

RESOLUTION NO.: R-2015-061

*Authorizing the City Manager to execute and ratifying the execution of a Second Amendment to Contract of Sale for the purchase of approximately 8.5 acres known as 1048 Dreyfus Road, Richland County TMS #11204-02-01*

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STAMPED IN RED

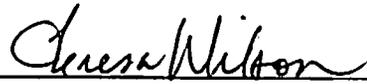
BE IT RESOLVED by the Mayor and City Council of the City of Columbia, South Carolina this 21st day of July, 2015, that the City Manager was authorized to execute and does hereby ratify the execution of the attached Second Amendment to Contract of Sale, to consummate the purchase of purchase of approximately 8.5 acres known as 1048 Dreyfus Road, Richland County TMS #11204-02-01 for the purchase prices of One Hundred Seventy-five Thousand and No/100 (\$175,000.00) Dollars.  
*(Funding Source: CIP # SD8412)*

Requested by:

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

  
\_\_\_\_\_  
Mayor

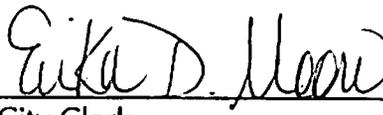
Approved by:

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

Approved as to form:

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

ATTEST:

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

Introduced: 7/21/2015  
Final Reading: 7/21/2015

**THIS CONTRACT IS SUBJECT TO APPROVAL BY THE BANKRUPTCY COURT,  
AND BUYER SHOULD REVIEW PERTINENT ORDERS IN THE DEBTOR'S CASE  
FOR FURTHER INFORMATION.**

**CONTRACT OF SALE**

**THIS CONTRACT OF SALE** (the "Contract") is made this 13<sup>th</sup> day of January, 2015 (the "Effective Date") between **R. William Metzger, Jr.** ("Trustee"), as the Trustee for **William Maxwell Gregg, II** ("Debtor"), and **The City of Columbia, South Carolina**, a South Carolina municipality, ("Buyer"). Trustee, having been duly appointed by the United States Bankruptcy Court for the District of South Carolina ("Bankruptcy Court") as the Chapter 11 Trustee for Debtor in Case No. 13-00665-dd ("Bankruptcy Case"), is referred to below as "Seller."

**RECITALS**

**A.** Buyer is interested in purchasing that certain tract or parcel of land located near the City of Columbia, County of Richland, State of South Carolina, located at 1048 Dreyfus Road containing approximately **8.5 ACRES, more or less**, and having **TMS No(s). 11204-02-01** (the "Property"), which is more particularly shown and described on **EXHIBIT A** attached hereto.

**B.** Seller has agreed to sell the Property to Buyer and Buyer has agreed to purchase the same, subject to, and upon the terms and conditions as forth in this Contract.

**NOW, THEREFORE**, in consideration of the mutual covenants of the parties herein contained, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

**1. Property.** Seller agrees to sell and convey the Property to Buyer and Buyer agrees to purchase and accept the same from the Seller in an "as-is, where-is" condition subject to the terms and conditions of this Contract herein. Such conveyance shall include all rights, privileges, easements and appurtenances appertaining to the Property including, but not limited to, all of Seller's rights, title and interests in any timber, mineral rights, adjacent streets, roads, alleys, rights of way and condemnation awards, any utility allocations and any governmental permits or approvals. Subject to the following:

(a) all easements, restrictions, covenants and conditions of record (provided they do not make the title unmarketable);

(b) all licenses, rights of way and easements, if any, for public utilities;

(c) all governmental statutes, ordinances, rules and regulations, including those involving proper zoning;

(d) any state of facts which an accurate survey and/or physical inspection of the Property might reveal.

2. **Purchase Price and Deposit.** The purchase price is **ONE HUNDRED AND SEVENTY-FIVE THOUSAND and no/100 (\$175,000.00) DOLLARS** (“Purchase Price”), payable as follows:

(a) Within five (5) days after execution of this Agreement, Buyer shall deposit the sum of **TWENTY-FIVE THOUSAND AND NO/HUNDREDTHS (\$25,000.00) DOLLARS** (“Escrow Deposit”) in an escrow account maintained by Trustee as Escrow Agent. The Escrow Deposit is under the jurisdiction of the Bankruptcy Court and Buyer is deemed to have submitted to the exclusive jurisdiction of the Bankruptcy Court as to any dispute. In the event the Bankruptcy Court does not approve the sale in accordance with Section 31 below, the Escrow Deposit will be returned to Buyer. If the Closing does not occur by reason of default hereunder by Buyer and Seller is not in default hereunder, the parties shall proceed in accordance with Section 14; and

(b) The remaining balance of Purchase Price is to be paid by Buyer in cash upon the closing of this transaction and delivery of the deed and other closing documents. The Escrow Deposit shall be applied to the Purchase Price at closing.

