

ORDINANCE NO.: 2005-090

Authorizing transfer of Canal Side to Beach Equity Investments, LLC

BE IT ORDAINED by the Mayor and Council of the City of Columbia, South Carolina, this 3rd day of August, 2005, that the City Manager is hereby authorized to execute a Contract of Sale, Deed and any closing documents necessary to effect the conveyance from the City of Columbia to Beach Equity Investments, LLC of the property described in the attached Exhibit

"A", for the sum of Six Million and No/100 (\$6,000,000.00) Dollars.

ORIGINAL
STAMPED IN RED

Requested by:



MAYOR

Approved by:



City Manager

Approved as to form:

ATTEST:



City Attorney



City Clerk

Introduced: 7/27/2005

Final Reading: 8/3/2005

EXHIBIT A

All that piece, parcel or lot of land, situate, lying and being at the Northwestern corner of the intersection of Hampton Street and Williams Street in the City of Columbia, County of Richland, State of South Carolina and being more particularly shown and designated as Parcel A on a plat prepared by Johnson, Knowles, Burgin and Bouknight, Inc. for the South Carolina Department of Corrections, dated May 24, 1988, and recorded in Plat Book 55 at Page 6879, Office of the RMC for Richland County, and according to said plat having the following boundaries and measurements:

Beginning at the Southeast corner of Parcel A at a fence corner designated 100 on said plat, then along the Southern property line of said parcel South $75^{\circ} 58' 57''$ west for a distance of 469.86 feet to an iron; then continuing South $71^{\circ} 10' 47''$ West for a distance of 226.32 feet to a concrete monument; then continuing South $75^{\circ} 11' 12''$ West for a distance of 46.77 feet to a concrete marker; then continuing South $68^{\circ} 13' 33''$ West for a distance of 159.17 feet to an iron; then along the western property line of said parcel North $44^{\circ} 32' 57''$ West for a distance of 173.18 feet to an iron; then continuing North $36^{\circ} 18' 30''$ West for a distance of 296.63 feet to an iron; then continuing North $27^{\circ} 31' 00''$ West for a distance of 359.80 feet to an iron; then continuing North $13^{\circ} 14' 43''$ West for a distance of 216.18 feet to an iron; then along the Northern property line of said parcel North $76^{\circ} 32' 23''$ East for a distance of 717.67 feet to an iron; then continuing North $76^{\circ} 32' 23''$ East for a distance of 517.40 feet to a fence corner; then along the Eastern property line of said parcel South $13^{\circ} 39' 55''$ East for a distance of 906.82 feet to a fence corner, then turning South $44^{\circ} 14' 09''$ West for a distance of 56.45 feet to the fence corner designated 100, being the point of beginning.

The property hereby conveyed is bounded on the north by the right of way of Blanding Street, on the east by the right of way of Williams Street, on the south by the right of way of Hampton Street, and on the west by the Columbia Canal.

CONTRACT OF SALE

Agreement made as of July 19, 2005 (the "Effective Date") between BEACH EQUITY INVESTMENTS, LLC ("Purchaser") and CITY OF COLUMBIA ("Seller").

I. DEFINITIONS. As used herein the following terms shall have the following meanings:

A. Property - The land on Hampton, Williams, and Blanding Streets, Columbia, SC described on the attached Exhibit "A".

B. Western Portion - A portion of the Property bounded on the west by the canal and on the east by the remainder of the Property, which common boundary shall be determined as hereinafter provided.

C. Purchase Price - Six Million Dollars (\$6,000,000.00).

D. Earnest Money - Ten Thousand Dollars (\$10,000.00).

E. Escrow Agent - Gottlieb & Smith, P.A.

F. Inspection Period - The period ending on the sixtieth (60th) day following the Effective Date. If the Inspection Period ends on a Saturday, Sunday, or legal holiday it shall be extended until the next following business day.

G. Closing Date - The later of the sixtieth (60th) day following the end of the Inspection Period or the thirtieth (30th) day following satisfaction of the Zoning Contingency. If the Closing Date falls on a Saturday, Sunday, or legal holiday it shall be extended until the next following business day.

II. PURCHASE AND SALE. Seller agrees to sell and Purchaser agrees to buy the Property for the Purchase Price subject to the terms and conditions hereof.

III. ESCROW DEPOSIT. Upon the execution hereof Purchaser shall deposit the Earnest Money with Escrow Agent. The Earnest Money shall be deposited into an FDIC insured account (non-interest bearing). Interest, if any, shall accrue for the benefit of Purchaser (but shall be paid to Seller if Purchaser defaults). In the event Purchaser has the right to and elects to terminate this Contract, Escrow Agent shall refund the Earnest Money upon receipt of notice of such termination and upon Purchaser's delivery of due diligence studies, reports, surveys, and other information to Seller as contemplated by Paragraph V. At Closing Escrow Agent shall pay the Earnest Money to Seller to be credited against the Purchase Price. Escrow Agent shall hold the Earnest Money according to the terms hereof and those set forth on the attached Exhibit "B".

