

RESOLUTION NO.: R-2003-057

Authorizing City Manager to execute an Agreement of Purchase and Sale between the City of Columbia and Washington Square, LLC for the purchase of property known as 1136 Washington Street

BE IT RESOLVED that the Interim City Manager is authorized to execute the attached Agreement of Purchase and Sale between the City of Columbia and Washington Square, LLC for the purchase of property known as 1136 Washington Street, Richland County Tax Map Sheet 09013-05-02, for the sum of Four Million Eight Hundred Thousand and No/100 (\$4,800,000.00).

Approved this 27th day of August, 2003

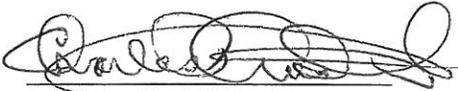
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Requested by:



Mayor

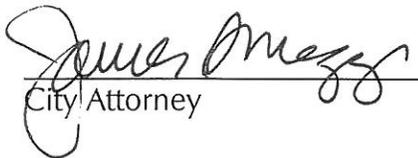
Approved by:



Interim City Manager

Approved as to form:

ATTEST:



City Attorney



City Clerk

Introduced: 8/27/2003

Final Reading: 8/27/2003

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AGREEMENT OF PURCHASE AND SALE

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement") made and entered into as of the date last executed by Purchaser or Seller, as set forth below their signatures, by and between WASHINGTON SQUARE, LLC (the "Seller"), a South Carolina limited liability company, and CITY OF COLUMBIA (the "Purchaser").

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Property: Seller agrees to sell and Purchaser agrees to buy, upon the terms and conditions set forth herein: (i) all that certain parcel of land with all improvements located thereon which is generally known as 1136 Washington Street and located at the corner of Washington Street and Main Street in the City of Columbia, South Carolina, together with all rights, privileges, and easements appurtenant thereto, if any (the "Real Property"), (ii) all rights, title and interest in and to all tenant leases, applications, and other records pertaining to the use and operation of the Real Property, together with all refundable tenant deposits not previously forfeited or applied (and interest thereon, if any) in connection therewith, and (iii) any and all personal property associated with the building and improvements located on the Real Property (the "Personal Property" and with the Real Property, sometimes, collectively, the "Property").

2. Purchase Price: The purchase price shall be Four Million Eight Hundred Thousand and no/100 Dollars (\$4,800,000.00) (the "Purchase Price"). The Purchase Price shall be payable in the form of a cashier's check or federal wire transfer, at Seller's direction, as follows: (i) upon the execution of this Agreement by Purchaser and Seller, Purchaser shall pay to the Escrow Agent (as defined in Paragraph 20) earnest money in the amount of Fifty Thousand and no/100 Dollars (\$50,000.00) (the "Earnest Money"), to be held in escrow under the terms set forth herein, to be applied to the Purchase Price upon Closing; and (ii) at Closing, the balance of the Purchase Price shall be paid to Seller.

3. Closing: The closing of this transaction (the "Closing") shall be held on or before ninety (90) days after full execution of this Agreement (the "Closing Date"). Closing shall take place at the offices of Turner, Padgett, Graham & Laney, P.A., Bank of America Plaza, 1901 Main Street, 17th Floor, Columbia, South Carolina 29202, or at such place as shall be agreeable to the parties.

4. Title: The title to the Real Property shall be good, indefeasible, fee simple, marketable and insurable title, free and clear of all monetary liens and encumbrances but subject to restrictions, conditions, covenants, easements and matters of survey existing of record on the date hereof and such other matters that may otherwise be expressly approved by Purchaser.

5. Closing Costs: Seller shall pay for the preparation of the deed and other conveyance documents to the Property, the costs of deed transfer fees and the cost of discharging any mortgage or other monetary lien against the Property. Purchaser shall be responsible for the cost of recording the deed and any instruments to be recorded under the terms of this Agreement with respect to the Property. Except as otherwise provided herein, each party shall be responsible for its own expenses, including attorneys' fees.

