

ORIGINAL
STAMPED IN RED

RESOLUTION NO.: R-2023-006

Authorizing the City Manager to execute an Option to Purchase Agreement between the City of Columbia and Foxfire Management Company, LLC as well as any documents necessary to consummate the purchase of 118 Bluff Road, 126 Bluff Road, 132 Bluff Road and 138 Bluff Road, Richland County TMS #11204-02-35, TMS #11204-02-34, TMS #11204-02-33 and TMS #11204-02-32

BE IT RESOLVED by the Mayor and City Council this 17th day of January, 2023, that the City Manager is hereby authorized to execute the attached Option to Purchase Agreement and any other documents necessary and on such forms as may be approved by the City Attorney, in order to consummate the purchase of the referenced property, between the City of Columbia and Foxfire Management Company, LLC for the purchase of 118 Bluff Road, 126 Bluff Road, 132 Bluff Road and 138 Bluff Road, Richland County TMS #11204-02-35, TMS #11204-02-34, TMS #11204-02-33 and TMS #11204-02-32.

(Funding Source: CDBG MIT 4039999-CP108001)


Requested by:

Assistant City Manager Gentry

Approved by:


City Manager

Approved as to form:


City Attorney

Introduced: 1/17/2023

Final Reading: 1/17/2023


Mayor

ATTEST:


City Clerk

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

OPTION TO PURCHASE AGREEMENT

THIS OPTION TO PURCHASE AGREEMENT ("Agreement") is made effective as of the last date signed by either Party, by and between **CITY OF COLUMBIA, SOUTH CAROLINA, a municipal corporation** ("Grantee"), and **FOXFIRE MANAGEMENT COMPANY, LLC** ("Grantor").

RECITALS

WHEREAS, Grantor acquired certain property, together with all improvements now and hereafter located thereon, located in the City of Columbia, Richland County, South Carolina, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property"); and,

WHEREAS, Grantor has agreed to grant Grantee an Option to Purchase (defined below) the Property.

NOW THEREFORE, in consideration of the premises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Option.

(a) Upon payment in the amount of Ten Thousand and No/100 (\$10,000.00) Dollars ("**Earnest Money**") Grantee shall have and Grantor hereby grants Grantee the option to purchase the Property ("**Purchase Option**"). The payment of such consideration shall be made to Colliers International of South Carolina, Inc., as Escrow Agent ("**Escrow Agent**") and will be applied against the purchase price at the closing date pursuant to any Purchase and Sale Agreement ("**PSA**"). The failure to satisfy all conditions contained herein will require return of the earnest money payment by the Escrow Agent to the Grantee.

This Option is exercisable for a period of up to three hundred (300) days from execution of the Purchase Option and may be extended for two (2) thirty-day (30) periods ("**Option Period**"). The Purchase Option is exercisable at any time by delivering a written notice to Grantor as provided for in Paragraph 2(g) below, ("**Notice of Exercising Option**") stating that Grantee has elected to exercise the Purchase Option. Once exercised, Grantee shall be entitled to continue with its acquisition of the Property unless Grantee elects to terminate as provided herein.

(b) For one hundred eighty (180) days after the Effective Date of this Purchase Option, Grantee and/or its agents and employees shall have reasonable access to the Property to conduct

studies and inspections, including but not limited to a Part 58 and Phase I environmental study, to perform due diligence, and to determine if the Property is suitable to the Grantee ("**Inspection Period**"). Grantee is to advise Grantor if environmental Phase II will be required. If Phase II requires time beyond the 180-day inspection period, the Grantor will grant up to sixty (60) additional days to the period. Grantor's refusal to permit the required environmental assessments is grounds to terminate this Purchase Option and for the return of the Earnest Money at the Grantee's discretion. Failure of any conditions found herein shall also be grounds for termination of this Option and Purchase at Grantee's sole discretion and shall result in return of the Earnest Money.

(c) During the Option Period Grantor shall not solicit offers from, or engage in negotiations with, any third party with respect to the sale or lease of the Property.

2. Purchase and Sale Agreement.

(a) Upon Notice of Exercising Option, as provided herein, the following additional terms shall govern the closing obligations pursuant to any PSA:

(i) Grantee is prepared to offer not more than Eight Hundred Thousand and No/100 (\$800,000.00) Dollars to purchase the Property subject to the determination of the final purchase price by reference to Paragraph 2(d) contained herein.

(ii) The target Purchase and Sale Agreement closing date will be sixty (60) days following completion of all requirements of the Option Agreement ("**PSA Closing**") unless otherwise extended as provided herein. Establishment of a final closing date is contingent upon receipt by the Grantee of a Finding of No Significant Impact and an Authorization to Use Grant Funds, should it be determined that the acquisition will be funded with federal funds. Grantor shall agree to extend the PSA Closing until such Finding and Authorization has been received.

