

ORDINANCE NO.: 2007-047

Authorizing the transfer of a portion of Richland County TMS #09013-13-09 from the City of Columbia to Isadore S. Bernstein, Lowell L. Bernstein and Beth E. Bernstein or their assigns, and acceptance by the City of Columbia of Richland County TMS #09013-13-04 and 09013-13-05 from Isadore S. Bernstein, Lowell L. Bernstein and Beth E. Bernstein

ORIGINAL
STAMPED IN REC

BE IT ORDAINED by the Mayor and Council of the City of Columbia, South Carolina, this 20th day of June, 2007, that the City Manager is hereby authorized to execute the attached Contract for Sale, a Deed and any closing documents necessary to effect the conveyance of a portion of Richland County TMS #09013-13-09 to Isadore S. Bernstein, Lowell L. Bernstein and Beth E. Bernstein or their assigns for the sum of Six Hundred Thousand and No/100 (\$600,000.00) Dollars and acceptance of Richland County TMS #09013-13-04 and 09013-13-05 from Isadore S. Bernstein, Lowell L. Bernstein and Beth E. Bernstein. The conveyance and acceptance shall also include the grant and reservation of easements as required by the aforementioned Contract of Sale. All parcels being more fully shown and delineated in Exhibit "A" and Exhibit "B" of the aforementioned Contract of Sale which is attached hereto and incorporated herein by reference.

Requested by:

Steve Gantt, Senior Assistant City Manager



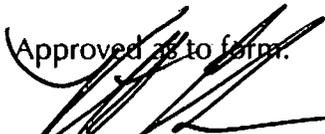
MAYOR

Approved by:



City Manager

Approved as to form:



Interim City Attorney

ATTEST:



City Clerk, Interim

Introduced: 6/6/2007
Final Reading: 6/20/2007

CONTRACT OF SALE

Contract made as of the 31 day of May, 2007, between the CITY OF COLUMBIA ("City") and ISADORE S. BERNSTEIN, LOWELL E. BERNSTEIN, and BETH E. BERNSTEIN (collectively, "Bernstein").

RECITAL: The City has previously adopted a resolution authorizing the commencement of condemnation proceedings to acquire the Washington Parcel (as hereinafter defined) and the parties have negotiated this agreement in lieu of condemnation.

THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

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

a. Washington Parcel - That parcel of land on Washington Street, Columbia, SC more particularly described or shown on the attached **Exhibit "A"**.

b. Lady Parcel - That parcel of land on Lady Street, Columbia, SC more particularly described or shown on the attached **Exhibit "B"**.

c. Zoning Plan - The proposed zoning set forth in Application to Amend the Zoning Ordinance dated March 22, 2007, Applicant: Charles P. Austin, Sr., City Manager, including Descriptive Statement dated March 7, 2007, copies of which are attached as **Exhibit "C"**.

d. Zoning Approval Date - The date on which the Columbia City Council duly adopts the Amendment to Zoning Ordinance as provided in the Zoning Plan.

e. Initial Closing Date - The date which is fifteen (15) business days following the later of the Zoning Approval Date or the date the Columbia City Council adopts an ordinance authorizing the conveyance of the Lady Parcel and appropriate easements.

f. Second Closing Date - The date which is fifteen (15) business days following written notice of the substantial completion by the City of the Parking Garage and the Lady Parcel Improvements, which substantial completion shall occur not later than December 15, 2008.

g. Purchase Price - Six Hundred Thousand Dollars (\$600,000.00).

2. **Conveyance.** Bernstein agrees to convey the Washington Parcel to the City on the Initial Closing Date and the City agrees to convey the Lady Parcel to Bernstein on the Second Closing Date, said obligations to convey being subject to the terms and conditions hereof.

3. **Zoning.** The City has submitted the Zoning Plan to the City of Columbia Planning Commission for PUD zoning approval and ultimate adoption by City Council. The obligations of Bernstein hereunder are expressly conditioned and contingent upon the due

adoption of an ordinance by the Columbia City Council amending its Zoning Ordinance for the purpose of implementing the Zoning Plan. If the Zoning Approval Date does not occur by August 31, 2007, either party may terminate this agreement upon fifteen (15) days written notice to the other, provided, that if the Zoning Approval Date does occur during said fifteen (15) day notice period this agreement shall not terminate.

