

ORDINANCE NO.: 2014-128

*Authorizing the City Manager to execute a Contract of Sale between the City of Columbia and the United Way of the Midlands, Inc. for the purchase of Approximately 0.95 acre known as 1800 Main Street, Richland County TMS #19015-11-10*

ORIGINAL  
STAMPED IN REC.

BE IT ORDAINED by the Mayor and City Council of the City of Columbia this 27th day of January, 2015, that the City Manager is hereby authorized to execute the attached Contract of Sale between the City of Columbia and United Way of the Midlands, Inc. and any other documents necessary and approved by the City Attorney to consummate the purchase by the City of Columbia of approximately 0.95 acre known as 1800 Main Street, Richland County TMS #19015-11-10 for Two Million Two Hundred Thousand and No/100 (\$2,200,000.00) Dollars.

BE IT FURTHER ORDAINED, that the City Manager is hereby authorized to enter into and execute a Lease Agreement, on a form approved by the City Attorney, between the City of Columbia and United Way of the Midlands, Inc. for the lease by the City of Columbia, during the pendency of the Contract, of approximately 7,500 square feet of office space located on the first floor of the building in exchange for which the City shall pay for the prorata share of operating expenses, including taxes, if any, insurance and utilities, during such occupancy and for any tenant improvement costs.

BE IT FURTHER ORDAINED that the City Manager is hereby authorized to enter into and execute a Lease Agreement on a form approved by the City Attorney between the City of Columbia and United Way of the Midlands for the lease by the United Way of the Midlands, Inc. of approximately 18,000 square feet of space it currently occupies on the second and third floors of the Building for up to twelve (12) months following the closing provided notice of intent to remain in possession is made prior to closing. The United Way of the Midlands shall not pay base rent but shall pay the prorata share of operating expenses, including taxes, if any, insurance and utilities, during such occupancy.

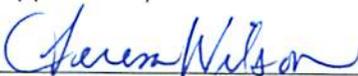
*(Funding Source: 4039999-636600-CP105904-636600)*

Requested by:

City Manager

  
Mayor

Approved by:

  
City Manager

Approved as to form:

  
City Attorney

ATTEST:

  
City Clerk

Introduced: 1/6/2015

Final Reading: 1/27/2015

## CONTRACT OF SALE

Agreement made as of the 5<sup>th</sup> day of February, 2015, between THE CITY OF COLUMBIA ("Purchaser") and UNITED WAY OF THE MIDLANDS, INC. ("Seller").

I. DEFINITIONS. As used herein the following terms shall have the following meanings:

A. Property - Approximately 0.95 acre located at 1800 Main Street, City of Columbia, SC; Richland County Tax Map No. 19015-11-10.

B. Building - The building located on and comprising part of the Property.

C. Purchase Price - Two Million Two Hundred Thousand Dollars (\$2,200,000.00).

D. Earnest Money - Forty-nine Thousand Nine Hundred Ninety-nine Dollars (\$49,999.00).

E. Escrow Agent - McNair Law Firm, P.A.

F. Inspection Period - The period ending on January 26, 2015.

G. Closing Date - on or before September 30, 2015.

II. PURCHASE AND SALE. Seller agrees to sell and Purchaser agrees to buy the Property for the Purchase Price subject to the terms and conditions hereof.

III. ESCROW DEPOSIT. Upon the execution hereof Purchaser shall deposit the Earnest Money with Escrow Agent who shall hold same in accordance with this Contract including the attached **Exhibit "A"**. The Earnest Money shall be deposited into an FDIC insured account. Interest, if any, shall accrue for the benefit of Purchaser (but shall be paid to Seller if Purchaser defaults). In the event Purchaser has the right to and elects to terminate this Contract as provided herein, Escrow Agent shall refund the Earnest Money upon receipt of notice of such termination. At Closing Escrow Agent shall pay the Earnest Money to Seller to be credited against the Purchase Price. Notwithstanding anything in this Contract to the contrary, if Escrow Agent receives notice of termination from Purchaser, or Purchaser's attorneys, prior to the end of the Inspection Period, Escrow Agent shall and is hereby directed by Seller to refund the Earnest Money to Purchaser.