(iii) Grantor shall deliver the following to Grantee on or before the PSA Closing date:

(1) A limited warranty deed, in recordable form, conveying the Property to Grantee subject only to "Permitted Encumbrances" (being those exceptions listed on Exhibit "B" attached hereto, together with any other encumbrances which are acceptable to Grantee in its sole and absolute discretion).

(2) A bill of sale conveying to Grantee all personal property and equipment located on or used in connection with the Property;

(3) A FIRPTA Affidavit in compliance with law;

(4) An owner's affidavit as to mechanic's liens, possession and other matters in a form acceptable to the title insurer to delete the standard title exceptions;

(5) A tax compliance letter issued by the South Carolina Department of Revenue within thirty (30) days of the PSA Closing Date.

- (6) A South Carolina tax withholding affidavit;
- (7) Past environmental reports in the Grantor's possession;
- (8) Any geotechnical reports in Grantor's possession;
- (9) Asbestos Report and any updates completed;
- (10) Copies of current leases of any occupying tenants;
- (11) Evidence of signatory's authority to sell the property;

(12) A closing or settlement statement reflecting the disbursement of funds in a manner consistent with this Agreement, application of the purchase price to the repayment in full of any mortgages or other monetary liens or encumbrances (other than current years taxes not yet due and payable) affecting the Property prior to disbursement of any funds to Grantor and the proration of any current years taxes not yet due and payable (the "**Closing Statement**"); and

(13) Such other documents as may be reasonably required by this Agreement or may be reasonably requested by the title insurer or reasonably requested by either party to implement the provisions hereof and that are not inconsistent with the provisions of this Agreement.

(iv) Grantee shall deliver the following to Grantor on or before the before the PSA Closing date:

(1) Purchase price by wire transfer of immediately available United States funds to an account designated by Grantor minus the Earnest Money previously paid;

(2) A Closing Statement; and

(3) Such other documents as may be reasonably required by this Agreement or as may be reasonably requested by the title insurer and that are not inconsistent with the provisions of this Agreement.

(v) Grantee shall be required to pay for deed preparation, documentary or transfer stamps or fees, title examination, title insurance premium, normal and reasonable closing costs, all past due taxes, and pro-rata real estate taxes and assessments for the current year, if applicable. Grantee shall pay the recording of the deed. Each party to pay their own attorneys' fees.

(b) Notwithstanding the foregoing, Grantee shall have no obligation to close (i) should Grantor be unable to deliver title to the Property at closing free and clear of all liens, claims, encumbrances, restrictions and exceptions (except for Permitted Encumbrances), or (ii) should there occur prior to closing a material adverse change in the condition of the Property, including, without limitation, a change in the conditions reported in any environmental report, or (iii) should

there be instituted or threatened any condemnation or eminent domain proceedings against the Property.

(c) Grantor acknowledges that the Grantee is represented by Colliers International of South Carolina, Inc.. The Grantor is responsible for all real estate commissions as a result of this transaction.

(d) Fair Market Value. "Fair Market Value," as used herein, shall be determined in the manner set forth in this subparagraph (d). Within twenty (20) days following the date on which Grantor receives the Notice of Exercising Option, Grantee shall commence an appraisal for the purpose of determining the Fair Market Value and offer amount. Grantor and Grantee hereby agree that the Fair Market Value of the Property shall be the lesser of (i) the Fair Market Value of the Property which is identified in the appraisal report issued by Grantee's Appraiser or (ii) Eight Hundred Thousand and No/100 (\$800,000.00) Dollars. Grantee shall be responsible for the costs and fees charged by the Grantee's Appraiser.

(e) Additional Conditions.

(i) Grantee possesses eminent domain authority to acquire property, however, in the event that Grantor and Grantee cannot reach agreement for the purchase of the Property, the Grantee will not pursue its acquisition under eminent domain.

(ii) The Grantee may use federal funds provided under the Community Development Block Grant – Disaster Recovery Program for the acquisition of the subject property. As an agency that does not intend to use it for this purchase, the Grantee must comply with all provisions of Uniform Relocation Assistance and Real Property Acquisition Policies Act, namely §49 CFR 24.101(b)(1). The Grantee must also comply with the applicable provisions of 24 Part 58 Environmental Review Procedures. Pursuant to these sections, this proposed acquisition meets all said requirements as follows:

(1) The Grantee does not intend to exercise its right of eminent domain;

(2) The Property will not be acquired if the Grantor and Grantee are unable to agree to price and terms;

(3) The acquisition of the subject Property is not an absolute requirement for the project;

(4) The Property is not part of a larger planned project area requiring additional acquisitions; and,

(5) The Grantor will be advised of the fair market value as determined by appraisal.