4. Title.

a. Bernstein shall convey to the City on the Initial Closing Date marketable fee simple title in and to the Washington Parcel. The City shall convey to Bernstein on the Second Closing Date marketable fee simple title in and to the Lady Parcel. For the purposes of this Contract, "marketable fee simple title" shall mean fee simple ownership which is free of all claims, liens, and encumbrances of any kind or nature whatsoever other than current ad valorem taxes not yet due and payable and easements for public utilities serving only the applicable property. Notwithstanding anything herein to the contrary, if Bernstein is unable to convey marketable fee simple title as herein provided (and same is not caused by the willful act of Bernstein), the City's sole remedy shall be to terminate this Contract.

b. Bernstein shall have a period of fifteen (15) business days from the later of written notice of the Zoning Approval Date or the satisfaction of the Ordinance Contingency set forth in Section 13 (the "Title Date") in which to examine title to the Lady Parcel and to give written notice to the City of any objection(s) which Bernstein has to title (the "Title Objection Notice"). The City shall have ten (10) days after receipt of the Title Objection Notice in which to advise Bernstein whether it is willing and/or able to cure such title objection(s). If the City does not give such notice to Bernstein or if it notifies Bernstein that it is in fact unwilling or unable to cure such title objection(s) then Bernstein shall have the option, as its sole remedy, to terminate this Contract or to waive the title objection(s). In either event, Bernstein shall promptly give the City written notice of its decision. If Bernstein does not give written Title Objection Notice within fifteen (15) business days after the Title Date, title shall be deemed to be acceptable and any objection thereto shall be deemed to have been waived for all purposes. Notwithstanding the foregoing, except for the SCE&G easement mentioned below, Bernstein shall not be deemed to have waived an adverse title matter arising subsequent to the Title Date. The City shall not willfully cause adverse title matters to arise and will cure any title objections and/or defects arising after the Title Date. The City intends to grant SCE&G an easement in connection with the transformer generally shown on Exhibit "B" including underground power lines connecting to the transformer.

5. Lady Parcel Improvements. The following improvements to the Lady Parcel (the "Lady Parcel Improvements") shall be made by and at the expense of the City prior to the Second Closing Date:

a. Pave with asphalt the driveway area shown on Exhibit "B" to standards required by the City of Columbia for access to its public parking areas. The proposed parking spaces along the western end of the Future Development Area are not included but the two (2) proposed parking spaces near the northern boundary of the Lady Parcel are included. The curbing near the Future Development Area is not included.

b. Extend conduit(s) from the transformer shown on Exhibit "B" under the driveway to the Future Development Area.

- c. Rebuild the retaining wall along the western boundary.
- d. Plant trees (and maintain thereafter) at the northern boundary of the Lady Parcel as generally shown on Exhibit "B".
- e. Apply grass seed to the unpaved portion of the Lady Parcel. Maintenance shall be the responsibility of the then owner.
- f. Install concrete dumpster pad and curb.

6. Reservation of Easements by the City. The City shall create by reservation contained in the deed or separate declaration the following perpetual easements for the benefit of the City and its land adjacent to the Lady Parcel, which easements shall run with the land:

a. A non-exclusive easement for vehicular and pedestrian ingress and egress to and from Lincoln and Lady Streets over and across the driveways which are generally shown on Exhibit "B" and for the maintenance, repair, and replacement of such driveways. The City shall be responsible for the maintenance of the driveways (but not parking spaces) on the Lady Parcel except for damage caused by the owner of the Lady Parcel or its contractors, guests, agents, and tenants.

b. An exclusive easement for the use, operation, maintenance, repair, and replacement of the handicap access ramp and related structure along the northern boundary of the Lady Parcel as generally shown on Exhibit "B" and marked thereon as "Handicap Area", together with a non-exclusive easement for ingress and egress from said Handicap Area to Lincoln Street.

7. Grant of Parking Easement. The City shall establish an easement for the benefit of the Lady Parcel for the exclusive and perpetual use of seventeen (17) parking spaces in the area generally shown on Exhibit "B" together with a non-exclusive easement for ingress and egress to and from said parking spaces. The grant of easement shall include a right to maintain and operate a parking gate or other similar device to separate the spaces covered by the easement from public parking spaces nearby. The easements shall run with the land.

8. Initial Closing. At closing on the Initial Closing Date Bernstein shall deliver the following:

a. A duly executed limited warranty deed conveying marketable fee simple title in the Washington Parcel to the City subject to easements and restrictions of record as of the Title Date;

b. An owner's affidavit consistent with a limited warranty deed sufficient to enable the City's title insurance company to delete exceptions as to mechanics' liens and other monetary liens;

c. Possession of the Washington Parcel; and

d. Such other documents as the City or its attorneys or title insurance company may reasonably request.