6. Taxes, Utilities, Charges, Rents and Assessments:

a) All real property taxes and ad valorem taxes, whether or not a lien, assessed or to be assessed for the year in which this transaction is consummated, shall be prorated between Seller and Purchaser to the Closing Date. Any and all general and special assessments against or with respect to the Property for the time period to the date of Closing shall be paid in full by Seller prior to or at Closing. Unless otherwise agreed by the parties, the amount of such taxes, as estimated by the Tax Assessor of the County in which the Property is located, shall be credited to the Purchaser at Closing.

b) All utility and service expenses related to the Property shall be prorated as of the Closing Date, with Purchaser being responsible for all such expenses commencing with the Closing Date. The parties agree to make such adjustments outside of Closing based upon the actual bills when received.

c) All rents collected by Seller up to the Closing Date which are allocable to the period commencing with and after the Closing Date shall be paid to Purchaser at Closing. All rent due prior to Closing Date, but collected after Closing Date and any excess amounts received (less reasonable costs and legal fees incurred in the collection thereof) shall be promptly remitted to Seller.

d) If the actual amounts of any prorated taxes and charges are not available upon Closing, the best estimates available will be used and an appropriate adjustment subsequently made upon receipt of the actual bills, if the estimates are inaccurate.

7. Possession; As-Is Property Condition: Possession of the Property shall be delivered to Purchaser on the Closing Date, in its "as-is" condition as on the date hereof, normal wear and tear excepted.

8. Default and Remedies:

a) Seller shall be in default hereunder if Seller shall fail to meet, comply with or perform in a material fashion any covenant, agreement, or obligation within the time limits and in the manner required in this Agreement. In the event of a default by Seller hereunder, Purchaser may pursue any and all remedies available at law or in equity, specifically including the right to seek to enforce specific performance of this Agreement against Seller, it being agreed by the parties that the Property is unique in nature.

b) Purchaser shall be in default hereunder if Purchaser shall fail to meet, comply with or perform in a material fashion any covenant, agreement, or obligation within the time limits and in the manner required in this Agreement. In the event of a default by Purchaser hereunder, Seller may pursue any and all remedies available at law or in equity, specifically including the right to seek enforce specific performance of this Agreement against Purchaser, it being agreed by the parties that the Property is unique in nature.

c) If it shall be necessary for either Purchaser or Seller to employ an attorney to enforce its rights pursuant to this Agreement because of the default of the other party, the non-prevailing party shall reimburse the prevailing party for reasonable attorneys' fees and legal expenses.

9. Examination of Property by Purchaser:

a) Prior to Closing, Purchaser and its agents and independent contractors shall have license to go upon the Real Property, in order to survey, inspect, and otherwise evaluate the

Property for Purchaser's intended use, in a manner which causes the least possible disturbance to the possession of Seller. Seller makes no warranty or representation as to the safety of the Real Property for entry pursuant to this Paragraph. Purchaser and its agents and independent contractors shall conduct themselves so as to avoid damage to or the creation of a nuisance or any unsafe condition on the Real Property, and shall leave the Real Property in as close to the same condition as when it was entered as is reasonably possible. To the extent permitted by South Carolina, Purchaser shall indemnify and hold Seller harmless for any loss or damage by virtue of claims arising from such entry and Purchaser's actions on the Real Property.

b) Purchaser acknowledges that Seller has previously permitted access to the Real Property and Seller's records regarding the same to Purchaser, its advisors and consultants and allowed them to copy all information in Seller's possession related to the Property.

c) Seller has previously provided Purchaser with:

(i) copies of all written leases and other rental agreements affecting the Property;

(ii) a complete copy of the existing title insurance policy, any endorsements thereto and legible copies of all underlying documents;

(iii) a legible copy of the existing survey;

(iv) a copy of all service contracts, warranties, guaranties, parking agreements and other agreements which relate to or affect the Property;

(v) a copy of any engineering or soil reports appraisals affecting the Property and dated within the last three years;

(vi) a copy of the ad valorem real property tax bills for the last three years for the Property; and

(vii) for each of the last two years, operating statements, tenant expense reimbursement statements and tenant responses to same.

d) Purchaser specifically acknowledges and agrees that Purchaser has examined the Property and, through such examination, has become familiar with the physical condition thereof. Seller has not made and does not make any representations or warranties as to the physical condition, zoning, or legality or occupancy of the Real Property or any other matter or thing affecting or relating to the Property. Purchaser hereby expressly acknowledges and represents that no such representations or warranties have been made. Purchaser further agrees to take the Property in "as is" condition on the Closing Date. Seller shall not be liable or bound in any way for any verbal or written statements, representations, or information pertaining to the Property furnished by any agent or employee of Seller, or any other person. It is understood and agreed that all prior and contemporaneous representations, statements, understandings and agreements, oral or written, between the parties are merged in this Agreement, which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying on any statement or representation or warranty not embodied in this Agreement made by the other.

