to the Parcel 2 Garage shall, subject to reasonable review and approval by City, be paid for by the City.

4. Developer shall enter into a party wall agreement with City and, if necessary, grant air rights easements to City to allow the Parcel 1 Garage to be attached to the Parcel 2 Garage. The party wall agreement and easements described herein shall be in commercially reasonable form with terms satisfactory to Developer, but at a minimum shall include the following:

Party Wall Agreement	Except for the pavement and underlying road bed on the ground floor drive through portion of Parcel 2A which shall be repaired and maintained by Developer at its costs, all required maintenance and repair of the City's Parcel 2A Parking Garage shall be at the sole cost and expense of the City, including the anchoring of the same into the Parcel 2 Parking Garage.
	The absolute right of the Developer to undertake any repairs or maintenance not promptly undertaken and completed by the City at the City's expense plus an administration fee of 15% of the cost of the same
Parcel 2A Easements	Must be fully insurable for title purposes as an appurtenant easement to Parcel 2
	Must provide that once the Parcel 2 Parking Garage is operational that access cannot be obstructed at any time specifically including during the construction of the Parcel 1 Parking Garage, even if the same results in additional costs related to the construction (such as overtime to complete the same to a level that would permit access prior to the Parcel 2 Parking Garage becoming operational)

5. The two garages, when constructed, shall be separate structures and shall be operated independently. The Parcel 1 Garage shall be designed in such a manner that it shall not cause the Parcel 2 Garage to be deemed a "closed" garage.

6. Developer shall convey Parcel 2A to City in fee simple reserving, however, the Parcel 2A Easements. The conveyance shall be free of lien and any encumbrance inconsistent with the intended use of Parcel 2A.

7. Developer shall dedicate the Parcel 2 Public Easement and City shall dedicate the Parcel 1 Public Easement. Developer, at its expense, shall construct and maintain public pedestrian and emergency vehicle access ways on and within the Parcel 2 Public Easement and the Parcel 1 Public Easement. This obligation to construct and maintain shall burden Developer and its successors in title to Parcel 2.

8. Developer and City shall enter into the Development Agreement which shall be in commercially reasonable form with terms acceptable to Developer and shall include the following:

a. City shall at all times act promptly in all undertakings and shall not do anything that will delay the completion of the Parcel 2 Garage.

b. All risk of loss related to the Parcel 1 Garage shall rest with City, that shall be solely responsible for insurance and other casualty related risks.

c. City shall coordinate geotechnical and civil engineering work.

d. Developer shall coordinate and enter into contracts with Architect and General Contractor and for any engineering other than civil. All contracts shall be subject to reasonable and timely approval by City.

e. Developer shall use its best efforts to cost engineer and otherwise control costs in behalf of City, but makes no warranty as to the same.

f. Developer shall not charge a development fee, but shall be entitled to reimbursement for all out-of-pocket expenses incurred by Developer in connection with the Parcel 1 Garage and that would not have been otherwise incurred plus a reasonable fee to cover its overhead (but not profit).

g. Except as set forth in the next sentence City shall have final approval of design and costs. Developer shall have approval rights in addition to City as to any element of the City's Parcel 2A Parking Garage.

h. City shall timely and promptly pay construction costs in accordance with the terms of the construction, architectural, and other contracts approved by City.

i. Developer does not warrant any of the work on the project as undertaken by the Subcontractors and professional service providers; Developer will pass through all warranties received by Subcontractors and professional service providers to City.

9. This Agreement and all terms, provisions, and covenants contained herein shall apply to, be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns, including their respective successor in title to the parcels.

10. Any notices, requests, or other communications required or permitted to be given hereunder shall be in writing and shall be either (i) delivered by hand, (ii) mailed by United States certified mail, return receipt requested, postage prepaid, (iii) sent by a reputable, national overnight delivery service (*e.g.*, FedEx, UPS, etc.), or (iv) sent by facsimile or email (with the original being sent by one of the other permitted means or by regular United States mail) and addressed to each party at the applicable address set forth beside the signature of each party or elsewhere herein. Any such notice, request, or other communication shall be considered given or

delivered, as the case may be, on the date of hand delivery (if delivered by hand), on the day following deposit in the United States mail (if sent by United States certified mail), on the next business day following deposit with an overnight delivery service with instructions to deliver on the next day or on the next business day (if sent by overnight delivery service), or on the day sent by facsimile or email (if sent by facsimile or email, provided the original is sent by one of the other permitted means as provided in this paragraph or by regular United States mail). However, the time period within which a response to any notice or request must be given, if any, shall commence to run from the date of actual receipt of such notice, request, or other communication by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice was given shall be deemed to be receipt of the notice, request, or other communication. By giving a least five (5) days prior written notice thereof, any party hereto may, from time to time and at any time, change its mailing address hereunder.

11. This Agreement constitutes the entire agreement between the parties and no changes shall be effective unless in writing signed by the party adversely affected.

Signed, sealed, and delivered as of the date first above set forth.

Address:

CITY OF COLUMBIA

PO Box 147  
Columbia, SC 29217

Telephone: (803) 545-3026  
Telecopy: (803) 545-3051  
Email: twilson@columbiasc.net

By:  (SEAL)  
Print Name: Teresa Wilson  
Title: City Manager

MULTICON DEVELOPMENT COMPANY

\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Telecopy: \_\_\_\_\_  
Email: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# EXHIBIT "A"

## Parcel 1