9. Second Closing. At closing on the Second Closing Date Bernstein shall tender the Purchase Price (plus or minus normal closing adjustments) by wire transfer of collected funds together with such other documents as the City may reasonably request, and the City shall deliver the following:

a. A duly executed limited warranty deed with reservation of easements (pursuant to Section 6) and grant of parking easement (pursuant to Section 7) conveying marketable fee simple title in the Lady Parcel subject to easements and restrictions of record as of the Title Date and the easement to SCE&G to be granted in connection with the transformer near the northern boundary of the Lady Parcel as shown on Exhibit "B";

b. An owner's affidavit consistent with a limited warranty deed sufficient to enable Bernstein's title insurance company to delete exceptions as to mechanics' liens and other monetary liens;

c. Possession of the Lady Parcel; and

d. Such other documents as Bernstein or its attorneys or title insurance company may reasonably request.

10. Prorations and Expenses; Commissions.

a. Real property taxes, if any, and all other items customarily prorated shall be prorated at each closing.

b. Bernstein and the City represent that neither has dealt with a real estate company in connection with this transaction and that no real estate commissions are due in connection herewith.

c. The parties shall be responsible for their own attorneys' fees. In connection with the Washington Parcel Bernstein shall be responsible for transfer tax or other similar taxes or fees for recording based in whole or in part upon the consideration for or value of the Washington Parcel (if any) and the City shall be responsible for all other costs including title examination, title insurance premiums, survey, and environmental studies. In connection with the Lady Parcel the City shall be responsible for transfer tax or other similar taxes or fees for recording based in whole or in part upon the consideration for or value of the Lady Parcel (if any) and initial survey costs and Bernstein shall be responsible for all other costs including title examination, title insurance premiums, environmental studies, and survey updates (if any).

11. As Is Condition / Environmental.

a. Each party acknowledges that it is purchasing the respective Washington Parcel and Lady Parcel "as is" and not on the basis of representations or warranties made by the conveying party either express or implied or arising by operation of law including, without limitation, any warranty of condition, habitability, merchantability, or fitness for a particular purpose in connection with said parcel.

b. Bernstein has no actual knowledge (as to the Washington Parcel) and the City has no actual knowledge (as to the Lady Parcel) 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. For purposes of this Contract knowledge of the City shall be deemed to be the actual knowledge of the City Manager, Charles P. Austin, Sr., and the Assistant City Manager, Steven A. Gantt, and the knowledge of other City employees or elected officials shall not be imputed.

12. Default.

a. If after acquisition of the Washington Parcel the City fails to consummate the conveyance of the Lady Parcel and is in default hereof and such failure continues for ten (10) days following written notice, Bernstein, at its option, shall be entitled to proceed to enforce this Contract by an action of specific performance to convey the Lady Parcel in a court of competent jurisdiction or to require the City to pay liquidated damages of Six Hundred Thousand Dollars (\$600,000.00) in the event of a non-willful default and One Million Dollars (\$1,000,000.00) in the event of a willful default as Bernstein's sole remedies.

b. If Bernstein fails to consummate the purchase of the Lady Parcel and is in default hereof, except in the event of a default by the City, and such failure continues for thirty (30) days following written notice, the City may terminate this Contract provided that the City shall pay Bernstein the sum of Three Hundred Sixty-five Thousand Dollars (\$365,000.00) as consideration for the Washington Parcel.

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

13. Ordinance Contingency. Notwithstanding anything in this Contract to the contrary, the obligations of the City herein are conditioned upon the passage of an ordinance authorizing the conveyance of the Lady Parcel and appurtenant easements. In no event shall Bernstein be obligated to convey the Washington Parcel until the ordinance has been adopted. If the ordinance has not been adopted by the Zoning Approval Date either party may terminate this Contract and neither party shall have liability to the other.

14. Miscellaneous.

a. This Contract and all terms, provisions, and covenants contained herein shall apply to, be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. This Contract may be assigned by Bernstein upon written notice to the City provided that the assignee shall assume all of Bernstein's liabilities and obligations hereunder provided that prior to the Initial Closing Date no assignment shall be effective except to the owner of the Washington Parcel. Upon such assignment and assumption Bernstein shall be released and discharged of all future liabilities hereunder.

b. The captions employed in this Contract are for convenience only and are not intended to in any way limit or amplify the terms and provisions hereof.

c. Any notices, requests, or other communications required or permitted to be given hereunder shall be in writing and shall be either (i) delivered by hand, (ii) mailed by United States certified mail, return receipt requested, postage prepaid, (iii) sent by a reputable, national overnight delivery service (e.g., Federal Express, Airborne, etc.), or (iv) sent by

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

d. Pending consummation of the sale as herein provided, Bernstein will not impose any easements, covenants, conditions, restrictions or other encumbrances upon the Washington Parcel or any part thereof without prior written consent of the City, which consent shall not be unreasonably withheld, and the City will not impose any easements, covenants, conditions, restrictions or other encumbrances upon the Lady Parcel or any part thereof without prior written consent of Bernstein, which consent shall not be unreasonably withheld.