3. **Buyer’s Rights Prior to Closing.**

(a) Commencing as of the Effective Date (as defined herein) of this Contract, Buyer, its authorized agents and employees, as well as others authorized by the Buyer, shall have full and complete access to the Property for sixty (60) days to conduct due diligence (“Inspection Period”). Buyer shall be entitled to enter upon the Property and make such structural, operational, legal, surveying, architectural, engineering, topographical, geological, soil, subsurface, environmental, water drainage, and other investigations, inspection, evaluations, studies, tests and measurements as the Buyer deems reasonably necessary or advisable so long as same does not result in any material adverse change to the physical characteristics of the Property (collectively, the Buyer’s rights set forth herein are referred to as the “Investigations”). Buyer agrees to pay any and all costs, expenses and liabilities arising from or by reason of the Investigations. Buyer shall restore any disturbance of the Property caused by the Investigations into the same condition that existed prior to the Effective Date in the event Buyer fails to close or terminates this Contract.

(b) Within five (5) business days of the Effective Date of this Contract, Seller shall provide Buyer or Buyer’s legal counsel with copies of any existing title insurance policies, surveys, plats, geotechnical, engineering, environmental documents, or other title-related or construction documents (such as restrictive covenants and easements (whether finalized or in draft form), construction and signage requirements, etc.) and other information affecting the Property which are in Seller’s actual possession or reasonably obtainable by Seller.

(c) As part of the Investigations, Buyer may, at his sole cost and expense, choose to obtain a survey of the Real Property by a licensed surveyor or engineer selected and engaged by Buyer (the “Survey”) showing and certifying to the effect that (i) the boundary lines

of the Real Property close; (ii) no improvements to the Real Property materially encroach upon adjoining property and no improvements to adjoining property materially encroach upon the Real Property; (iii) the boundaries of the Real Property, as shown on such survey, are consistent with its boundaries as indicated by any existing surveys of record; and (iv) the Real Property has access to a public right of way, either directly or by means of a recorded easement;

(d) As part of the Investigations, Buyer may also perform an examination of title and obtain a commitment for title insurance for the Property from a national title insurance company ("Title Commitment") committing to insure that fee simple title is vested in Seller (or will be by the time of Closing); that title is good and marketable of record; and that upon entry of an Order of Sale free and clear of liens by the Bankruptcy Court pursuant to Section 30 of this Contract, title is free and clear of all liens, encumbrances, easements, restrictions, claims of title, leases, adverse possession, condemnation and other matters that will make title to the property unmarketable other than those exceptions set forth in Exhibit B hereto ("Permitted Exceptions") and that the Property has access to a public right of way, either directly or indirectly or by means of a recorded easement;

(e) At any time prior to the expiration of the Inspection Period, the Buyer shall have the sole and exclusive right to terminate this Contract if the Buyer determines that the Property, for any reason or no reason, is not suitable for Buyer's intended uses and purposes, or if the Buyer cannot obtain a Title Commitment insuring good and marketable title to the Property, as determined by Buyer's legal counsel. If the Buyer elects to terminate this Contract pursuant to this paragraph, it shall give written notice of such termination to the Seller prior to the expiration of the Inspection Period and, within five (5) days of such notice of termination Buyer shall provide Seller with copies of any reports associated with the Investigations. Upon such termination, the Escrow Agent shall disburse the Escrow Deposit and neither party shall have any further rights or obligations hereunder except for any obligations of the Buyer under Section 3(a) hereinabove. If the Buyer elects to proceed with the closing upon the expiration of the Inspection Period, the Escrow Deposit shall become non-refundable but shall be applied to the Purchase Price at Closing.

