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**RESOLUTION NO.: R-2013-051**

*Authorizing the City Manager to execute a Development Loan Agreement relating to the acquisition and development of the land and building known as the Palmetto Compress and Warehouse Company Building located at 617 Devine Street, Richland County TMS #08915-13-03*

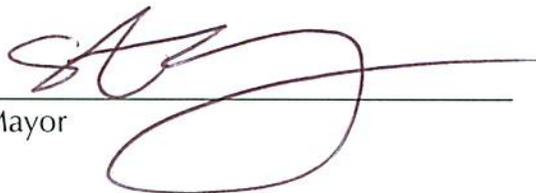
BE IT RESOLVED by the Mayor and City Council this 23rd day of April, 2013, that the City Manager is authorized to execute the attached Development Loan Agreement, or in a form approved by the City Attorney, between the City of Columbia and Columbia Development Corporation, or a single-member limited liability company owned by it (the "Company"), relating to the acquisition and development of the land and building known as the Palmetto Compress and Warehouse Company Building (collectively, the "Project"), located at 617 Devine Street, Richland County TMS #08915-13-03.

This resolution is contingent upon the Company entering into a contract to acquire all of the outstanding stock of Palmetto Preservation Corporation (the "Owner") or, in the alternative, to acquire the Project from the Owner in fee simple, as the Company deems most advantageous and appropriate in its sole and exclusive discretion.

Those certain findings of public purpose and the details of the acquisition and development of the Project as are set forth in Ordinance No. 2013-051, are hereby incorporated herein by specific reference thereto.

Requested by:

Mayor and City Council \_\_\_\_\_

  
\_\_\_\_\_  
Mayor

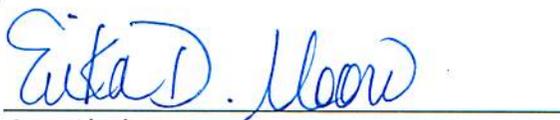
Approved by:

  
\_\_\_\_\_  
Cheryl Wilson  
City Manager

Approved as to form:

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

ATTEST:

  
\_\_\_\_\_  
Erika D. Moore  
City Clerk

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

**DEVELOPMENT LOAN AGREEMENT**

THIS DEVELOPMENT LOAN AGREEMENT (the "Agreement") is made and entered into as of this 26<sup>th</sup> day of April, 2013, by and between the City of Columbia, South Carolina (the "City"), a body politic and corporate of the State of South Carolina (the "State"), and Columbia Development Corporation, a South Carolina nonprofit corporation (the "Company").

**WITNESSETH:**

WHEREAS, the City desires to acquire certain parcels of 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" (the Land and aforementioned building collectively herein after referred to as, the "Real Property"), and foster and/or facilitate the preservation of the Palmetto Compress and Warehouse Company Building and its adaptive re-use and redevelopment of the Real Property; and

WHEREAS, the City desires to designate the Palmetto Compress and Warehouse Company Building as a City Landmark; and

WHEREAS, the City Council has enacted Ordinance No. 2013-051 (the "Ordinance"), authorizing the appropriation of up to \$7,000,000, from time to time, of available moneys (the "Appropriated Moneys"), in order to finance the costs of acquisition, maintenance, renovation, marketing, redevelopment, upfitting and improvement of the 2013 Project, which includes the Land and the certain buildings including the Palmetto Compress and Warehouse Company Building, improvements, facilities and other appurtenances located on portions of the Land comprising the Real Property, together with any costs associated with the maintenance, renovation, marketing, redevelopment, upfit or equipment thereof, and the payment of on-going operation and maintenance expenses and marketing and development expenses associated with the foregoing (collectively, the "2013 Project"); and

WHEREAS, the Company has experience, expertise and capability to facilitate projects such as the 2013 Project; and

WHEREAS, the City desires to engage the Company to facilitate the 2013 Project by, among other acts, acquiring the Real Property or the Stock, as defined hereinafter; and

WHEREAS, the City is aware of certain tax credits that are available under federal and South Carolina law, relating to the rehabilitation and redevelopment of historic structures and the financing thereof, including but not limited to textile mill and related properties (the "Tax Credits"), the benefits of which Tax Credits the City may desire to pass along (or avail itself) to one or more developers of the 2013 Project; and

WHEREAS, it is believed that, provided eligible rehabilitation or redevelopment expenditures are made to the 2013 Project, the Owner (or its successor through the acquisition of all of the outstanding stock of the Owner) may qualify for the Tax Credits; however, it is believed that certain of the Tax Credits may be significantly limited and/or unavailable if the assets comprising the 2013 Project were transferred from its current holding entity; and

