

ORDINANCE NO.: 2007-022

Authorizing transfer of 4.02 +/- acres known as a portion of Olympia Railroad Property, Project No. 251-67, and being a portion of Richland County TMS #11301-19-04 to C. Brent Chitwood & Assigns

ORIGINAL
STAMPED IN RED

BE IT ORDAINED by the Mayor and Council of the City of Columbia, South Carolina, this 4th day of April, 2007, that the City Manager is hereby authorized to execute a Contract of Sale, Deed and any closing documents necessary to effect the conveyance of 4.02 +/- acres known as a portion of Olympia Railroad Property, Project No. 251-67 and being a portion of Richland County TMS #11301-19-04 to C. Brent Chitwood & Assigns for the sum of Fifty Thousand and No/100 (\$50,000.00) Dollars.

Requested by:


MAYOR

Approved by:


City Manager

Approved as to form:


City Attorney

ATTEST:


City Clerk

Introduced: 3/21/2007
Final Reading: 4/4/2007

STATE OF SOUTH CAROLINA

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AGREEMENT OF SALE

COUNTY OF RICHLAND

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This Agreement made this 13th day of April 2007, by and between the City of Columbia ("Seller") and Park View of Columbia, LLC formally known as C. Brent Chitwood and Assigns, ("Buyer").

Subject to the following terms and conditions, it is agreed that:

1. **PROPERTY DESCRIPTION.** Buyer agrees to buy and Seller agrees to sell all that parcel of land, with the buildings and improvements thereon, if any, situated in Richland County, South Carolina, known as Olympia Railroad Property, South Carolina, and being more particularly described on the attached Exhibit A, which is incorporated herein by reference (hereinafter the "Property").

2. **PRICE.** The purchase price is Fifty Thousand (\$50,000) Dollars, payable by the Buyer to the Seller as follows:

(a) Upon the execution of this Agreement, the Buyer shall deposit with the Seller Five Thousand (\$5,000.00) Dollars as earnest money;

(b) Upon delivering of the deed, Buyer shall pay to Seller Forty Five Thousand (\$45,000) Dollars by cashier's check or certified check.

3. **CLOSING COSTS.** All closing costs, prepaid items, deed transfer fees, and all other expenses of sale will be paid by the Buyer.

4. **CONDITIONS AND RESTRICTIONS.** The Seller shall convey the Property to the Buyer in fee simple by proper limited warranty deed, free from all liens and encumbrances except as are herein agreed to. The Buyer agrees to accept the Property subject to any governmental statutes or ordinances, zoning ordinances and regulations, building restrictions and conditions, restrictions, covenants, and easements of record, including any shown on a recorded plat; also, any state of facts that an accurate survey would show. Also subject to the contingencies and other agreements described on Page 4.

5. **CONDITION OF PROPERTY.** The Buyer has fully examined and inspected the Property except as to environmental matters (see Paragraph 11 below). The Buyer acknowledges that it is purchasing the Property "AS IS" and not on the basis of representations or warranties made by Seller or anyone acting on Seller's behalf, either expressed or implied, other than as specifically set forth or provided for herein. **THE SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF HABITABILITY.**

6. **RISK OF LOSS OR DAMAGE.** The risk of loss or damage to the premises by fire or other casualty until the delivery of the deed is assumed by the Seller. In the case of loss or damage, the Seller has the option to restore the Property within a reasonable time to substantially its undamaged condition or to terminate this Agreement. In the event the Seller elects to terminate this Agreement, there shall be no further obligation of the Seller to the Buyer and the Seller shall return the earnest money to the Buyer.

7. **REAL ESTATE COMMISSION.** Both parties warrant that they have taken no action which would

result in a real estate commission being due.

8. **SELLER'S DEFAULT.** If the Seller shall be unable to convey title in accordance with the terms of this Agreement, the sole obligation of the Seller shall be to reimburse the Buyer for the cost of title examination and to refund the Buyer's earnest money paid hereunder. Upon the making of such refund and reimbursement, this Agreement shall wholly cease and terminate and neither party shall have any further claim against the other by reason of this Agreement. Seller shall not be required to bring any action or proceedings or otherwise incur any expense to render the title to the Property marketable. The Buyer may, nevertheless, accept such title as Seller may be able to convey, without reduction of the purchase price or any credit or allowance against the same and without any other liability on the part of the Seller. The acceptance of a deed by the Buyer shall be deemed to be a full performance and discharge of every agreement and obligation on the part of the Seller to be performed pursuant to the provisions of this Agreement. The term "cost of title examination" is defined for the purposes of this Agreement as the expense actually incurred by the Buyer for title examination; in no event, however, to exceed the amount customarily charged by local attorneys for comparable title examinations. If a Title Insurance Company, which is a member of the American Land Title Association, will issue a binder to issue an owner's title insurance policy insuring the title to the Property in the amount equal to the purchase price, which owner's title insurance policy will have as exceptions only those as are herein agreed to, the Seller shall be deemed to be able to convey fee simple title.

