

ORDINANCE NO.: 2010-152

ORIGINAL
STAMPED IN RED

Authorizing the City Manager to execute Agreements of Purchase and Sale between the City of Columbia and Columbia Venture, LLC for the purchase of approximately 312 acres (being portions of Richland County TMS # R11000-01-02 and R11000-01-06 and between the City of Columbia and Sunday School, LLC for the purchase of approximately 33 acres (Richland County TMS # R11000-01-04) and authorizing the City Manager to execute an access easement to Columbia Venture, LLC for access across a portion of the 312 acre parcel

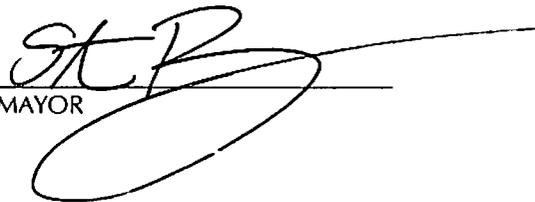
BE IT ORDAINED by the Mayor and City Council this 16th day of November, 2010, that the City Manager is authorized to execute Agreements of Purchase and Sale for the purchase by the City of Columbia of approximately 312 acres from Columbia Venture, LLC and approximately 33 acres from Sunday School, LLC (345 total acres) for Eleven Thousand Six Hundred Twenty-five and No/100 (\$11,625.00) Dollars per acre for a combined estimated total purchase price of Four Million Ten Thousand Six Hundred Twenty-five and No/100 (\$4,010,625.00) Dollars (total purchase price may be more or less depending on exact acreage being determined after the completion of an accurate survey upon the signing of the referenced agreements); and,

BE IT FURTHER ORDAINED that the City Manager is authorized to execute an easement granting Columbia Venture, LLC, its successors and assigns, a sixty-six (66') foot access easement from the portion of Northern Drive as is described in the attached agreement for the purchase of 312 acres upon the City taking fee simple title to the property; and,

BE IT FURTHER ORDAINED that the City Manager is authorized to include a provision within the aforesaid easement effectuating a public dedication of all or a portion of the aforesaid access easement as a public roadway after the roadway is constructed by Columbia Venture, LLC with such public dedication being effective only upon fulfillment of all of the following conditions: (i) Columbia Venture, LLC, or its successors and assigns, executes the appropriate documents necessary to abandon and extinguish the reserved easement; (ii) the applicable governmental body agrees to accept dedication of the public roadway; and (iii) the public roadway meets the applicable governmental body's standards of construction for a public road.

Requested by:

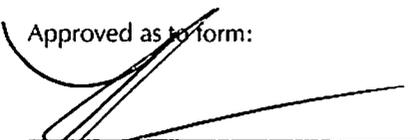
Steven A. Gantt, City Manager


MAYOR

Approved by:


City Manager

Approved as to form:


City Attorney

ATTEST:


City Clerk

Introduced: 11/9/2010
Final Reading: 11/16/2010

(b) At Closing, Purchaser shall pay to Seller the balance of the Purchase Price, subject to adjustments as set forth herein, by federal bank wire transfer or by cashier's check or attorney escrow check.

4. Inspection Period. Any provision hereof to the contrary notwithstanding, Purchaser shall have until forty-five (45) days after the Effective Date (the "*Inspection Period*") to perform development studies, financial analyses, feasibility studies, inspections, utility studies, storm drainage analyses, soil tests, surveys, appraisals, environmental studies and such other tests, evaluations and examinations of the Property as Purchaser may desire. In the event the results of Purchaser's tests, evaluations and analyses are not satisfactory to Purchaser in its sole discretion or if for any other reason Purchaser elects not to purchase the Property, Purchaser may on or before the last day of the Inspection Period terminate this Agreement by written notice to Seller, whereupon the Earnest Money shall be refunded to Purchaser. In such event, this Agreement shall be deemed terminated, and neither Purchaser nor Seller shall have any further obligation under this Agreement. In the event Purchaser does not terminate this Agreement within said time period, this Agreement shall remain in full force and effect and the Earnest Money shall become non-refundable.