WHEREAS, the current owner of the Real Property is Palmetto Preservation Corporation (the "Owner"), and it is believed that the Owner has owned the Real Property for more than 20 years; and

WHEREAS, the City proposes to loan the Appropriated Moneys to the Company, and that the Company either acquire the Real Property by utilizing the Appropriated Moneys to acquire all of the outstanding stock of the Owner (the "Stock") or, in the alternative, to purchase the Real Property in fee simple; and

WHEREAS, the City and the Company desire to enter into this Agreement to set forth their mutual understandings;

NOW, THEREFORE, in consideration of the mutual agreements between the parties as set forth herein and other good and valuable consideration, the parties hereto do hereby agree as follows:

**ARTICLE I**  
**AVAILABILITY AND USE OF APPROPRIATED MONEYS**

**1.01** City Representations and Covenants. The City represents and agrees for the benefit of the Company that:

(a) the City Council has duly adopted the Ordinance, pursuant to which the City Manager is authorized to appropriate up to \$7,000,000, from time to time, from available moneys; and

(b) pursuant to this Agreement, the City shall make available to the Company such Appropriated Moneys as may be required to acquire all of the Stock or, in the alternative, acquire the Real Property in fee simple, and, in either event, pay such costs of the 2013 Project pursuant to Section 1.02(b) and Section 1.03 hereof;

(c) pursuant to this Agreement, the City shall provide the routine maintenance of the Real Property at no cost to the Company, including but not limited to landscaping, parking lot and driveway maintenance, fence repair, and graffiti removal;

(d) pursuant to this Agreement, the City shall pay directly to the service providers the routine monthly expenses of operating the Palmetto Compress and Warehouse Company Building and Real Property, including but not limited to expenses for electricity, water, storm water, propane, liability and property damage insurance, elevator, sprinkler systems, trash collection, security systems, a property manager if needed, and the maintenance of equipment of the 2013 Project;

(e) pursuant to this Agreement, the City shall conduct its own Environmental Phase I study and, if necessary, an Environmental Phase II study of the 2013 Project;

(f) pursuant to this Agreement, the City shall pay the initial costs associated with termination of the current demolition contract by and between Carolina Wrecking, Inc. and Owner, a roof assessment, repair and maintenance, locks replacement, termite and pest control, shoring of the below-grade retaining wall and replacing rotten wood as deemed necessary by the City; and

(g) pursuant to this Agreement, the City shall pay the real property taxes for the 2013 Project and shall reimburse the Company for its legal costs associated with the purchase of the 2013 Project.

**1.02** Company Representations and Covenants. The Company represents and agrees for the benefit of the City that:

(a) the Company represents that it is nonprofit corporation duly organized and validly existing under the laws of the State of South Carolina (the "State"), and that it is authorized to execute, deliver and perform its obligations under this Agreement;

(b) the Company shall acquire all of the Stock or, alternatively, acquire the Real Property in fee simple, after consultation with and/or at the direction of the City and otherwise pay the costs of the 2013 Project. Provided, however, the Company's obligations hereunder are limited solely to the Appropriated Moneys made available by the City therefor pursuant to Section 1.01(b) and Section 1.03 hereof;

(c) to the extent within its control, the Company shall direct the investment of any Appropriated Moneys held by it only after consultation with and/or at the direction of the City and only in investments permitted for political subdivisions under applicable South Carolina law;

(d) the Company shall endeavor to develop and use the 2013 Project only after consultation with and/or at the direction of the City;

(e) the Company shall not sell, lease, abandon, dispose, demolish, transfer, mortgage or encumber, in whole or in part, the 2013 Project, Real Property or the Stock, if applicable, without first obtaining the prior written consent of the City; and

(f) the Appropriated Moneys shall only be used to acquire all of the Stock or Real Property in fee simple, as directed by the City, and pay the actual costs of the 2013 Project. No Appropriated Moneys may be used to pay management or development fees of the Company or any other party, without the prior written consent of the City;

(g) pursuant to this Agreement, the Company shall secure liability insurance on the 2013 Project in the amounts of \$1 million per occurrence/\$2 million aggregate, replacement value coverage for the Palmetto Compress and Warehouse Company Building and any other improvements to the Real Property covered thereby, and shall name the City of Columbia as an additional insured on the policies;

(h) pursuant to this Agreement, the Company shall contract directly with the service providers for the provision of utility and other routine monthly services, including but not limited to the provision of electricity, water and sewer, elevator service and maintenance, alarm and security system monitoring, and trash collection, the costs of which shall be paid directly to the service providers by the City pursuant to Section 1.01(d) above;

1.03 Loan of Appropriated Moneys. The parties hereto acknowledge and agree that, by execution of this Agreement, the City is hereby loaning to the Company the Appropriated Moneys as the same shall be made available by the City to the Company pursuant to Section 1.01(b), and the Company hereby agrees that it is indebted to repay the City in an amount equal to such Appropriated Moneys so advanced, without interest, within four (4) years of the date of this Agreement (the "repayment date") unless the repayment date has been extended in writing by mutual agreement of the parties; provided, however, that the Company's obligation to repay the loan described above is limited to such amounts as may be available to the Company following the sale, lease or other disposition, in whole or in part, of the 2013 Project, the Real Property or the Stock pursuant to Section 1.02(e).