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. All terms and conditions of this Contract which by their nature and effect if required to be observed, kept or performed after closing shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

g. TIME IS OF THE ESSENCE HEREUNDER.

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

Address:

1737 Main Street
Columbia, SC 29201
Attn: Steve Gantt
Telephone: 803-545-3025
Telecopy: 803-255-8922
Email: sagantt@columbiasc.net

CITY OF COLUMBIA

By: 
Print Name: Charles P. Austin, Sr.
Title: City Manager

OK - Howard C. Epp
6-1-07

with copy to:

Gottlieb & Smith, P.A.
1901 Main Street, Suite 600
Columbia, SC 29201
Attn: Joel E. Gottlieb, Esquire
Telephone: 803-765-9291
Telecopy: 803-239-4801
Email: joel@gottliebsmith.com

c/o Beth Bernstein
1019 Assembly Street
Columbia, SC 29201
Telephone: 803-799-7900
Telecopy: 803-799-9996
Email: beth@bersteinandbernstein.com

Isadore S. Bernstein by Beth E Bernstein,
ISADORE S. BERNSTEIN AIF
By Beth Bernstein, attorney-in-fact
Lowell E. Bernstein
LOWELL E. BERNSTEIN
Beth E. Bernstein
BETH E. BERNSTEIN



City of Columbia APPLICATION to AMEND the ZONING ORDINANCE

Date Received (OFFICE USE ONLY) _____ By (OFFICE USE ONLY) _____

Applicant (PLEASE PRINT): Charles P. Austin Sr., City Manager
Address: P. O. Box 147
City, State, ZIP: Columbia, South Carolina 29217
Contact Telephone Number: 803-545-3284
Fax Number: 803-545-3032

TO THE HONORABLE MAYOR AND CITY COUNCIL,

I, the applicant named above, under signature of my own hand below, hereby request that the Zoning Ordinance of the City of Columbia, South Carolina be amended as described below:

1. This application requests a change to the:
 Zoning Map (complete only item numbers 2, 3, 4, 5, and 7); and/or
 Zoning Text (complete only item numbers 6 and 7).

2. Provide the exact address and the tax map reference number of property to be considered for rezoning:

Address: 812, 816, 818, 822 and 824 Washington Street
1307-09, 1321, 1323 and 1325 Lincoln Street
825, 831, and 833 Lady Street

Tax Map Reference Number per Richland County Tax Map last revised 12/04 are as follows:
09013-13-03, -04, -05, -06 and -09.

3. How is this property presently zoned?
The property is currently zoned C-4, Central Area Commercial and M-1, Light Industrial. Both the present zonings include the -DD, Design /Development appendage/overlay.

4. What zoning do you propose for this property?
We propose the property be rezoned to PUD-C,-DD, Commercial Planned Unit Development with the Design/Development Area appendage/overlay.

5. Do you own any of the property proposed for this zoning change? Answer YES or NO; if NO, provide the address of the property that you own.

Yes

6. What section or sections of the text of the Zoning Ordinance would be affected?

N/A

7. Describe your proposal in detail (please attach additional paper if you need more space):
The intent of the proposal is to establish two parcels. The City of Columbia intends to construct a multi-story parking deck on the parcel at the corner of Washington and Lincoln Streets. The City of Columbia intends that the parcel at the corner of Lady and Lincoln Streets be sold to and improved by a private developer. The proposal is described in more detail in the Descriptive Statement dated March 7, 2007 attached hereto.

By signing below, I understand that, while this application will be carefully reviewed and considered, the burden of proving the need for the proposed amendment rests with me.

Signature  Date March 22, 2007

OK - Shawn C. Epp
3-20-07

**Lady and Lincoln Streets PUD
Descriptive Statement
March 7, 2007**

Subject Property

This PUD establishes the land use regulations for the approximately eastern ½ of the block bounded by Washington Street on the north, Lincoln Street on the east, Lady Street on the south, and Gadsden Street on the west. This area is commonly referred to as 812, 816, 818, 822, and 824 Washington Street, 1307-09, 1321, 1323, and 1325 Lincoln Street, and 825, 831, and 833 Lady Street. More specifically, the Subject Property is defined as those parcels with the following tax map numbers, according to the Richland County Property Tax Map last revised 12/04: 09013-13-03, -04, -05, -06, and -09.