5. Title and Survey Review. In addition to the Survey, Purchaser may obtain a title insurance commitment at its expense (the "*Title Commitment*") issued by a Title Company selected by Purchaser (the "*Title Company*"). Purchaser shall notify Seller during the Inspection Period of its objection to any matters of title (such objections being referred to as the "*Title Exceptions*") and of its objection to any matters of survey (such objections being referred to as the "*Survey Exceptions*"). Seller shall notify Purchaser within fifteen (15) days after receipt of Purchaser's notice whether it will be able to cure or remove the Title Exceptions and Survey Exceptions, as applicable. If Seller notifies Purchaser that it is unable or unwilling to cure or remove any Title Exceptions or Survey Exceptions, then Purchaser shall have the option to terminate this Agreement in accordance with the terms of Section 4 (Inspection Period) hereof. If Purchaser does not give such notice of termination prior to the expiration of the Inspection Period, Purchaser shall be deemed to have waived such Title Exceptions and Survey Exceptions.

6. Easement Reservations. At the time of conveyance of the Property, Seller will reserve the below-listed access easement (the "*Easement*"). The Easement shall be located approximately as shown on Exhibit "B" attached hereto and made a part hereof, provided that Seller may make reasonable minor adjustments in the location of the Easement as necessary to meet engineering requirements and the requirements of applicable governmental agencies. Seller will be permitted, at its sole cost and expense, to construct and maintain a road within the Easement. Once the road is constructed Seller will at its expense obtain an as-built survey of the road and Easement. The Purchaser shall make a conditional public dedication of the road to be constructed by Seller within the reserved easement. The public dedication of the road to be constructed by Seller within the reserved easement will be effective only upon fulfillment of the following conditions: (i) Seller executes the appropriate documents necessary to abandon and extinguish its easement as reserved in this paragraph; (ii) the applicable governmental body agrees to accept such dedication; and (iii) the road meets the applicable governmental body's standards of construction for a public road.

a. Easement from Northern Drive. A sixty-six foot (66') access easement from the portion of Northern Drive located on the Property to the portion of Parcel E (as shown on the Recorded Survey) being retained by Seller with such Easement to be located approximately as shown on Exhibit "B" attached hereto and made a part hereof.

7. Levee Maintenance. At closing, Purchaser shall bind itself, and its successors and assigns, to maintain at its cost all levees located on the Property at the same height and slope width, and

to the same quality, as the levees located on adjacent parcel that is the site of the Purchaser's wastewater treatment plant, such parcel being subject to certain deed restrictions. Seller shall have the right to enter onto the Property and Seller shall be permitted at its sole cost and expense to make the same improvements to the levees located on the Property that Seller makes to the levees located on its property in the event that Seller becomes permitted under applicable law to make improvements to the levees on such property, whether as a result of re-mapping, change in law or other governmental action. In the event that Purchaser defaults under its levee maintenance obligations, and such default continues for a period of thirty (30) days after written notice from Seller of such default, Seller shall be permitted to enter the Property and, at Purchaser's expense, perform the work that Purchaser is obligated to perform. Any and all work performed by Seller on the Property shall comply with all federal, state and local laws, ordinances, rules and/or regulations. Prior to performing any work on the Property, Seller shall obtain all necessary approvals, licenses and/or permits as may be required of Seller pursuant to all federal, state, and local laws, ordinances, rules and/or regulations.

8. Condition of Property. EXCEPT AS SPECIFICALLY WARRANTED ABOVE, PURCHASER ACKNOWLEDGES THAT PURCHASER IS PURCHASING THE PROPERTY FROM SELLER "AS IS" AND WITHOUT WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. PURCHASER ACKNOWLEDGES THAT DURING THE INSPECTION PERIOD PURCHASER WILL SATISFY ITSELF ON ALL SUCH MATTERS.