## **ARTICLE II OPERATION OF THE 2013 PROJECT**

2.01 City Disbursement of Appropriated Moneys. The City shall initially disburse to the Company, from the Appropriated Moneys, an amount equal to \$5,650,000 plus \$15,405 for termination costs associated with the Owner's demolition contract plus any additional closing costs incurred by the Company if purchasing the property in fee simple (the "Initial Disbursement"), for the Company to purchase either the Stock or the Real Property, as directed by the City. The City acknowledges the Company shall enter into a contract with the Owner for the purchase of either the Stock or the Real Property and agrees that it shall make the Initial Disbursement in such time and manner in accord with Company's obligations under such contract. Thereafter, the City shall make available, from time to time, up to \$100,000 of the Appropriated Moneys (the "Survey Moneys") for the Company to conduct pre-determined studies, including but not limited to preservation, development and marketing studies. For additional disbursements beyond the Initial Disbursement and the Survey Moneys, the Company shall request in writing the additional funds needed for completion of the 2013 Project and shall include all supporting documentation for the requested funds.

2.02 Company Development Committee. Pursuant to its by-laws, The Company shall establish a Company Development Committee to provide oversight of the 2013 Project (the "Development Committee"). The Development Committee shall consist of four (4) City employees to be designated by the City and a to-be-determined number of non-City employees to be designated by the Company. The Development Committee shall develop criteria for the development and marketing of the 2013 Project, approve the Requests for Proposal/Requests for Qualifications (RFPs/RFQs) to be issued for development of the 2013 Project and shall make recommendations to the City on the development of the 2013 Project and any potential sale of the 2013 Project or portion thereof. The Development Committee shall make quarterly written reports to City Council on the progress of the 2013 Project.

**2.03 Company Reports.** The Company shall make monthly written reports to the Development Committee detailing efforts made to develop and market the 2013 Project and all expenditures and anticipated expenditures for the next month.

**2.04 Sale of the 2013 Project.** The Company shall provide to the Development Committee all responses to RFPs/RFQs for development and marketing of the 2013 Project. The Development Committee shall formulate its recommendation based on the RFPs/RFQs and forward its recommendation along with the responses to the RFPs/RFQs to the Company. The Company shall forward its recommendation along with the recommendation of the Development Committee to City Council for its approval. City Council shall vote on whether to approve the sale of the 2013 Project in whole or in part. All sale proceeds for the sale of the 2013 Project or any portion thereof shall be distributed to the City.

### **ARTICLE III MISCELLANEOUS**

**3.01 Binding Nature of Agreement; Default.** This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the City, the Company, and their respective successors. Any failure by either party hereto on any obligation under this Agreement shall constitute a "Default" under this Agreement. Upon the occurrence of a Default, any aggrieved party shall notify the defaulting party that it has thirty (30) days after receipt of notice of Default within which to cure the Default to the satisfaction of the aggrieved party providing such notice. Upon failure to remedy such Default, any aggrieved party shall have the right to any remedy provided in law, equity or provided elsewhere in this Agreement. In the event of a Default by the Company under this Agreement, and the Company fails to remedy such Default as provided herein, the City shall have no further obligation to the Company under this Agreement, no further Appropriated Moneys shall be disbursed to the Company, the City may in its sole and exclusive discretion, use any of the remaining limited Appropriated Moneys to complete the 2013 Project, and the Company shall immediately make any further assignments to the City of any construction contracts, professional services contracts (e.g., architectural, engineer, or prime contractors), any rights to use plans, drawings, and specifications, any governmental permits or approvals for the 2013 Project as may be necessary, and shall transfer any right or interest the Company has in the 2013 Project to the City.

**3.02 No Personal Liability.** No obligation or agreement contained herein shall be deemed to be an obligation or agreement of any present or future member, elected official, officer, director, agent or employee of the City or the Company in any other than his or her official capacity, and neither the members of the City Council, the director of the Company, nor any official or officer executing this Agreement shall be personally liable thereon or be subject to any personal liability or accountability by reason of the obligations or agreements of the City or the Company contained in this Agreement.