The Subject Property is exactly 2 acres (87,120 sq.ft.), and it is legally defined within Exhibit A of this Descriptive Statement.

Requested Rezoning

Currently, the Subject Property is zoned C-4, Central Area Commercial and M-1, Light Industrial, both including the -DD, Design/Development Area appendage/overlay. The requested rezoning for the entire Subject Property is PUD-C, -DD, Commercial Planned Unit Development with the Design/Development Area appendage/overlay.

Intent of PUD-C

The intent of this PUD is to create two parcels. The first and larger parcel – consuming approximately the northern ¾ of the Subject Property – would be improved by the City of Columbia with a multi-story, approximately 665-space, parking structure. This parcel is hereinafter referred to as the “Parking Deck Parcel”. The second and smaller parcel – at the corner of Lincoln and Lady Streets, fronting Lady Street – would be improved with a multi-story, mixed-used building with surface parking behind, and perhaps along side, it. The City intends that a private entity would develop this smaller parcel, hereinafter referred to as the “Development Parcel”. The City envisions that individual employees, customers, and clients frequenting the Development Parcel will use the abundant number of parking spaces provided within the parking structure. Further, the City shall reserve 17 parking spaces upon the Parking Deck Parcel in perpetuity for companies or other like entities that occupy the Development Parcel.

Terms and References

Where this PUD uses the phrase “the Zoning Ordinance”, it refers to Zoning Ordinance of the City of Columbia, South Carolina, as it may be amended from time to time. References to section numbers are to the Zoning Ordinance, also as it may be amended from time to time. No rules of construction (Sec. 17-54) or other words, terms, or phrases deviate from the Zoning Ordinance.

Parking Deck Parcel

Permitted Uses

A freestanding parking structure is a permitted use. In accordance with Sec. 17-305 (b) (4), City Council, by approving this rezoning, ascertains that the site plan and development controls of the

proposed PUD derive the same effect and benefits normally imposed by safeguards and conditions placed upon special exceptions.

The development plan for the parking structure may include an office area along Washington Street to accommodate the offices of the Parking Division of the City. At this time, no other principle uses are envisioned upon the Parking Deck Parcel or within the parking structure. However, to provide flexibility, this PUD also permits those uses listed as permitted uses and special exceptions within the C-1, C-2, C-3, C-3A, C-4, C-5, and C-6 districts to occupy that office space along Washington Street, except that the following uses are expressly prohibited:

- Residential uses;
- Hotels, roominghouses, and all other accommodations under SIC No. 70 within the Zoning Ordinance;
- Drinking establishments;
- Liquor stores;
- Pawnshops;
- Payday or title loan establishments;
- Massage parlors not certified by the State;
- Sexually oriented businesses;
- Wireless communication facilities (WCFs) where the support structure is a freestanding communication tower; and
- WCFs mounted on, upon, or to the parking structure where the WCF would be greater than 20 feet higher than the parking structure. WCFs of this configuration may extend to no more than 40 feet higher than the parking structure only where the WCF is a stealth WCF. All permitted WCFs shall be reviewed and approved by the DDRC in accordance with Sec. 17-283 (e) prior to the issuance of a building permit.

Overnight occupancy upon the Parking Deck Parcel is permitted only in conjunction with the provision of security to the structure and/or property.

Setbacks

This PUD imposes no setback requirements upon the Parking Deck Parcel along any lot line.

Height

No portion of any structure shall exceed 63 feet high, except those exceptions outlined within Sec. 17-279 and except the exceptions for WCFs outlined within the section titled Permitted Uses above.

Required Parking Spaces

This parking structure has no required parking spaces, and any uses proposed in addition to the parking structure shall require 0 parking spaces.

Design of Parking Spaces and Aisles

Parking spaces within the parking structure may be less than 9 feet wide by 20 feet deep, and the associated aisles of all parking spaces may be less than that prescribed by the Transportation and Traffic Engineering Handbook (Sec. 17-344 (a) (2)).

Development Parcel

Development Intensity

This PUD is intended to provide flexibility to develop the Development Parcel while ensuring that the development does not create any negative secondary impacts upon the environs, such as an excessive parking demand.

The following uses are permitted upon the Development Parcel at the following locations:

- Office/Retail within any floor; and
- Multi-Family Residential within floors 2, 3, and 4 (see additional restrictions below).