(iii) If any buildings are occupied by tenants at the time of the Grantee's Notice of Exercising Option, the Grantor will be provided with notifications that the Grantor will be required to present to all tenants. The Grantor will be required to provide Grantee with evidence that all tenants have been notified regarding a potential sale and advised that they are not to take

Grantor:

**FOXFIRE MANAGEMENT
COMPANY, LLC,**

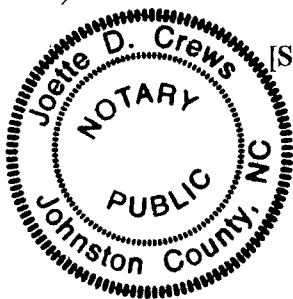
By: Bj. A. White
Its: Manager
Date: 2-6-23

STATE OF NC
COUNTY OF Wake

Personally appeared before me, the undersigned authority in and for the said county and state, on this 6th day of February, 2023, within my jurisdiction, the within named Benjamin H. White who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed in the above and foregoing instrument and acknowledged that he/she executed the same in his/her representative capacity, and that by his/her signature on the instrument, and as the act and deed of the entity upon behalf of which he/she acted, executed the above and foregoing instrument, after first having been duly authorized so to do.

Joette D. Crews
NOTARY PUBLIC
Print Name: Joette D. Crews

My Commission Expires:
2/12/27
(SEAL)



[Signatures Continue on the Following Page]

Grantee:

**CITY OF COLUMBIA, SOUTH
CAROLINA**

By: Teresa B. Wilson
Its: City Manager
Date: 10/23/2023

APPROVED AS TO FORM

[Signature]
Legal Department City of Columbia, SC
1/10/2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, the undersigned authority in and for the said county and state, on this 23rd day of January, 2022, within my jurisdiction, the within named Teresa Wilson, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed in the above and foregoing instrument and acknowledged that he/she executed the same in his/her representative capacity, and that by his/her signature on the instrument, and as the act and deed of the entity upon behalf of which he/she acted, executed the above and foregoing instrument, after first having been duly authorized so to do.

[Signature]
NOTARY PUBLIC
Print Name: Tasha L. Watson

My Commission Expires:
2-1-2028
(SEAL)

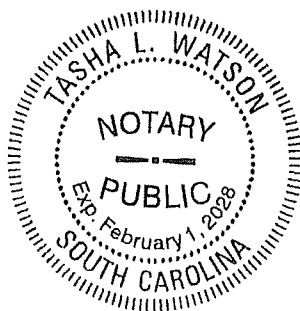


EXHIBIT A

Legal Description

118 Bluff Rd, Columbia, South Carolina/ TMS #R11204-02-35
126 Bluff Rd, Columbia, South Carolina/ TMS #R11204-02-34
132 Bluff Rd, Columbia, South Carolina/ TMS #R11204-02-33
138 Bluff Rd, Columbia, South Carolina/ TMS #R11204-02-32

Or portions thereof:

EXHIBIT B
PERMITTED ENCUMBRANCES

1.

any further action until they receive additional notifications. With regard to any current or future tenants, the following must occur:

(1) The Grantee will be allowed access to any tenant-occupants who occupy property and may be displaced as a result of the acquisition;

(2) Should the Grantor move a tenant into the property following delivery of the Notice of Exercising Option, they are required to present any tenant with a "move-in" notice, advising the tenant that they are not eligible for benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act. The Grantees shall provide the Grantor with the appropriate form.

(3) If Grantor fails to provide the "move-in" notice to any tenants, as herein required, the costs incurred in compliance with the Act will be borne by the Grantor and deducted from the sales proceeds at closing.

(f) This Agreement shall be binding upon Grantor and Grantee, and their respective heirs, successors and assigns; and as such shall be a burden upon and shall be deemed to run with the title to the Property. This Agreement shall continue and remain in full force and effect notwithstanding any exercise of the Purchase Option by the Grantee and/or any acquisition of the Property by the Grantee or its assignee pursuant thereto. This Agreement may be assigned by Grantee to any person or entity which Grantee designates without the requirement of any consent of the Grantor.

(g) All notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be effective upon personal delivery to the Party to whom they are addressed; or upon receipt/confirmation, if sent via e-mail or facsimile to the addresses indicated below; or, if mailed, five (5) days following deposit in the United States mail first class postage prepaid; or, if sent by nationally recognized overnight courier, the date when signed for at addressee's residence or place of business and addressed to each Party at the following address:

City of Columbia
Attn: City Manager
1737 Main Street
Columbia, South Carolina 29202

Foxfire Management Company, LLC
Attention: Ben Whited
4700 Falls of Neuse Rd., Ste. 400
Raleigh, North Carolina 27609
Email: Ben.Whited@fjtpa.com
Phone: 919-917-5277

(h) This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina, exclusive of its choice of law rules.

[Remainder of Page Intentionally Blank]