**4. Conditions to Closing.** It is further understood and agreed that the obligation of Seller and Buyer under this Contract is contingent solely upon, and subject to, the following:

(a) **Title.** Buyer shall provide to Seller a commitment for an ALTA owner's title policy covering the Property issued by a national title insurance company (the "Title Commitment") within thirty (30) days of execution of this Contract, together with a copy of all documents referenced therein ("Title Documents"). On or before 5:00 p.m. EST on the tenth (10<sup>th</sup>) day after receipt of the Title Commitment and Title Documents (the "Title Review Period"), Buyer shall deliver to Seller and Title Company a written notice (the "Buyer's Title Notice"), which shall specify any matter disclosed by the Title Commitment, the Title Documents or any Survey that are not acceptable to Buyer in its sole discretion (the "Objections"). On or before 5:00 p.m. EST on the tenth (10<sup>th</sup>) day after receiving Buyer's Title Notice, Seller shall notify Buyer in writing of the Objections (if any) that Seller will satisfy or cure at or before Closing (the "Seller's Title Notice"). In the event that Seller does not provide

Seller's Title Notice within the time period specified above, Seller shall be deemed to have elected not to cure any of the Objections. If Seller elects (or is deemed to have elected) not to cure or satisfy any one or more of the Objections, then Buyer shall have the right, by written notice delivered to Seller on or before the expiration of the Inspection Period to either (i) waive its prior notice as to the Objections and therefore proceed to Closing or (ii) terminate this Contract pursuant to Section 3 above. Buyer's failure to deliver such written notice shall be a conclusive presumption that Buyer has elected to waive those Objections which Seller has elected not to cure or satisfy. For purposes of this Contract, the "Permitted Exceptions" are and shall be limited to (a) those Schedule B exceptions set forth in the Title Commitment (including the standard printed exceptions included in the standard South Carolina Land Title Association owner's title policy) other than the Objections (unless any such Objections are waived by Buyer or cured by Seller pursuant to this Section 4(a), (b) municipal or other governmental laws, ordinances and regulations, if any, affecting the herein-described Property and (c) the lien of non-delinquent taxes, assessments and other usual and customary charges assessed against owners of real property in the State of South Carolina (subject to proration as provided in Section 10 hereof). Notwithstanding anything in this Contract to the contrary, Seller shall cure and remove at or prior to Closing (and Buyer shall not be required to object thereto) all monetary liens and encumbrances (such as mortgages and deeds of trust, mechanics' liens, income tax liens, judgment liens, tax liens assessed for delinquent taxes and other similar liens) affecting the Property or any part thereof, and in no event shall any such monetary liens and encumbrances constitute Permitted Exceptions.

(b) All of the documents and other items required to be delivered by Seller to Buyer at the Closing as provided by this Contract shall have been delivered in form and substance reasonably satisfactory to Buyer.

(c) The Buyer shall have obtained appropriate approval from City Council to enter into this Contract and the Bankruptcy Court shall have entered the sale order in a form satisfactory and acceptable to Buyer in accordance with Section 30 herein.

5. **No Other Contingencies.** Except as specifically provided in this Section 4 of this Contract, this contract constitutes Buyer's firm offer, with no contingencies as to the validity, effectiveness, or binding nature of the offer, including without limitation, contingencies for financing, due diligence, or inspection. This contract does not depend upon Buyer receiving prior approval of its intended use for the property.

6. **Intended Use.** Not Applicable.

7. **Closing.** The Closing shall take place at the offices of the Trustee, Robinson McFadden & Moore, P.C., 1901 Main Street, Suite 1200, Columbia, South Carolina, 29201 or at such other place as agreed to by the parties, on or before the date that is thirty (30) days from the later of the expiration of the Inspection Period or Bankruptcy Court Approval as set forth in Section 31 herein.

(a) Seller shall deliver to the Closing the following with respect to the Property, all in form satisfactory to Buyer:

(1) A limited warranty deed or deeds, executed and acknowledged by the Seller as of the Closing Date;

(2) A certificate and affidavit of non-foreign status (the "FIRPTA Affidavit"), executed by Seller as of the Closing Date;

(3) Appropriate resolutions and other evidence reasonably required by Buyer to evidence the Seller's authority to execute and deliver the deed;

(4) An executed closing statement, in a form reasonably acceptable to Buyer;

(5) 1099-S;

(6) All state withholding affidavits and certificates of tax compliance, as applicable; and

(7) All other documents reasonably necessary to effectuate the transaction under the terms of this Contract.