10. Seller Closing Documents: At Closing, the Seller shall deliver to Purchaser the following:

a) Duly executed and acknowledged limited warranty deed in form and content reasonably acceptable to Purchaser's counsel and in recordable form conveying good, fee simple

title to the Real Property, in accordance with the provisions of Section 4 above, and a bill of sale as to the Personal Property in form and content reasonably acceptable to Purchaser;

b) Duly executed lien affidavit warranting and holding Purchaser and the Title Company harmless against unpaid laborers' and materialmen's liens;

c) Such other documents as Purchaser's counsel may reasonably request to evidence Seller's authority to execute and perform under this Agreement and to execute and deliver all documents conveying the Property to Purchaser;

d) A certificate given under penalty of perjury and on a form approved under regulations promulgated under Section 1445 of the Internal Revenue Code of 1954, as amended (the "IRC"), that Seller is not a foreign person;

e) Seller's tax identification number and such other information as may be required by Purchaser for any governmentally required form including, without limitation, IRS Form 1099B and the South Carolina Withholding Tax Affidavit;

f) An assignment and assumption of tenant leases; and

g) All other documents necessary to consummate the transactions under this Agreement.

11. Purchaser Closing Documents: At Closing, Purchaser shall deliver to Seller the following:

a) The balance of the Purchase Price due;

b) The assignment and assumption of tenant leases; and

c) Such other documents and papers, which may be reasonably necessary to the consummation of the transactions described in this Agreement.

12. Entire Agreement; Amendments: It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement, neither party relying upon any statement or representation not embodied in this Agreement, made by the other. No amendments or modifications of this instrument shall be binding unless in writing and executed by the party to be bound.

13. Notices: Any notice, request, instruction or delivery of document to be given hereunder by any party hereto to any other party shall be in writing and shall be deemed to have been given (i) upon delivery in person to such other party, (ii) if mailed, upon the expiration of four (4) business days after being deposited in the United States mail, registered or certified mail, postage pre-paid, or (iii) if overnight delivery, upon the next business day, to the address of such party as set forth below or to such other address as such party shall furnish in writing to the party entitled to notice:

Seller: Washington Square, LLC
Post Office Box 101
Columbia, South Carolina 29202
Attention: A.S. Harpe, II.
Phone: (803) 779-7777
Facsimile: (803) 931-8989

With a copy to: Turner, Padgett, Graham & Laney, P.A.
Post Office Box 1473
Columbia, South Carolina 29202
Attention: Lanneau Wm. Lambert, Jr.
Phone: (803) 227-4248
Facsimile: (803) 799-3957

Purchaser: City of Columbia
Post Office Box 667
Columbia, South Carolina 29202
Attention: City Manager
Phone: (803) 545-3026
Facsimile: (803) 255-8922

With a copy to: City of Columbia
Post Office Box 667
Columbia, South Carolina 29202
Attention: James S. Meggs, City Attorney
Phone: (803) 737-4242
Facsimile: (803) 737-4250

Personal delivery to a party or to any officer, partner, agent or employee of such party at its address herein shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Notwithstanding the foregoing, no notice of change of address shall be effective until the date of receipt thereof. This Paragraph shall not be deemed to prohibit any other manner of delivering a notice or other document; provided, however, the burden of proving actual delivery by any other manner shall be upon the party delivering such notice or document.

14. Waiver: No failure of either party to insist upon strict compliance with any provision of this instrument shall constitute a waiver of such party's right to subsequently demand strict compliance.