**3.03 Approvals, Consents, Notices and Other Actions.** No approvals, consents, notices and other similar actions required by this Agreement shall be deemed given unless and until reduced to writing. For purposes of providing any approvals, consents, notices and other similar actions required by this Agreement, such actions may be taken on behalf of the City by the City Manager, and may be taken on behalf of the Company by the president or other chief executive officer of the Company.

**3.04 Amendments; Complete Agreement.** This Agreement may not be amended, changed, modified, altered or terminated, except in accordance with the express provisions of this Agreement or with the written consent of the parties hereto. Except as otherwise incorporated into this Agreement, this Agreement constitutes the entire agreement between the parties and supersedes all agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter hereof, and no party hereto shall be bound by any oral or written agreements, statements, promises, or understandings not specifically set forth in this Agreement.

**3.05 Sections; Headings.** The sections, headings and other titles to paragraphs of this Agreement are inserted solely for the convenience of reference. None shall in any way define, limit, extend or aid in the construction of the scope, extent, meaning or intent of this Agreement.

**3.06 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

**3.07 No Construction Against Drafter.** The parties hereby acknowledge that they have reviewed this Agreement and concur that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of any provision of this Agreement.

**3.08 Time is of the Essence.** The parties hereto specifically agree that time is of the essence to this Agreement with respect to the performance of the obligation of the parties under this Agreement.

**3.09 Severability.** If any provision of this Agreement or any obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, that determination shall not affect any other provision, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, obligation, or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the fullest extent permitted by law.

**3.10 Cooperation; No Joint Venture.** The City and the Company shall act in a good faith, commercially reasonable manner to address all matters related to the development, financing, construction, ownership and operation of the 2013 Project as contemplated by this Agreement. The City shall not be deemed the owner, constructively or otherwise, of any part, portion, or interest of or in the 2013 Project except as specifically agreed to herein. Specifically, but without limitation, the City shall never be construed to be in the chain of title for any part, portion, or interest of the 2013 Project, except as specifically set forth and agreed to herein. The parties hereby agree that nothing in this Agreement shall be deemed to place the City and the Company in the relationship of employer/employee, partners, or joint venturers. No party shall have the right to obligate or bind the other in any manner. Each party agrees and acknowledges that it will not hold itself out as an authorized agent with the power to bind the other party in any manner.

**3.11 Notices.** Unless otherwise specifically provided in this Agreement or by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party to this Agreement shall be in writing and shall be deemed duly served, given, delivered and received when personally delivered (including confirmed overnight delivery service to the party to whom it is directed), or in lieu of such personal delivery, when three (3) business days have elapsed following deposit thereof in the United States mail, first-class postage prepaid, certified, return receipt requested, addressed to:

To the City:	City of Columbia Attn: City Manager Post Office Box 147 Columbia, South Carolina 29217	With a copy to:	City Attorney Post Office Box 667 Columbia, South Carolina 29202
To the Company:	Columbia Development Corporation Attn: Fred Delk  Columbia, South Carolina _____	With a copy to:	_____ _____ _____

Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

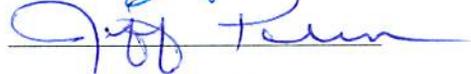
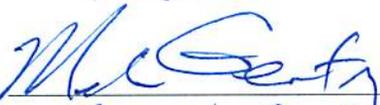
**3.12 Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any person, other than the parties hereto, any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

**3.13 Governing Law.** This Agreement shall be governed by the laws of the State of South Carolina.

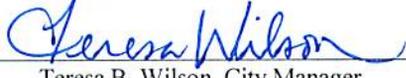
3.14 Successors and Assigns. All rights and privileges, obligations and liabilities created by this Agreement shall inure to the benefit of, and be binding upon the heirs, designees, administrators, executors, successors and assigns of the parties hereto; provided, however, the rights and privileges, obligations and liabilities of the Company under this Agreement may not be sold, assigned, transferred, or inure to any assignee of or successor to the Company without the prior written consent of the City, which shall not be unreasonably withheld.

IN WITNESS WHEREOF, the City of Columbia, South Carolina and Columbia Development Corporation have caused this Agreement to be executed by their duly authorized officers, all as of the date first above written.

WITNESSES:

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

CITY OF COLUMBIA, SOUTH CAROLINA

By:   
\_\_\_\_\_  
Teresa B. Wilson, City Manager

COLUMBIA DEVELOPMENT CORPORATION

By:   
\_\_\_\_\_  
Fred Delk, Executive Director