IV. TITLE. Seller shall convey to Purchaser at Closing marketable fee simple title in and to the Property. For the purposes of this Contract, "marketable fee simple title" shall mean fee simple ownership which is: (i) free of all claims, liens and encumbrances of any kind or nature whatsoever other than the Permitted Exceptions (as hereinafter defined); and (ii) insurable by a title insurance company reasonably acceptable to Purchaser, at then current standard rates under the ALTA Owner's Policy of Title Insurance with all standard printed exceptions therein deleted and without exception other than for the Permitted Exceptions. For the purposes of this Contract, the term "Permitted Exceptions" shall mean: (i) current city, state and county ad valorem taxes not yet due and payable; (ii) easements for the installation or

maintenance of public utilities serving the Property provided same do not interfere with development and use of the Property by Purchaser; and (iii) all, if any, other easements of record as of the date of Seller's execution of this Contract provided same do not interfere with the development and use of the Property by Purchaser or render title unmarketable. Seller will use reasonable efforts to eliminate claims, liens, and encumbrances other than Permitted Exceptions. Notwithstanding anything herein to the contrary, if Seller is unable to convey marketable fee simple title as herein provided (and same is not caused by the willful act of Seller), Purchaser's sole remedy shall be to terminate this Contract and receive a refund of the Earnest Money and Seller thereafter shall have no liability to Purchaser.

V. SURVEYS AND STUDIES. Seller shall promptly provide Purchaser with information and documentation (to the extent same is reasonably available) requested by Purchaser to facilitate its evaluation of the Property. During the Inspection Period Purchaser shall be permitted to enter the Property and to inspect and evaluate the Property, to conduct studies thereon, and to interview tenants, if any. If Purchaser determines for any reason that the Property is not suitable for Purchaser's purposes, Purchaser may terminate this Contract by giving written notice of same to Seller prior to 5:00 p.m. on the last day of the Inspection Period. Upon termination of this Contract pursuant hereto, Escrow Agent shall refund the Earnest Money to Purchaser. To the extent permitted by law, Purchaser shall hold Seller harmless from any damage caused by Purchaser, its agents or contractors, in the course of conducting such surveys and/or studies. The indemnities herein shall expressly survive the Closing or the termination of this Contract and shall be in addition to any liquidated damage provisions contained in this Contract.

VI. CLOSING DATE. The closing shall occur at the offices of Escrow Agent or another mutually agreeable location on the Closing Date or such earlier date established by Purchaser on reasonable notice to Seller but no earlier than July 1, 2015, nor later than September 30, 2015.

VII. CLOSING. At Closing Purchaser shall tender the Purchase Price (plus or minus normal closing adjustments) by cashier's check or wire transfer of collected funds and Seller shall deliver the following:

A. A duly executed limited warranty deed conveying marketable fee simple title in the Property to Purchaser subject to easements, conditions, and restrictions of record as of the date hereof.

B. An owner's affidavit sufficient to enable Purchaser's title insurance company to delete exceptions as to mechanic's liens (other than mechanic's liens or potential mechanic's liens which might arise as a result of activities of Purchaser), other monetary liens and other matters.

C. If Seller is not a foreign person, a certificate and affidavit of non-foreign status (FIRPTA affidavit), and if Seller is not a qualified United States taxpayer the appropriate amount shall be withheld according to law.

D. A Form I-295 (Seller's Affidavit - South Carolina Withholding Tax) as prescribed by the South Carolina Department of Revenue, and if Seller is not a SC resident the appropriate amount shall be withheld and remitted to the Department of Revenue.

E. A Transferor's Affidavit, and/or if applicable, a Certificate of Tax Compliance from the South Carolina Department of Revenue dated within thirty (30) days of Closing.

F. Appropriate resolutions and other evidence reasonably required by Purchaser and the title company to evidence Seller's authority to execute and deliver the deed and other documents contemplated hereby.

G. Possession of the Property subject to the provisions of Section VIII.

H. Such other documents as Purchaser may reasonably request.

VIII. PRE AND POST CLOSING OCCUPANCY. As used herein the term "Lease Form" shall mean a commercially reasonable form of office space lease to be agreed upon by Purchaser and Seller during the Inspection Period.

A. If Purchaser desires to occupy the now vacant portion of the Building consisting of approximately 7,500 rentable square feet on the first floor, it may do so at any time during the pendency of this Contract after the Inspection Period upon notice to Seller and upon execution of the Lease Form with Purchaser as tenant and Seller as landlord. Purchaser shall not pay base rent but shall pay its prorata share of operating expenses, including taxes, if any, insurance and utilities, during such occupancy. Purchaser shall be responsible for any tenant improvement costs.

B. If, after Closing, Seller desires to continue to occupy the approximately 18,000 square feet of space it is currently occupying on the second and third floors of the Building, it may do so for up to twelve (12) months following Closing provided Seller advises Purchaser of its intent to remain in possession prior to Closing. Seller shall not pay base rent but shall pay its prorata share of operating expenses, including taxes, if any, insurance and utilities, during such occupancy.