9. **BUYER'S DEFAULT.** If the Buyer shall default under this Agreement, the Seller shall have the option of suing for damages or of terminating this Agreement. If the Seller elects to terminate this Agreement, the earnest money deposit may be retained as liquidated damages. These remedies are in addition to, and not in place of, all remedies available to the Seller at law or in equity.

10. **ADJUSTMENTS.** Taxes, interest, water charges, sewer charges, fuel oil, light charges, rents when collected, and other assessments, if any such items are applicable, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are based on the taxes of record on this date and are, therefore, prorated on that basis. Any increase or decrease of taxes shall be subject to an adjustment by the Buyer and/or Seller when the current year's taxes are determined.

11. **ENVIRONMENTAL INSPECTION PERIOD.** Buyer shall have an environmental inspection period which begins on the date a representative of the Seller executes this Agreement and ends at the end of the sixtieth (60) day thereafter. During the inspection period, the Buyer may obtain such environmental assessment reports as it deems appropriate and shall have reasonable access to the Property for the sole purpose of conducting such environmental investigations. Buyer shall indemnify and hold Seller harmless from any damages, liabilities, or claims for damage to the Property, other property damage, personal injury, mechanics liens and for any other type of claim, in any way connected with the activities of Buyer hereunder, including, without limitation, Buyer's agents, contractors, or employees, and also including payment by Buyer to Seller of attorney's fees incurred by Seller in defense of any claim or in the enforcement thereof. The indemnities herein shall expressly survive the closing or the termination of this Agreement and shall be in addition to any other damage provisions contained in this Agreement. At any time during this inspection period, Buyer shall have the right to terminate this Agreement if it receives a Phase I Environmental Assessment showing substantial and material environmental problems with the Property. If the Buyer should terminate the Agreement for that reason, the Buyer will receive a refund of all earnest money.

12. **CLOSING DATE.** The closing shall take place within thirty (30) days after the expiration of the environmental inspection period. At closing, Seller shall deliver the deed upon Buyer's compliance with the terms and conditions hereof and the earnest money shall be applied to the purchase price. Time is of the

essence but the closing date may be extended by written agreement of the parties.

13. POSSESSION. The Seller shall relinquish possession of the Property to the Buyer at closing.

14. ONLY CONTRACT. The captions employed in this Agreement are for convenience only and are not intended in any way to limit, amplify, or modify the terms and provisions hereof. The parties hereto further agree that this written Agreement expresses the entire agreement between the parties and this Agreement may not be changed orally, but only by an instrument in writing signed by the party against whom enforcement of such change is sought. All prior negotiations and representations of the parties are merged herein and are void and unenforceable unless contained in this Agreement.

15. DEFINITION. If two or more people constitute the Buyer, the word "Buyer" shall be construed as if written "Buyers" whenever the sense of this Agreement so requires.

WITNESSES:

Wanda D. Salley
[Signature]

AS TO SELLER

Cami Jeffers
[Signature]

AS TO BUYER

CITY OF COLUMBIA

By: [Signature]
Its City Manager

[Signature]
BUYER

BUYER

Exhibit A - Property Description

4.02 Acres as shown on the plat prepared for the City of Columbia, SC dated 1/31/05 as #G602 and Project # 251-67 as part of Tax Map # 11301-19-04 and known as the Eastern portion of the Olympia Seaboard Railroad Right of Way. The property is generally bounded on the west by Olympia Park, on the North by the City of Columbia "RA Monument" and to the East by the Church of God, Cunningham, Scarborough, Craft, Connell, Jenkins and Florida St. and to the South by Olympia Ave.

Exhibit B – Contingencies From Seller

- (1) Buyer must provide proof of ownership of property contiguous to the site prior to the closing of this transaction. The properties may be any of the following contiguous properties: TMS 11204-01-01; 02; 04 or 05.

Exhibit C – Other Agreements

- (1) The City of Columbia will retain an easement in the area of the existing Sanitary Sewer Easements and the Rocky Branch Culvert between Pin Markers 608 and 609 for a width of 68.75 feet as shown on the attached drawing "Olympia RR Culvert Easement 013007.pdf" for the purpose of maintaining, expanding or improving the Rocky Branch and its Culvert and for the installation of the Three Rivers Greenway that is proposed along the banks of the Creek to run between Five Points and Granby Park.