**ORIGINAL
STAMPED IN RED**

IV. TITLE. Seller shall convey to Purchaser at Closing marketable fee simple title in and to the Property. For the purposes of this Contract, "marketable fee simple title" shall mean fee simple ownership which is: (i) free of all claims, liens and encumbrances of any kind or nature whatsoever other than the Permitted Exceptions (as hereinafter defined); and (ii) insurable by a title insurance company reasonably acceptable to Purchaser, at then current standard rates under the ALTA Owner's Policy of Title Insurance with all standard printed exceptions therein deleted and without exception other than for the Permitted Exceptions. For the purposes of this Contract, the term "Permitted Exceptions" shall mean: (i) current city, state and county ad valorem taxes not yet due and payable; (ii) easements for the installation or maintenance of public utilities serving only the Property provided same do not interfere with development and use of the Property by Purchaser; and (iii) all, if any, other easements of record as of the date of Seller's execution of this Contract provided same do not interfere with the development and use of the Property by Purchaser or render title unmarketable. Seller will use reasonable efforts to eliminate claims, liens, and encumbrances other than Permitted Exceptions. Notwithstanding anything herein to the contrary, if Seller is unable to convey marketable fee simple title as herein provided (and same is not caused by the willful act of Seller), Purchaser's sole remedy shall be to terminate this Contract and Seller thereafter shall have no liability to Purchaser.

V. SURVEYS AND STUDIES.

A. During the Inspection Period Purchaser shall be permitted to enter the Property and to inspect and evaluate the Property and to conduct studies thereon. If Purchaser determines for any reason that the Property is not suitable for Purchaser's purposes, Purchaser may terminate this Contract by giving written notice of termination to Seller prior to the end of the Inspection Period. If Purchaser does not terminate this Contract the Earnest Money shall be deemed "at risk" and non-refundable subject only to Seller's obligations hereunder. During the Inspection Period Seller shall promptly provide Purchaser with information and documentation (to the extent same is in Seller's possession) reasonably requested by Purchaser to facilitate its evaluation of the Property. Purchaser shall hold Seller harmless from any damage caused by Purchaser, its agents or contractors, in the course of conducting such surveys and/or studies. The indemnities herein shall expressly survive the Closing or the termination of this Contract and shall be in addition to any liquidated damage provisions contained in this Contract.

B. Purchaser shall promptly provide Seller with copies of all studies, reports, surveys, and other due diligence materials and information excepting, however, proprietary information.

VI. ZONING CONTINGENCY. The obligations of Purchaser are contingent upon its obtaining zoning and / or planning approval from the City of Columbia for a PUD that would allow the flexibility to develop not less than seven hundred fifty (750) single and multi-family residential units; not less than thirty-five thousand (35,000) square feet of office and retail space; and a maximum building height of one hundred feet (100'). The zoning / PUD layout shall be reasonably satisfactory to Purchaser and if such satisfactory zoning / PUD is not obtained within six (6) months of the Effective Date then either party may terminate this Contract on ten (10) days notice to the other whereupon the Earnest Money shall be refunded to Purchaser. Notwithstanding the foregoing, if satisfactory zoning / PUD is obtained within the said ten (10)

day notice period this Contract shall not terminate. Reference to the "City of Columbia" in this paragraph shall mean the City of Columbia in its capacity as the governmental agency having jurisdiction over zoning and planning and not in its capacity as Seller hereunder. Accordingly, the approval of this Contract by Seller shall not imply zoning, planning approval, or design approval, or any other approval typically required by the City of Columbia in connection with development and construction.

VII. COMMON BOUNDARY. Prior to and as a condition of closing, the parties shall reasonably establish the eastern boundary of the Western Portion (the "Common Boundary"). The Common Boundary shall be located far enough east of the canal to permit the esplanade and public walking and biking paths to be on the Western Portion, it being understood that this will include a small portion of the Property at its higher elevation above the canal. The Common Boundary shall be a function of the final design of the esplanade and need not be a straight line.

VIII. ESPLANADE. It shall be a condition of closing that the parties have mutually agreed upon a design of the esplanade to be constructed on the Western Portion. The design of the esplanade shall be the responsibility of Seller at its expense in conjunction, however, with Purchaser's design of its proposed project on the Property so the esplanade and its walking and bike trails are reasonably compatible with said project.

It shall be a further condition of the closing that Seller demonstrate to Purchaser (to the reasonable satisfaction of Purchaser and its mortgage lender) Seller's source of funding for the construction of the esplanade. Seller shall construct the esplanade at its expense and agrees that it shall commence construction within a reasonable time after closing so that construction can be completed in a reasonable timeframe in order to facilitate Purchaser's marketing efforts.