(b) At the Closing, Buyer shall deliver, the following with respect to the Property:

(1) On or prior to 10:00 a.m. on the Closing Date, Buyer shall have deposited in escrow with the closing agent the Purchase Price by wire transfer via the Federal Reserve System (plus or minus the net adjustments computed hereunder).

(2) Closing statement in a form reasonably acceptable to Seller; and

(3) All other documents reasonably necessary to effectuate the transaction under the terms of this Contract.

**8. Title.** Seller agrees to convey to Buyer good and marketable, fee simple title to the Real Property and deliver a proper limited warranty deed, with all recording transfer fees and documentary stamps/taxes paid, free of encumbrances, subject only to the Permitted Encumbrances.

**9. Closing Costs.** Seller agrees to pay for its share of pro-rata taxes and pro-rata utility costs, all documentary and transfer taxes, deed preparation fees, real estate commissions, if any, and Seller's attorney's fees. Buyer shall pay for its normal closing costs, including its attorney fees, title insurance premiums, fees to record the deed, the cost of a survey, and expenses of Inspections of the Property described herein. All other charges will be divided between the parties in accordance with practices customary in the jurisdiction in which the Property is located.

10. **Pro-rations.** Except for roll back taxes, all taxes, interest, rents (as and when collected), water rents, sewer charges, lights and other utilities and other legal assessments shall be adjusted as of the Closing Date. Buyer shall be solely responsible for all roll back taxes assessed, charged or levied against the Property (if any).

11. **Taxes.** Tax pro-rations pursuant to this Contract are based upon the 2014 assessments and tax rates and will, therefore, be prorated on that basis as a final determination of the tax liability of Seller for 2014 and/or 2015.

12. **Seller's Representations and Warranties.** As a material inducement to Buyer's execution and performance of this Contract, Seller makes the following representations and warranties, all of which are true and complete as of the date of this Contract, shall be true and complete as of the settlement, and shall survive the Closing:

(a) **Authorization.** Subject to obtaining approval of the Bankruptcy Court as set forth in Section 30 of this Contract, Seller has the full right and authority to enter into, perform and consummate its obligations under this Contract, without any qualification, and without the necessity of the consent of any party.

(b) **Non-Foreign Status.** Neither Seller nor Debtor is a "foreign person" as defined in the Federal Foreign Investment in Real Estate Act of 1980 and the Tax Reform Act of 1984, as amended. Seller shall execute a "Non-Foreign Affidavit" at settlement certifying the foregoing.

(c) **Condemnation.** To the actual knowledge of Trustee, there are no pending or threatened condemnation or similar proceedings or special assessments or tax reassessments affecting the Property or any part thereof, nor to the knowledge of Seller are any such proceedings or assessments contemplated by any "Governmental Authorities" (as used herein, "Governmental Authorities" shall mean the United States, the State of South Carolina, the County of Richland, the City of Columbia, or any agency, department, commission, board, bureau or instrumentality of any of them), or other entity having condemnation authority, and that Seller shall promptly notify and deliver to Buyer copies of all such notices received by Trustee prior to Closing, if any;

(d) **Materialman's Liens.** To the actual knowledge of Trustee, there are no unpaid charges, debts, liabilities, claims or obligations arising from the construction, ownership or operation of the Property by Trustee which could give rise to any mechanic's or materialmen's or other statutory lien against the property, or any part thereof, or for which buyer will be responsible.

13. **Buyer's Representations and Warranties.** As an inducement to Seller to enter into this Agreement and to consummate the transactions contemplated herein, Buyer hereby represents and warrants to Seller:

(a) **Organization.** Buyer is a municipality governed under the Laws of the State of South Carolina, and has power required to carry on its business as is now conducted. Buyer has all requisite power and authority to own, lease, and use the Property.