For the purpose of this section of this PUD, permitted uses under the label "Office/Retail" shall include those uses listed as permitted uses and special exceptions within the C-1, C-2, C-3, C-3A, C-4, C-5, and C-6 districts, except that the following uses are expressly prohibited:

- Motels, roominghouses, and boardinghouses;
- Liquor stores;
- Pawnshops;
- Payday or title loan establishments;
- Massage parlors not certified by the State;
- Sexually oriented businesses;
- Wireless communication facilities (WCFs) where the support structure is a freestanding communication tower; and
- WCFs mounted on, upon, or to the building where the WCF would be greater than 20 feet higher than the building. WCFs of this configuration may extend to no more than 40 feet higher than the building only where the WCF is a stealth WCF. All permitted WCFs shall be reviewed and approved by the DDRC in accordance with Sec. 17-283 (e) prior to the issuance of a building permit.

In accordance with Sec. 17-305 (b) (4), City Council, by approving this rezoning, ascertains that the site plan and development controls of the proposed PUD derive the same effect and benefits normally imposed by safeguards and conditions placed upon special exceptions.

At no time shall the number of dwelling units upon the Development Parcel exceed 12. If dwelling units are constructed upon floors 2, 3, or 4, uses accessory to those dwelling units may be established on the ground floor, including but not limited to a lobby, mailroom, sales/leasing/management office, and fitness room. Such ground floor, accessory uses shall not exceed 3,400 sq.ft. Within the dwelling units, occupants may establish a home occupation in accordance with Sec. 17-317.

No drive-through facilities are permitted as principle or accessory uses upon the Development Parcel. An ATM is permitted upon the Development Parcel, provided it is oriented to pedestrians and located either along Lincoln or Lady Streets or within the building.

Setbacks

The building shall be located generally at the corner of Lady and Lincoln Streets. The building shall occupy a footprint that is equal to or less than 83.5 feet deep (measured parallel to Lincoln Street) and less than or equal to 168 feet wide (measured parallel to Lady Street); however, the building will be subject to additional setbacks imposed by the three transmission conductor lines currently located along the north side of the Lady Street ROW. From a regulatory perspective, the setbacks for the Development Parcel are:

- 0 feet from the Lincoln Street lot line;
- 0 feet from the Lady Street lot line;
- 38 feet 5 inches from the north (rear) lot line; and
- 40 feet from the west (side) lot line.
- IMPORTANTLY**, no portion of the building shall encroach into a 25-foot vertical radius measured from each of the three transmission conductor lines currently present along the north side of the Lady Street ROW. This additional setback requirement is more clearly depicted upon page 2 dated March 6, 2007 of Exhibit B attached hereto. Certainly, the removal of any one or all of these transmission conductor lines releases this setback requirement.

Persons building upon the Development Parcel are advised to thoroughly review applicable building and fire codes to ensure that no additional setbacks are required. In some instances, a greater setback from a lot line is required where the openings within a proposed exterior wall pass a particular threshold.

Balconies, awnings, and other appurtenances may be permitted to encroach within the ROW, subject to an encroachment permit issued by City Council. Signs may encroach upon the ROW only in accordance with the allowances of Sec. 17-407 (4) d. None of the above encroachments into the ROW shall be allowed to encroach into the 25-foot vertical radius from each of the three transmission conductor lines currently located along Lady Street.

Rooftop decks may be established, provided they consist of no more than deck and railings. To be certain, no tents, awnings, pergolas, or other like structure – permanent or temporary – shall establish a “ceiling” over the deck(s). This allowance does not waive conformance with all applicable building and fire codes.

Height

No portion of any structure shall exceed 63 feet, except:

- Those exceptions outlined within Sec. 17-279;
- The exceptions for WCFs outlined within the section titled Development Intensity above; and
- To establish a rooftop deck(s).

Required Parking Spaces

The developer shall provide at least 26 parking spaces, this number shall satisfy the parking requirement of the Zoning Ordinance for all uses upon the Development Parcel. 17 of the required 26 parking spaces will be on the Parking Deck Parcel, inside the parking structure on the ground level, just north of the Development Parcel’s northern boundary. The City shall reserve these 17 spaces in perpetuity for the exclusive use of the Development Parcel. Where a developer builds residential, two parking spaces shall be provided for each unit, and those spaces shall be reserved for the exclusive use of those units.

Design of Parking Spaces and Aisles

Parking spaces upon the Development Parcel shall not be smaller than 8 feet 6 inches wide by 18 feet deep, and the associated aisles of all parking spaces shall be that amount prescribed by the Transportation and Traffic Engineering Handbook (Sec. 17-344 (a) (2)).