IX. CCI WALL. Pursuant to an agreement with the SC State Historic Preservation Office dated March 23, 1995 (the "HP Agreement"), Seller has agreed to preserve a portion of the old CCI wall along the northern boundary of the Property. Purchaser agrees to preserve the wall in accordance with the HP Agreement and design its project in a manner which is compatible with the preservation of the wall.

X. REPURCHASE OPTION / PUT. Seller shall have the option at any time after closing to purchase the Western Portion from Purchaser for a price of Ten Dollars (\$10.00). This option may be exercised at any time within ten (10) years following closing upon written notice to Purchaser. In addition Purchaser may require Seller to repurchase the Western Portion from Purchaser for Ten Dollars (\$10.00) at any time within ten (10) years following closing upon written notice to Seller. Conveyance in either event shall be by special warranty deed conveying fee simple title to the Western Portion subject only to exceptions and conditions existing prior to the initial closing hereunder. In any event, Seller must purchase the Western Portion prior to commencing construction of the esplanade.

XI. PARK / PUBLIC ACCESS. Purchaser intends to construct a park area near the Common Boundary which shall be accessible to the public. In addition, the streets to be constructed by Purchaser on the Property shall be constructed to City of Columbia standards to allow public dedication and same shall be dedicated as public streets. Until the streets have been dedicated they shall nonetheless after construction be open to the public for access to the park

and esplanade. These provisions shall be reflected in the closing documents, however, they will survive Closing whether or not reflected in such documents.

XII. CLOSING DATE. The closing shall occur at the offices of Gottlieb & Smith, P.A., Columbia, SC, or another mutually agreeable location on the Closing Date or such earlier date established by Purchaser on reasonable notice to Seller.

XIII. CLOSING. At Closing Purchaser shall tender the Purchase Price (plus or minus normal closing adjustments) by wire transfer of collected funds together with such other documents as Seller may reasonably request and Seller shall deliver the following:

A. A duly executed limited warranty deed conveying fee simple title in the Property to Purchaser subject to easements, conditions, and restrictions of record as of the date hereof. The deed shall contain a provision describing the repurchase option provisions for the Western Portion.

B. An owner's affidavit sufficient to enable Purchaser's title insurance company (without extra charge to Purchaser) to delete exceptions as to mechanic's liens (other than mechanic's liens or potential mechanic's liens which might arise as a result of activities of Purchaser), other monetary liens and other matters to the extent not inconsistent with a limited warranty deed.

C. Possession of the Property.

D. Such other documents as Purchaser may reasonably request.

XIV. PRORATIONS AND EXPENSES; COMMISSIONS.

A. Real property taxes and all other items customarily prorated shall be prorated at Closing.

B. Purchaser and Seller represent that each has dealt with no real estate companies in connection with this transaction.

C. Seller shall pay for its own attorneys' fees. Purchaser shall pay all other closing costs, including its own attorneys' fees, title examination, title insurance premiums, and survey costs.

XV. DEFAULT.

A. If Purchaser fails to consummate the purchase as herein provided, except in the event of a default by Seller or failure for any conditions to Closing to have been satisfied, Purchaser and Seller have agreed that Purchaser shall pay the Earnest Money to Seller as liquidated damages for Purchaser's failure to consummate the purchase as herein provided and as Seller's sole remedy.

B. If Seller fails to consummate the sale and is in default hereof, Purchaser, at its option, shall be entitled to either terminate this Contract or proceed to enforce this Contract by an action of specific performance in a court of competent jurisdiction.

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

XVI. "AS IS" CONDITION / CROSS WALK.

A. Purchaser acknowledges that it is purchasing the Property "AS IS" and not on the basis of representations or warranties made by Seller (or anyone claiming to act on Seller's behalf) 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 the Property.

B. Seller agrees that it shall remove the Hampton Street crosswalk from the Property, at its expense, within six (6) months from the Effective Date.

XVII. 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. Purchaser may assign this Contract to an affiliated entity to be formed by Purchaser upon notice to Seller.

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 at 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, Seller will not impose any easements, covenants, conditions, restrictions or other encumbrances upon the Property or any part thereof without prior written consent of Purchaser, 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.

H. Seller recognizes that Purchaser (or its assigns) reserves the right to structure this transaction as a like-kind exchange intended to qualify under Section 1031 of the Internal Revenue Code. Accordingly, each party agrees to cooperate with the other to facilitate the qualification of the exchange, provided the other party incurs no additional risk or expense.

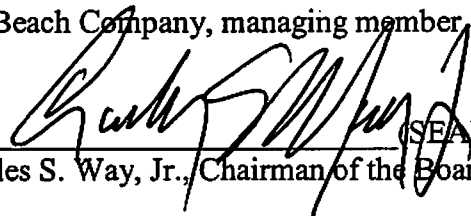
SIGNED, SEALED AND DELIVERED as of the date first above set forth.