(b) **Authority.** The execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions evidenced hereby are within the power and authority of Buyer and have been duly authorized by all necessary action on the part of Buyer. Buyer has all necessary legal capacity to enter into this Agreement. This Agreement has been duly and validly executed and delivered by Buyer and this Agreement and the other transaction documents required hereby to be executed and delivered by Buyer at Closing constitute or, when executed and delivered, will constitute valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

(c) **As-Is Purchase.** Buyer acknowledges, represents and warrants that, unless expressly provided otherwise in this contract, (i) any information ("Information") supplied or made available by Seller, whether written or oral, or in the form of maps, surveys, plats, soil reports, engineering studies, environmental studies, inspection reports, plans, specifications, or any other information whatsoever, without exception, pertaining to the Property, any and all records and other documents pertaining to the use and occupancy of the Property, income thereof, development potential and/or the cost and expenses of maintenance thereof, and any and all other matters concerning the condition, suitability, integrity, marketability, compliance with law, or other attributes or aspects of the Property, or a part thereof, is furnished to Buyer solely as a courtesy without any representation or warranty by Seller as to its accuracy, timeliness, suitability or reliability; (ii) THE INFORMATION IS PROVIDED, AND THE PROPERTY IS PURCHASED, ON AN AS-IS-WHERE-IS BASIS AND SELLER MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, COMPLIANCE WITH LAWS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE INFORMATION OR THE PROPERTY; and (iii) no representations, whether written or oral, have been made by Seller, or its agents or employees in order to induce Buyer to enter into this Agreement. Without limiting the generality of the foregoing, Buyer acknowledges, warrants and represents to Seller that neither Seller nor its agents or employees have made any representations or statements, whether written or oral, to Buyer concerning the investment potential, operation or resale of the Property at any future date, at a profit or otherwise, nor has Seller or its agents or employees rendered any advice or expressed any opinion to Buyer regarding any tax consequences of ownership of the Property.

(d) **Reliance by Buyer on Due Diligence.** Buyer acknowledges and agrees that, except as otherwise expressly set forth in this contract and/or in the closing documents to the contrary:

(1) Buyer shall have had the opportunity to conduct all due diligence inspections of the property as of the expiration of the due diligence period, including reviewing all due diligence documents and materials and obtaining all information which it deems necessary to make an informed decision as to whether it should proceed with the purchase of the property;

(2) Buyer shall be deemed to be satisfied with the results of its due diligence review of the property upon the expiration of the due diligence period;

(3) Buyer will be relying only on its due diligence inspections of the property, its review of the seller due diligence materials and the representations and warranties expressly made by seller in this contract and/or in the closing documents in purchasing the property; and

(4) Buyer will not be relying on any statement made or information provided to buyer by Seller (except for the representations and warranties expressly made by seller in this contract and/or in the closing documents) or any of its affiliates, or any of their respective shareholders, members, partners, trustees, beneficiaries, directors, managers, officers, employees, attorneys, accountants, contractors, consultants, agents or representatives, or any person purporting to represent any of the foregoing.

**14. Default.**

(a) **By Buyer.** It is expressly agreed that if the Buyer fails or refuses to comply with the conditions assumed by Buyer, or to perform all of Buyer's obligations hereunder, Seller's sole right and exclusive remedy shall be to retain the Escrow Deposit and rescind and terminate the Contract, whereupon all rights and obligations hereunder shall cease and terminate.

(b) **By Seller.** It is expressly agreed that if Seller fails or refuses to perform Seller's obligations hereunder, including the furnishing of marketable title as herein defined and transfer of possession as agreed whether due to a higher bidder or otherwise, Buyer's sole right and exclusive remedy shall be to have the Escrow Deposit refunded to Buyer by Seller, whereupon all rights and obligations hereunder shall cease and terminate, in which case Buyer shall have no further rights or remedies against Seller.

**15. Possession.** Seller shall give Buyer possession of the Property as of the Closing Date.

**16. Notices.** Whenever notices shall or may be given to either of the parties by the other, each such notice shall be in writing and be either hand-delivered or sent by certified mail, adequate and proper postage prepaid and affixed, addressed to the party at the address set forth hereinbelow (unless changed in the manner hereinafter set forth) and deposited in the United States Mail:

**If to the Buyer, to:**

The City of Columbia, South Carolina  
Attention: City Manager  
PO Box 147  
Columbia, S.C. 29217  
Telephone: (803) 545-3026  
Email: tbwilson@columbiasc.net

**With copy to:**

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

**If to the Seller, to:**

R. William Metzger, Trustee  
Robinson McFadden & Moore, PC  
P.O. Box 944  
Columbia, SC 29202  
(803) 227-1130  
[bmetzger@robinsonlaw.com](mailto:bmetzger@robinsonlaw.com)

**With copy to:**

Robinson McFadden & Moore, PC  
Attn: Wilson W. McDonald or Thomas W.  
Bunch II  
P.O. Box 944  
Columbia, SC 29209  
(803) 779-8900  
[wmcdonald@robinsonlaw.com](mailto:wmcdonald@robinsonlaw.com) or  
[tbunch@robinsonlaw.com](mailto:tbunch@robinsonlaw.com)

The foregoing addresses may be changed by notice given in the above-listed manner. Any such notice shall be deemed to have been given at the time it was placed in the United States Mail with proper postage affixed.