9. Closing. Closing (the "*Closing*") shall be held thirty (30) days following expiration of the Inspection Period. Purchaser shall provide Seller no less than five (5) days notice of the date of Closing. Closing shall take place at a location mutually agreed to by the parties.

10. Closing Documents. At Closing, Seller shall deliver good and marketable title to the Property to Purchaser by a limited warranty deed upon payment of the Purchase Price as set forth hereinabove. The deed shall be in proper form for recording and shall be duly executed and acknowledged with revenue stamps in the proper amount affixed thereto by Seller (or credited to Purchaser), all at Seller's expense. Seller represents and warrants that the title to the Property shall be good and marketable title in fee simple, free and clear of all tenancies and other liens and encumbrances except: (i) real estate taxes for the year 2010 and subsequent years, (ii) conditions, covenants, restrictions and easements of record, including any shown on a recorded plat, (iii) governmental statutes, ordinances rules, and regulations, including without limitation any limitations imposed by the zoning ordinances of the City of Cayce, South Carolina and any limitations imposed by the United States Army Corps of Engineers or any other regulatory agency having jurisdiction over wetlands. Seller shall also execute and deliver to Purchaser at Closing, all at Seller's expense, the following:

(a) No Lien Affidavit. An affidavit and indemnification agreement, for the benefit of Purchaser and Purchaser's title insurance company (in the form required by the title insurance company), that there are no amounts owed for labor, materials or services with respect to the Property.

(b) Owner's Affidavit. An affidavit and indemnification agreement, for the benefit of Purchaser and Purchaser's title insurance company (in the form required by the title insurance company), that there are no tenants or others claiming interests in the Property.

(c) Residency Certificates. Certificates, certifying under oath, that the Seller is not a "non-resident" within the meaning of S.C. Code 12-9-510 nor a "foreign person" as defined in Section 1445 of the U.S. Internal Revenue Code.

11. Closing Costs, Taxes and Assessments. Each of the parties shall pay its own attorney's fees and other expenses arising from this transaction. Seller shall pay for preparation of the deed. Seller shall pay all documentary stamp taxes and state, county and local transfer fees of every nature, and Seller shall pay the recording fee formerly known as deed stamps. Seller shall not pay rollback taxes. In the event after Closing the use of the Property is no longer agricultural or the Property otherwise is no longer eligible for taxation based on agricultural use, Purchaser will be responsible for any rollback taxes that are assessed. As of the date of Closing, ad valorem taxes for the year of Closing (based on the agricultural tax) shall be prorated on a calendar year basis.

12. Easements and Rights-of-Way. Seller will convey to Purchaser any and all right, title and interest which Seller has in and to land underlying any roads adjacent to or crossing the Property and all right, title and interest of Seller in and to any easements or rights-of-way adjacent to or benefitting the Property.

13. Inspections. Upon written request by Purchaser, Purchaser and its agents may enter upon the Property for purposes of inspection and testing during reasonable hours or other testing or inspections as provided for in Section 4 (Inspection Period). Purchaser shall be responsible for any injury to person or property arising from any activities by Purchaser or its employees, agents or contractors while on the Property.

14. Remedies. If Purchaser defaults on any of its obligations under this Agreement, the Escrow Agent shall pay the Earnest Money to Seller as liquidated damages as its sole remedy. If Seller defaults on any of its obligations under this Agreement, Purchaser can either, (i) terminate this Agreement in which case the Escrow Agent shall return the Earnest Money to Purchaser, or (ii) pursue specific performance against Seller, but no other remedy.

15. Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. Purchaser may assign this Agreement with Seller's written approval, which shall not be unreasonably withheld.