IX. PRORATIONS AND EXPENSES; COMMISSIONS.

A. Real property taxes attributable to the year of Closing shall be prorated at Closing with Seller giving Purchaser a credit against the Purchase Price for Seller's share. If current tax bills are not immediately available, such prorations shall be made on the basis of the taxes assessed for the preceding year and shall be adjusted when taxes for the year of sale are assessed. Any payment due by Seller or Purchaser to the other as a result of any such adjustment shall be paid by the party owing such amount within thirty (30) days after receipt of written notice of the amount of the adjustment. To the extent Seller is a tax exempt organization, no such prorations shall be made.

B. Subject to the provisions in Section VIII hereinabove, rents, water rent, and all other items customarily prorated shall be prorated at Closing.

C. Purchaser and Seller represent that each has dealt with no real estate companies other than Colliers International ("Broker") and Seller shall be responsible for any fees or commissions due or to become due to Broker.

D. Seller shall pay for its own attorneys' fees and for deed stamps, transfer tax, or other similar taxes or fees for recording based in whole or in part upon the consideration for or value of the Property. Purchaser shall pay all other closing costs, including its own attorneys' fees, any inspections, testing, assessments, title examination, title insurance premiums, and survey costs.

#### X. "AS IS" CONDITION / ENVIRONMENTAL.

A. The Property is being sold and conveyed on a strictly "AS-IS", "WHERE-IS" and "WITH ALL FAULTS AND DEFECTS" basis as it exists on the last day of the Inspection Period, ordinary wear and tear excepted, without representation, warranty, or covenant, express, implied or statutory of any kind or nature whatsoever, including without limitation, representation, warranty or covenant as to condition (structural, environmental, mechanical, or otherwise), past or present use, construction, development, lease performance, investment potential, tax ramifications or consequences, income, compliance with law, habitability, tenancies, merchantability or fitness or suitability for any purpose, all of which are hereby expressly disclaimed except as expressly stated herein. The provisions of this paragraph shall survive Closing or termination of this Agreement.

B. Without investigation or any obligation to perform same, Seller has no knowledge of the presence or existence of any asbestos, toxins, or hazardous substances (as defined or regulated by applicable federal, state, or local laws) or contamination upon or under the Property. Seller shall disclose any report known to it which outlines the presence of any asbestos, toxins, or hazardous substances or contamination upon or under the Property.

#### XI. DEFAULT.

A. If Purchaser fails to consummate the purchase as herein provided, except in the event of a default by Seller or failure for any conditions to Closing to have been satisfied, Purchaser and Seller have agreed that Purchaser shall pay the Earnest Money to Seller as liquidated damages for Purchaser's failure to consummate the purchase as herein provided and as Seller's sole remedy.

B. If Seller fails to consummate the sale and is in default hereof, Purchaser, at its option, shall be entitled to either terminate this Contract or proceed to enforce this Contract by an action of specific performance in a court of competent jurisdiction.

C. In the event of a legal action between Purchaser and Seller pursuant to the Contract, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the other.

#### XII. MISCELLANEOUS.



Telecopy: 803-933-1418  
Email: jgottlieb@mcnair.net

If to Seller: United Way of The Midlands, Inc.  
Attn: Mac Bennett  
1800 Main Street  
Columbia, SC 29201  
Telephone: 803-733-5410  
Telecopy: 803-779-7803  
Email: mbennett@uway.org

With copy to: Nelson Mullins Riley & Scarborough LLP  
Attn: Glen P. Caulk, Esquire  
1320 Main Street, 17th Floor  
Columbia, SC 29201  
Telephone: 803-255-9369  
Telecopy: 803-255-9160  
Email: glen.caulk@nelsonmullins.com

If to Escrow Agent: McNair Law Firm, P.A.  
Attn: Joel E. Gottlieb, Esquire  
1221 Main Street, Suite 1800  
Columbia, SC 29201  
Telephone: 803-753-3239  
Telecopy: 803-933-1418  
Email: jgottlieb@mcnair.net

D. Pending consummation of the sale as herein provided, Seller will not impose any easements, covenants, conditions, restrictions or other encumbrances upon the Property or any part thereof without prior written consent of Purchaser, which consent shall not be unreasonably withheld, delayed or conditioned.

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

F. Any time period provided for in this Contract, the last day of which falls on a Saturday, Sunday, or legal holiday, shall be extended until the next following business day.

G. TIME IS OF THE ESSENCE HEREUNDER.

SIGNED, SEALED AND DELIVERED as of the date first above set forth.

THE CITY OF COLUMBIA

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

SIGNED, SEALED AND DELIVERED as of the date first above set forth.