17. **Time of the Essence.** Time is of the essence; however, if the transaction cannot close within the stipulated time limits of this Contract, then Buyer and Seller may agree to extend this contract for a reasonable period of time.

18. **Real Estate Commissions.** Upon and subject to the closing of the sale of the Property, a brokerage commission equal to 7% of the Purchase Price shall be paid from proceeds otherwise payable to Seller at closing with 3.5% payable to Colliers International ("Seller's Brokers") and 3.5% payable to Catawba Properties, LLC ("Buyer's Broker"). All amounts paid by Seller are subject to review and approval by the Bankruptcy Court.

19. **Assignment.** Prior to or at closing, the Buyer shall have the right to assign any right or interest hereunder to a parent, subsidiary, or affiliate of Buyer or an entity to-be-formed by the Buyer or its agents only if such assignment has been approved by the Bankruptcy Court.

20. **Seller's Residual Interest in Resale of Property.** Buyer acknowledges that the Purchase Price is substantially less than the value of the Property if all, or a portion of the Property, could be developed. Buyer also acknowledges that it plays a role in the determination of whether the Property could be developed. As a material inducement to the execution of this Agreement by Seller, Buyer agrees that in the event Buyer sells or transfers the Property within twelve (12) months of Closing, Buyer shall pay to Seller twenty-five (25%) percent of the gross Purchase Price paid to Buyer within five (5) days of such sale. This provisions shall survive Closing.

21. **Modification/Further Assurances.** No modification of this Contract shall be valid or binding unless such modification is in writing, duly dated and signed by all parties hereto. The parties agree to sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done and made, upon the written request of the other party, any and all agreements, instruments, papers, deeds, acts or things, confirming or otherwise, as may be reasonably required to effect the purpose and intent of this Contract.

22. **Entire Agreement.** This instrument constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreement between the parties with respect to the sale of the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and/or conditions set forth in this Contract and that no party shall be bound by any terms, conditions, statements or representations, oral or written, not herein contained. Each party hereby acknowledges that in executing this Contract he or she has not been induced, persuaded, or motivated by any promise or representation made by the other party, unless expressly set forth herein. All negotiations, statements and preliminary instruments by the parties or their representatives are merged in this instrument.

23. **Binding Contract/Survival.** This Contract shall be binding upon and shall inure to the benefit of all parties, their respective heirs, successors, assigns, principals, and representatives. All of the representations, warranties and indemnification provided in this Contract shall survive closing, as well as the provisions of Section 20 herein.

24. **Risk of Loss.** The Property shall be held at the risk of the Seller until legal title has passed and possession has been given to the Buyer. The Seller shall immediately have all insurance policies on the Property endorsed to protect all parties hereto as their interests may appear and shall continue the insurance in full force during the term of this Contract.

25. **Tax-Free Exchange.** The parties acknowledge and agree that either party may desire to structure this transaction as a tax-free exchange pursuant to Internal Revenue Code Section 1031. The parties agree to cooperate with each other and execute and deliver all documents and perform such acts as are reasonably necessary to enable the transactions contemplated by this Contract to qualify as a like kind exchange of real property under §1031 of the Internal Revenue Code of 1986. The parties shall each bear the cost of their own, additional expenses arising out of the exchange process which would not otherwise have been attendant to this transaction.

26. **OFAC Compliance.** Seller and Buyer each represent as to itself and its own members that neither Seller nor Purchaser nor any shareholders, partners or members of Seller or Purchaser is listed in Executive Order 13224-Blocking Property and Prohibiting Transaction with Persons Who Commit, Threaten to Commit or Support Terrorism, as amended ("Executive Order 13224"), and neither Seller nor Purchaser has present, actual knowledge that any other persons or entities holding any legal or beneficial interest whatsoever in Seller or Purchase are included in, owned by, controlled by, knowingly acting for or on behalf of, knowingly providing assistance, support, sponsorship, or services of any kind to, or otherwise knowingly associated with any of the persons or entities referred to or described in Executive Order 13224, or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control.