Ingress & Egress

The developer shall ensure that in and out vehicular access is provided at Lincoln Street, and the developer shall ensure that in or out vehicular access is provided at Lady Street, generally in the location shown within pages 1 and 2 dated March 6, 2007 of Exhibit B attached hereto.

Dumpster

Refuse generated by the uses upon the Development Parcel shall be collected at a common dumpster, and the location of that dumpster shall generally be as shown in Exhibit B unless varied by written communication from the Director of Public Works or his/her designee. To be certain, roll carts shall not be used for refuse collection upon the Development Parcel. The dumpster shall be contained within an enclosure designed to compliment the principle building constructed upon the Development Parcel. The enclosure shall be of sufficient height to screen the dumpster on all sides.

Future Subdivision of Development Parcel

To facilitate a townhouse or live/work, fee-simple arrangement, the developer may subdivide the Development Parcel into smaller lots, provided ingress, egress, and parking easements are recorded upon all portions of the original Development Parcel. These easements shall have the same effect as providing the required number of parking spaces on site.

Review and Approval by DDRRC

Any development upon the Subject Property requires site plan review and approval and building design review and approval by the Design Development Review Commission (DDRRC) in accordance with the – DD, Design/Development Area appendage/overlay district.

Changes to Plans

The Planning Commission has the authority to review and approve minor changes to the development plans for the Subject Property. Minor changes are defined within Sec. 17-305 (b) (10) a. and the Zoning Administrator shall classify a change as either minor or major in accordance with Sec. 17-305 (b) (10) c.

Signage

Signage shall be developed in accordance with the C-4, Central Area Commercial district standards, except that any signage upon the Subject Property requires review and approval of either staff and/or the DDRRC in accordance with the – DD, Design/Development Area appendage/overlay district.

Landscaping and Tree Preservation

This PUD requires clearing the Subject Property. Landscaping and streetscaping in various degrees shall be provided internally and along all four sides of the Subject Property – some of which would be located within the ROW – in accordance with Exhibit B. This amount of landscaping and streetscaping satisfies the spirit and intent of the Landscape Ordinance. Landscaping shall be irrigated. The City is responsible for the installation and maintenance of all landscaping and streetscaping shown in Exhibit B, even that shown upon the Development Parcel.

Items Not Expressly Covered by PUD

Where this PUD is silent, development plans shall be reviewed against the Zoning Ordinance as if the property were zoned C-4, Central Area Commercial, including the -DD, Design/Development Area appendage/overlay.