15. Time of Essence: Time is of the essence in the performance of all obligations under this Agreement.

16. Date of Agreement: The date of this Agreement shall be deemed to be the date of execution by the last to sign of Purchaser and Seller.

17. Assigns: This Agreement may be assigned by Purchaser, and 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.

18. Captions and Headings; Number and Gender: The captions and headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to define or add to the interpretation, construction or meaning of any provision of this Agreement. Whenever the singular or plural number, masculine or feminine or neuter gender, is used herein, it shall equally include the other.

19. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In addition,

this Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by the affixing of the signatures of each of the parties to one of such counterpart signature pages; all of such signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

20. Escrow Agent: Purchaser and Seller agree that Turner, Padgett, Graham & Laney, P.A. (the "Escrow Agent") shall serve as the escrow agent for the Earnest Money Deposit. The Escrow Agent shall not incur any liability to anyone for damages, losses or expenses in connection with its holding of the Earnest Money, and Purchaser and Seller hereby agree to indemnify, defend and hold the Escrow Agent harmless from any claims, demands, judgments, costs, expenses or losses of any kind whatever incurred in connection with the Escrow Agent's role in connection with the Agreement. In the event of a dispute between the Purchaser and Seller arising prior to or at the time of delivery or other disposition of the Earnest Money by Escrow Agent pursuant hereto, Escrow Agent, in its sole discretion, shall be entitled to tender the Earnest Money into the custody of the Clerk of Court or any court of competent jurisdiction and shall thereupon be discharged from further duties and liabilities under this Agreement.

21. Property Management: At or prior to Closing, Purchaser agrees to enter into an agreement for the management of the Property with CB Richard Ellis / Columbia ("CBRE") upon terms and conditions reasonably acceptable to Purchaser and CBRE but specifically including an initial term of one (1) year, renewable annually.

22. CBRE Tenant Lease. One of the tenants, CBRE, occupies the top floor of the Property. Purchaser acknowledges that Seller's members are also the controlling principals of CBRE. Purchaser agrees to permit an early termination of the CBRE lease without penalty as soon as CBRE and its principals have procured other off-site tenant space for CBRE's relocation.

23. Seller IRC Section 1033 Conversion: Purchaser acknowledges that Seller desires to structure the sale of the Property as an involuntary conversion pursuant to IRC Section 1033. Purchaser confirms that it intends to use the Property for public purposes which include the relocation of certain municipal offices and departments. Purchaser agrees to cooperate with Seller to give effect to the IRC Section 1033 treatment, so long as Purchaser incurs no expense or liability. Seller agrees to indemnify and hold Purchaser harmless from any and all liability with respect to Seller's desired tax treatment for this sale.

24. Purchaser Authority. Purchaser hereby represents and warrants to Seller, as of the Contract Date and as of the Closing, that Purchaser has all necessary power and authority to execute, deliver and perform this Agreement and to complete the transactions provided for herein and all approvals and consents to Purchaser's execution, delivery or performance of this Agreement required from by law has been obtained in writing. Purchaser agrees to provide Seller with certified copies of all appropriate resolutions, ordinances or related documents authorizing Purchaser's actions in connection with this transaction.

25. Acceptance: The submission of the Agreement by Seller to Purchaser constitutes an offer which shall become null and void without further action by Seller unless Purchaser has returned the Agreement fully executed, without varying the terms, to Seller and delivered the Earnest Money to the Escrow Agent before 5:00 p.m. E.D.T. on August 27, 2003.

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SIGNATURE PAGES FOLLOW]*

SIGNATURE PAGE OF
AGREEMENT OF PURCHASE AND SALE

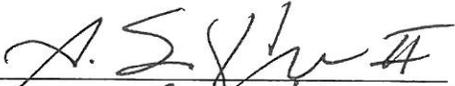
IN WITNESS WHEREOF, this Agreement of Purchase and Sale has been duly signed, sealed and delivered by the parties as of the day and year first above written.

WITNESSES:



SELLER:

WASHINGTON SQUARE, LLC

By: 
Print Name: A. J. HARPE, II
Authorized Member

Executed by Seller on August 21, 2003

PURCHASER:

CITY OF COLUMBIA



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

Executed by Purchaser on August 27, 2003