27. **Memorandum of Contract.** Each party agrees that this Contract shall not be recorded in the public records. However, upon the request of either party, each party shall

execute a Memorandum of this Contract in recordable form which memorandum may be recorded in the public records by either party.

**28. Dates and Times.** If the final day of any period or the deadline for performance of any obligation under this Contract falls on a Saturday, Sunday or legal holiday as defined by Title 53, Chapter 5 of the South Carolina Code of Laws, as amended, then the final day of the period or the deadline for performance shall be deemed to fall on the next day which is not a Saturday, Sunday, or legal holidays. Any reference in this Contract to any time period of less than six (6) days shall, in the computation thereof, exclude Saturdays, Sundays, or legal holidays.

**29. Governing Law and Venue.** The laws of the State of South Carolina (subject to the approval of the United States Bankruptcy Court, District of South Carolina as provided herein), shall govern the validity, enforcement and interpretation of this Contract.

**30. Time of Acceptance.** This offer shall remain open for a period of Ten (10) business days from the delivery of this Contract from Buyer to Seller. If Buyer has not accepted this offer by **5:00 p.m. on January 15, 2015**, then this Contract shall be considered null and void and of no further force and effect. The term "acceptance" shall mean when the original of this Contract has been fully executed by Seller, properly witnessed, and delivered to Buyer.

**31. Bankruptcy Court Approval.** This Contract is subject to approval by the Bankruptcy Court as provide herein.

(a) **Motions.** Seller is the Chapter 11 Trustee in the Bankruptcy Case pending in the Bankruptcy Court. Promptly following the Effective Date (and in no event later than five (5) days thereafter), Seller will file a motion (the "Sale Motion") for an order from the Bankruptcy Court authorizing the sale of the Property to Buyer (the "Bankruptcy Sale Order"), the form and contents of which Bankruptcy Sale Order shall be approved by Buyer in its sole discretion.

(b) **Bankruptcy Sale Order.** Seller and Buyer shall use their reasonable best efforts to obtain entry of the Bankruptcy Sale Order by the Bankruptcy Court pursuant to Sections 363 and 365 of the Bankruptcy Code, which shall contain, among other provisions reasonably requested by Buyer, the following provisions (it being understood that certain of such provisions may be contained in either the findings of fact or conclusions of law to be made by the Bankruptcy Court as part of the Bankruptcy Sale Order):

a. the transfer of the Property by Seller to Buyer (A) is or will be a legal, valid and effective transfer of the Property; (B) will vest Buyer with all right, title and interest of Seller in and to the Property free and clear of all "Liens" and "Claims" (as defined in Sections 101(37) and 101(5) of the Bankruptcy Code) known or unknown, fixed, liquidated, contingent or otherwise, including but not limited to, any of Seller's creditors, vendors, suppliers, employees or lessors and any other person that is the holder of one of the Claims (collectively "Claimants"), and that Buyer shall not be liable in any way (as successor entity or otherwise) for any Claims that any of the Claimants or any

other third party may have against either the Seller or the Property and permanently enjoins and restrains the assertion and prosecution of any Claims by Claimants or any other third party against Buyer and the ownership, use and operation of the Property; and (C) constitutes a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and the laws of the State of South Carolina;

b. all Persons are enjoined from taking any action against Buyer to recover any claim which such Person has solely against Seller;

c. the Bankruptcy Court retains exclusive jurisdiction to interpret, construe and enforce the provisions of this Contract and the Bankruptcy Sale Order in all respects, provided that in the event the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction with respect to any matter provided for in this clause or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter;

d. the provisions of the Bankruptcy Sale Order are non-severable and mutually dependent;

e. the transactions contemplated by this Agreement are undertaken by Buyer and Seller at arm's length, without collusion and in good faith within the meaning of Section 363(m) of the Bankruptcy Code, and such parties are entitled to the protections of Section 363(m) of the Bankruptcy Code;

f. a determination that not selling the Property free and clear of Liens and Claims would impact adversely on the bankruptcy estate; and

g. a determination that a sale of the Property other than one free and clear of Liens and Claims would be of substantially less benefit to the estate of Seller.