UNITED WAY OF THE MIDLANDS,  
INC.

By: J. Mac Bennett (SEAL)  
Print Name: J. Mac Bennett  
Title: Pres & CEO

## **EXHIBIT "A"**

### **Escrow Provisions**

1. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses, or expenses in connection with its actions as Escrow Agent including, without limitation, (i) any action taken or omitted upon advice of its legal counsel given with respect to any questions relating to the duties and responsibilities of Escrow Agent under this agreement; (ii) any action taken or omitted in reliance upon any instrument, including any written notice or instruction provided for in this agreement; or (iii) any loss or delay caused by or due to the bank in which the escrowed funds are deposited. Escrow Agent may rely upon any instrument pursuant to clause (ii) in the preceding sentence as being duly executed, valid, and effective, and as containing accurate information and genuine signatures.

2. In the event of a dispute between Seller and Purchaser arising prior to or at the time of the delivery or other disposition of the Earnest Money by Escrow Agent pursuant hereto, which dispute shall be sufficient, in the sole discretion of Escrow Agent, to justify its doing so, Escrow Agent shall be entitled to tender the Earnest Money into the registry or custody of any court of competent jurisdiction, together with such legal pleadings as it may deem appropriate, and thereupon Escrow Agent shall be discharged from all further duties and liabilities under this agreement. Any such legal action may be brought in such court as Escrow Agent shall determine to have jurisdiction thereof. Escrow Agent's determination of whether a dispute exists between Seller and Purchaser shall be binding and conclusive upon all parties hereto, notwithstanding any contention that no dispute exists. All costs and expenses incurred by Escrow Agent in taking any action pursuant to this paragraph shall be covered by and paid pursuant to the indemnification of Escrow Agent contained in the following paragraph.

3. Purchaser and Seller shall, and do hereby, jointly and severally indemnify, defend, and hold Escrow Agent harmless from, against, and in respect of: (i) any and all demands, judgments, expenses, costs, losses, injuries, or claims of any kind whatsoever whether existing on the date hereof or hereafter arising, incurred by Escrow Agent by reason of, from, or in connection with this agreement or any action taken or not taken by Escrow Agent under or in connection with this agreement; and (ii) any and all counsel fees, expenses, disbursements of counsel, amounts of judgments, demands, assessments, costs, fines, or penalties, and amounts paid in compromise or settlement, incurred or sustained by Escrow Agent by reason of, in connection with, or as a result of any claim, demand, action, suit, investigation, or proceeding (or any appeal thereof or relating thereto or other review thereof) incident to the matters covered by the immediately preceding clause (i).

4. If Escrow Agent shall notify Seller and Purchaser of its desire to be relieved of any further duties and liabilities hereunder, then Escrow Agent shall deliver the Earnest Money to a successor escrow agent designated by Seller and Purchaser. If Seller and Purchaser shall fail to agree upon and designate a successor escrow agent within ten (10) days after having been requested by Escrow Agent to do so, then Escrow Agent shall in its discretion designate the successor escrow agent. The successor escrow agent designated by Seller and Purchaser or by Escrow Agent, as the case may be, shall be a bank or trust company having trust powers in good standing and located in Columbia, South Carolina, and shall agree to be bound by all the terms

and conditions of this agreement. Immediately upon agreement by the successor escrow agent to be bound by all the terms and conditions of this agreement, the original Escrow Agent shall be relieved of any and all duties and liabilities under or in connection with this agreement; provided, however, that no successor escrow agent shall assume any liability for the acts or omissions of its predecessor escrow agent(s) hereunder.

5. The agency created in Escrow Agent hereby is coupled with an interest of Seller and Purchaser and shall be binding upon and enforceable against the respective heirs, successors, legal representatives and assigns of Seller and Purchaser. This escrow shall not be revoked or terminated by reason of the death, incompetency, dissolution, or liquidation of Seller or Purchaser, but shall continue to be binding upon and enforceable against the respective heirs, successors, legal representatives and assigns of Seller and Purchaser in the manner provided herein. In the event of the death, incompetency, dissolution, or liquidation of Seller or Purchaser, Escrow Agent may rely and act upon any notices permitted or required to be given hereunder from any person, firm, partnership, or corporation believed by Escrow Agent in good faith to be the heir, successor, legal representative or assign of such dissolved or liquidated party.

6. Seller hereby expressly consents to Escrow Agent's acting both as legal counsel for Purchaser and as Escrow Agent hereunder, including, without limitation, in connection with any dispute regarding the disbursement of the Earnest Money hereunder.

~#4812-4268-1376 v.2~