16. Commissions. Seller has engaged its broker and will pay such broker's commission at Closing. Seller warrants that it has taken no action that would result in a real estate commission being due on behalf of Purchaser or to be paid by Purchaser. Purchaser confirms that it has not separately engaged a broker in this matter.

17. Entire Agreement. It is understood and agreed that this Agreement constitutes the entire agreement of the parties, all prior or contemporaneous agreements and representations, whether oral or written, being merged herein and superseded hereby, and neither party shall rely upon any statement or representation made by the other not embodied in this Agreement. The covenants and warranties contained herein shall survive the Closing.

18. Modification. This Agreement may not be modified or amended nor shall any of its provisions be waived except by a written instrument signed by Seller and Purchaser.

19. Possession. Possession of the Property will be delivered at Closing.

20. Severability. In the event any provision in this Agreement shall be held by a court of competent jurisdiction after final appeal (if any) to be illegal, unenforceable or contrary to public policy, then such provision shall be stricken and the remaining provisions of this Agreement shall continue in full force and effect; provided, however, that if such provision embodies a condition of Purchaser's

obligation to close, Purchaser may at its option terminate this Agreement and receive a refund of all Earnest Money, and further provided if such stricken provision shall serve to reduce the Purchase Price to Seller or delay the Closing, then Seller may at its option terminate this Agreement and refund the Earnest Money.

21. Time of Essence. Time is of the essence to the parties with respect to this Agreement and closing of the sale provided for herein.

22. Paragraph Headings. The paragraph headings contained herein are for convenience only, and should not be construed as limiting or altering the terms hereof.

23. Governing Law. This Agreement shall be construed and enforced according to the laws of the State of South Carolina.

24. Notices. All notices required or permitted to be given hereunder shall be in writing and either hand delivered or sent by certified mail, return receipt requested, to the party to be notified at its address set forth above. Notice by mail shall be effective on the date placed in the mail.

25. Escrow Agent. In the event the Escrow Agent determines in its discretion that there is a bona fide dispute between the parties as to who is entitled to the Earnest Money, and that the rights of the parties as to the Earnest Money are unclear under this Agreement, the Escrow Agent may file an action for interpleader or otherwise seek a judicial determination as to the rights of the parties. In such event, the parties shall share equally any expenses of Escrow Agent in connection with such action. Seller acknowledges that Escrow Agent may also act as Purchaser's attorney with respect to the transaction contemplated by this Agreement.

26. Exchange. Purchaser acknowledges that Seller may prefer to exchange part or all of the Property for other property of like kind within the meaning of Section 1031 of the Internal Revenue Code, and Purchaser agrees to cooperate, to the extent permitted by law or otherwise, in accomplishing such exchange agreement consistent with the substantive provisions contained in this Agreement, provided that the accomplishment of such Exchange (a) shall be done solely at the cost and expense of Seller and shall not result in any increased expense to Purchaser; (b) shall not delay Closing hereunder; and (c) shall impose no additional liability whatsoever upon Purchaser (other than the cost, if applicable, for Purchaser's counsel to review such exchange documents on Purchaser's behalf), other than any liability which otherwise may be imposed upon purchaser under the terms of this Contract.

27. Assignment. Seller entered into a Closing Agreement with Burwell D. Manning, Jr., Eastern Corn & Grain Company, Inc., and Overlook, Inc. (collectively "Manning") dated February 19, 1999. Pursuant to the Closing Agreement, Seller granted to Manning a Hunting and Fishing License and a Farming License. Further, the Closing Agreement provided that the Hunting and Fishing License and the Farming License shall be terminated in whole or in part upon the earlier of (a) the occurrence of Default (as defined in the Closing Agreement) or (b) the date thirty (30) days after written notice from Seller. At Closing Seller will assign to Purchaser any and all of its rights of termination of the Hunting and Fishing License and the Farming License pursuant to the Closing Agreement as relate to the Property, but to no other property.

SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, this Agreement has been duly signed, sealed and delivered by the parties hereto the day and year first above written.

Witnesses:

Carig Avina
Dee Dee Janning

SELLER:

COLUMBIA VENTURE, LLC

By: _____ (SEAL)
Its: _____

PURCHASER:

CITY OF COLUMBIA

By: SA MTA (SEAL)
Name: Steven A. Gantt
Title: City Manager

EXHIBIT A

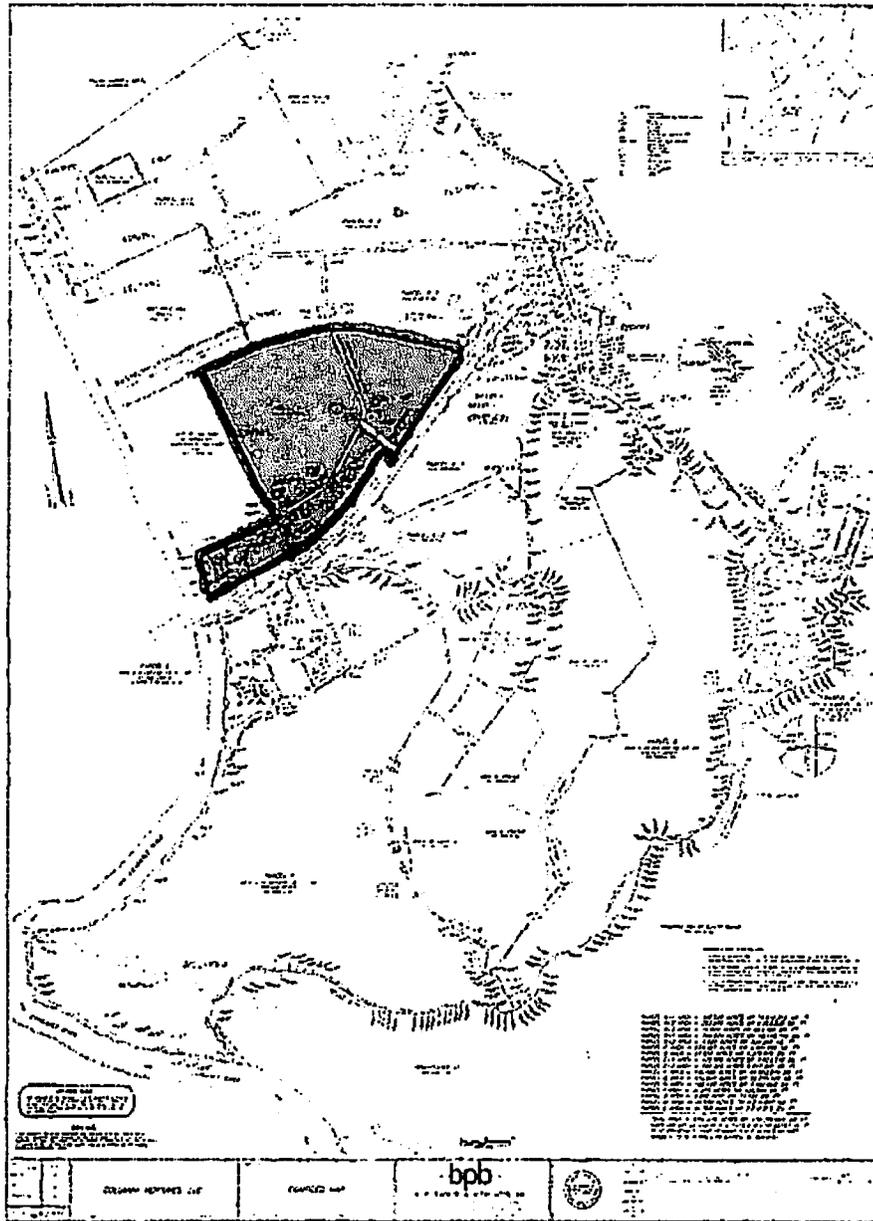
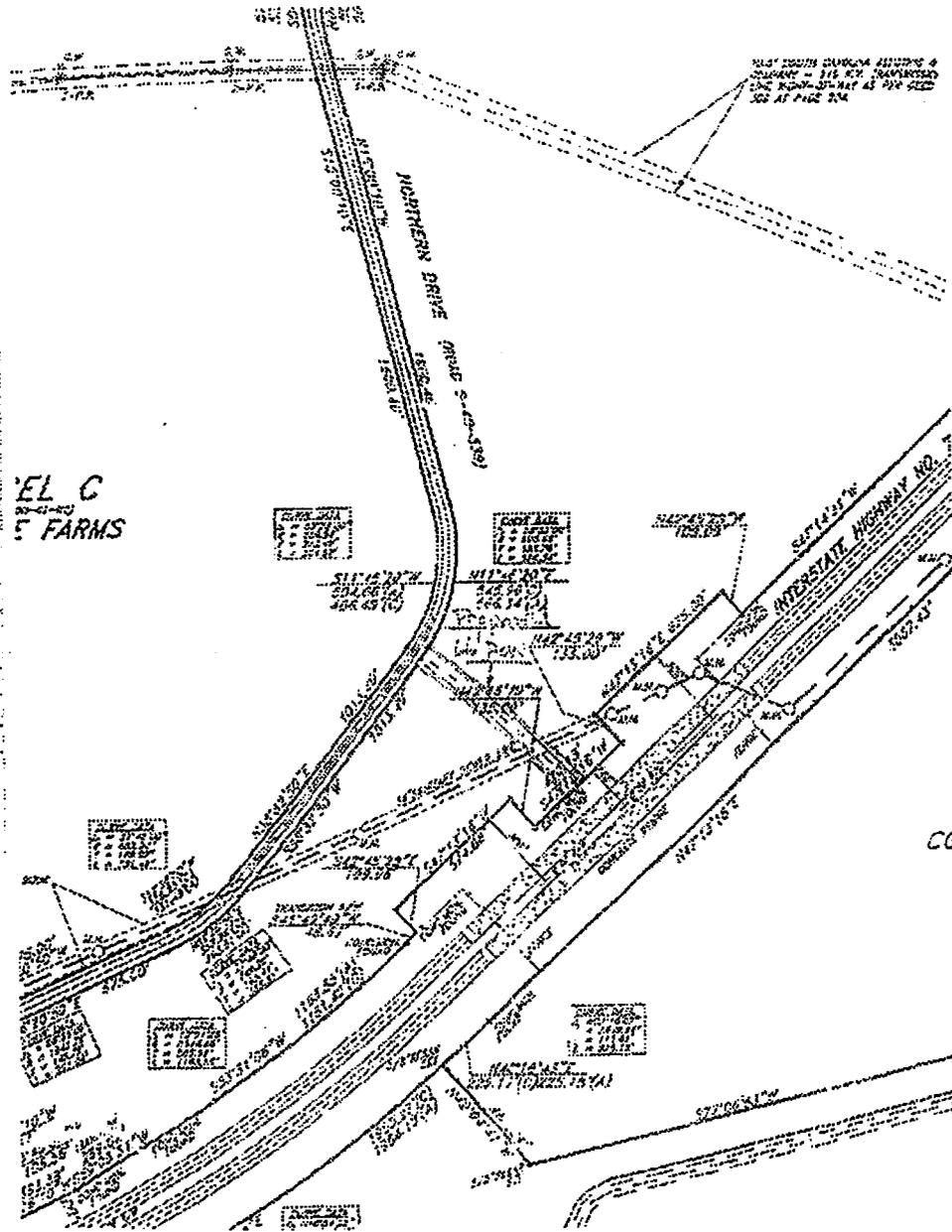


EXHIBIT B



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