**(c) Appeal.** If the Bankruptcy Sale Order or any other orders of the Bankruptcy Court relating to this Agreement shall be appealed (or a petition for certiorari or motion for rehearing or re-argument shall be filed with respect thereto), Seller agrees to take all steps as may be reasonable and appropriate to defend against such appeal, petition or motion, and Buyer agrees to cooperate in such efforts. Each party hereto agrees to use its reasonable best efforts to obtain an expedited resolution of such appeal, provided that nothing herein shall preclude the parties hereto from consummating the transactions contemplated herein if the Bankruptcy Sale Order shall have been entered and has not been stayed and Buyer has waived in writing the requirement that the Bankruptcy Sale Order be a Final Order in which event Buyer shall be able to assert the benefits of Section 363(m) of the Bankruptcy Code as a consequence of which such appeal shall become moot.

**(d) Termination due to lack of Bankruptcy Court approval.** If the Bankruptcy Court refuses to issue the Bankruptcy Sale Order or to approve any third party buyer at the hearing on the Sale Motion, then the transaction contemplated by this Contract shall automatically terminate and Seller and the Buyer shall be relieved of any further liability or obligation hereunder.

**(e) Cooperation.** Seller shall cooperate reasonably with Buyer and its representatives in connection with the Bankruptcy Sale Order and the related bankruptcy

proceedings. Such cooperation shall include, but not be limited to, consulting with Buyer at Buyer's reasonable request concerning the status of such proceedings and providing Buyer with copies of requested pleadings, notices, proposed orders and other documents relating to such proceedings as soon as reasonably practicable in connection with any submission thereof to the Bankruptcy Court. Seller further covenants and agrees that the terms of any plan submitted by Seller to the Bankruptcy Court for confirmation shall not conflict with, supersede, abrogate, nullify, modify or restrict the terms of this Agreement and the rights of Buyer hereunder, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement including, without limitation, any transaction that is contemplated by or approved pursuant to the Bankruptcy Sale Order.

**32. Execution of the Contract.** The effective date of this Contract shall be deemed to be the date of execution by the last party to sign this Contract ("Effective Date"). This Contract may be executed in counterparts by the parties. It shall not be necessary to have all of the signatures on behalf the parties appear on each counterpart. All such counterparts shall constitute a single Contract.

[THE REMAINING PORTION OF THIS PAGE HAS BEEN INTENTIONALLY LEFT  
BLANK.]  
[SIGNATURE PAGES TO FOLLOW.]

**THIS CONTRACT IS SUBJECT TO APPROVAL BY THE BANKRUPTCY COURT,  
AND BUYER SHOULD REVIEW PERTINENT ORDERS IN THE DEBTOR'S CASE  
FOR FURTHER INFORMATION.**

IN WITNESS WHEREOF, the parties have executed this Contract as of the dates set forth below.

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

Kristy Egan  
William McDonald

**SELLER:**

**R. William Metzger, Jr.** as Trustee for the Debtor William Maxwell Gregg, II

By: R. William Metzger, Jr. (L.S.)

Date: 1/17/15

**BUYER:**

**The City of Columbia, South Carolina**

By: Mia Stentz for Teresa Wilson (L.S.)

Its: Assistant City Manager

Date: 1/13/2015

Carly David  
[Signature]

**EXHIBIT A**

**PROPERTY DESCRIPTION**

All that certain piece, parcel, lot of land, situate lying and being in the County of Richland, State of South Carolina being described as being 8.5 +/- acres as shown on a plat dated December 22, 1938 of the Fisher Mill Pond Tract of the Thomas Taylor Property made by Tomlinson Engr. Co and having such metes and bounds as thereon setforth, said plat being hereto craved for a more complete and accurate description.

Being conveyed to William M. Gregg by Tax Deed of Cornelia S. Pasky, Treasurer of Richland County on behalf of James V. & Ouita H. Elliott, defaulting taxpayers, by deed dated December 20, 2000 and recorded December 21, 2000 in the Richland County ROD at Book 469, page 372 and having previously by titled to James B. & Ouita H. Elliott by deed of Estate of R. H. Elliott recorded in the Office of the Richland County R.O.D. in Deed Book 466 at page 82.

EXHIBIT B  
PERMITTED EXCEPTIONS

Seller's Initials: h  
Buyer's Initials: MJG