CITY OF COLUMBIA
LINCOLN STREET PARKING GARAGE
 MARCH 6, 2007

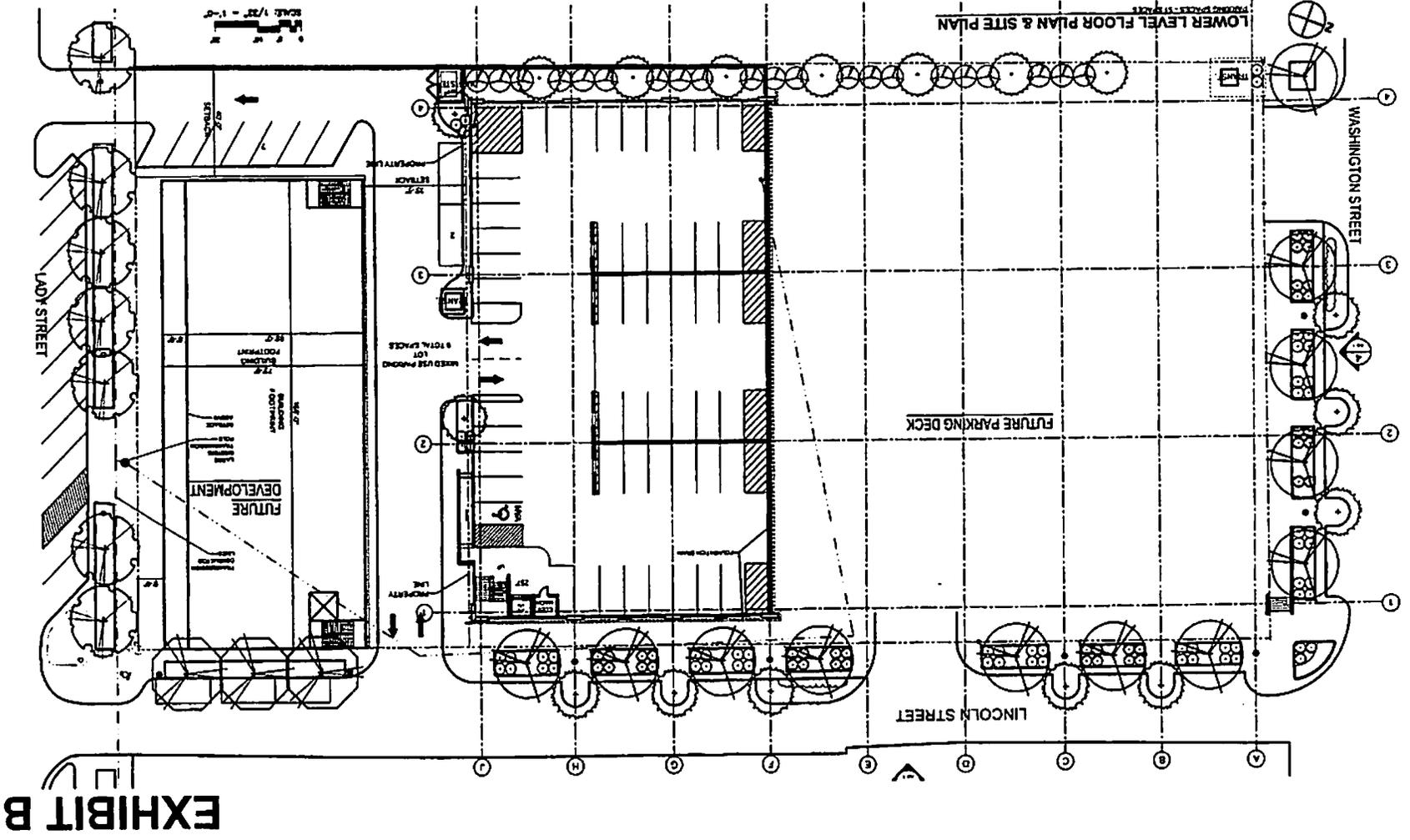
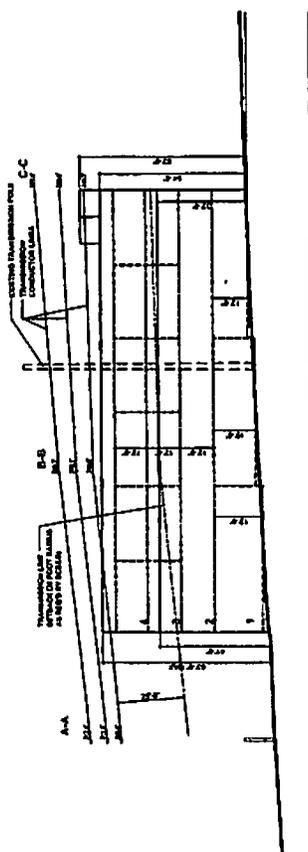
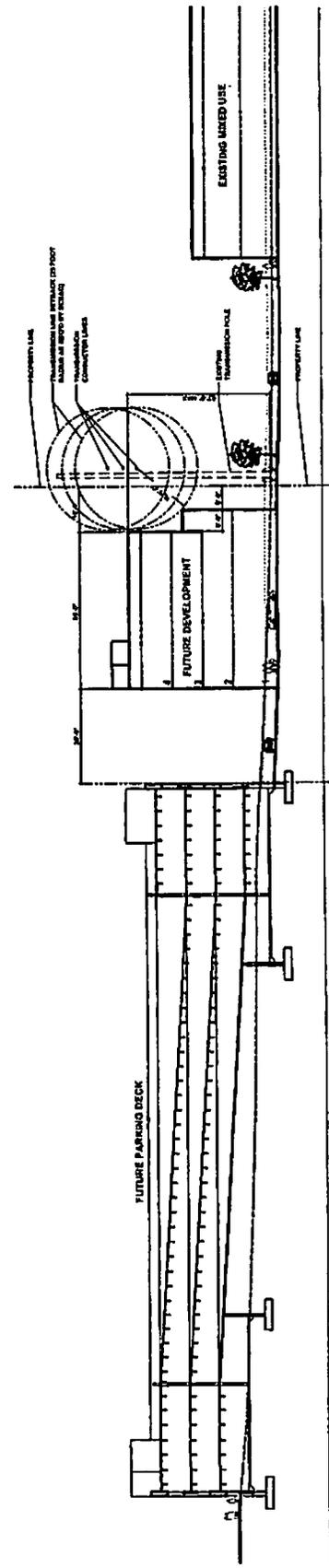


EXHIBIT B



SCALE: 1" = 40'-0"

ELEVATION AT FUTURE MIXED USE



LONGITUDINAL SITE SECTION

SCALE: 1" = 40'-0"