Address:

211 King Street, Suite 300
Charleston, SC 29401
Attn: Daniel J. Doyle
Telephone: 843-722-2615
Telecopy: 843-722-6449

BEACH EQUITY INVESTMENTS, LLC

By: The Beach Company, managing member

By:  (SEAL)
Charles S. Way, Jr., Chairman of the Board

CITY OF COLUMBIA

1737 Main Street
Columbia, SC 29217
Attn: City Manager
Telephone: 803-545-3025
Telecopy: 803-255-8922


By:  (SEAL)
Print Name: Charles V. Austin Sr.
Title: City Manager

EXHIBIT A

All that piece, parcel or lot of land, situate, lying and being at the Northwestern corner of the intersection of Hampton Street and Williams Street in the City of Columbia, County of Richland, State of South Carolina and being more particularly shown and designated as Parcel A on a plat prepared by Johnson, Knowles, Burgin and Bouknight, Inc. for the South Carolina Department of Corrections, dated May 24, 1988, and recorded in Plat Book 55 at Page 6879, Office of the RMC for Richland County, and according to said plat having the following boundaries and measurements:

Beginning at the Southeast corner of Parcel A at a fence corner designated 100 on said plat, then along the Southern property line of said parcel South $75^{\circ} 58' 57''$ west for a distance of 469.86 feet to an iron; then continuing South $71^{\circ} 10' 47''$ West for a distance of 226.32 feet to a concrete monument; then continuing South $75^{\circ} 11' 12''$ West for a distance of 46.77 feet to a concrete marker; then continuing South $68^{\circ} 13' 33''$ West for a distance of 159.17 feet to an iron; then along the western property line of said parcel North $44^{\circ} 32' 57''$ West for a distance of 173.18 feet to an iron; then continuing North $36^{\circ} 18' 30''$ West for a distance of 296.63 feet to an iron; then continuing North $27^{\circ} 31' 00''$ West for a distance of 359.80 feet to an iron; then continuing North $13^{\circ} 14' 43''$ West for a distance of 216.18 feet to an iron; then along the Northern property line of said parcel North $76^{\circ} 32' 23''$ East for a distance of 717.67 feet to an iron; then continuing North $76^{\circ} 32' 23''$ East for a distance of 517.40 feet to a fence corner; then along the Eastern property line of said parcel South $13^{\circ} 39' 55''$ East for a distance of 906.82 feet to a fence corner, then turning South $44^{\circ} 14' 09''$ West for a distance of 56.45 feet to the fence corner designated 100, being the point of beginning.

The property hereby conveyed is bounded on the north by the right of way of Blanding Street, on the east by the right of way of Williams Street, on the south by the right of way of Hampton Street, and on the west by the Columbia Canal.

EXHIBIT " B "

Escrow Instructions

1. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses, or expenses, including, without limitation, (i) any action taken or omitted upon advice of its legal counsel given with respect to any questions relating to the duties and responsibilities of Escrow Agent under this agreement; or (ii) any action taken or omitted in reliance upon any instrument, including any written notice or instruction provided for in this agreement. Escrow Agent may rely upon any instrument, pursuant to clause (ii) in the preceding sentence, as being duly executed, valid, and effective, and as containing accurate information and genuine signatures.

2. Notwithstanding anything in this agreement to the contrary, in the event of a dispute between Seller and Purchaser arising prior to or at the time of the delivery or other disposition of the Earnest Money by Escrow Agent pursuant hereto, which dispute shall be sufficient, in the sole discretion of Escrow Agent, to justify its doing so, Escrow Agent shall be entitled to tender the Earnest Money into the registry or custody of any court of competent jurisdiction, together with such legal pleadings as it may deem appropriate, and thereupon Escrow Agent shall be discharged from all further duties and liabilities under this agreement. Any such legal action may be brought in such court as Escrow Agent shall determine to have jurisdiction thereof. Escrow Agent's determination of whether a dispute exists between Seller and Purchaser shall be binding and conclusive upon all parties hereto, notwithstanding any contention that no dispute exists. All costs and expenses incurred by Escrow Agent in taking any action pursuant to this paragraph shall be covered by and paid pursuant to the indemnification of Escrow Agent contained in the following paragraph.

3. Purchaser and Seller shall, and do hereby, jointly and severally indemnify, defend, and hold Escrow Agent harmless from, against, and in respect of: (i) any and all demands, judgments, expenses, costs, losses, injuries, or claims of any kind whatsoever whether existing on the date hereof or hereafter arising, incurred by Escrow Agent by reason of, from, or in connection with this agreement or any action taken or not taken by Escrow Agent under or in connection with this agreement; and (ii) any and all counsel fees, expenses, disbursements of counsel, amounts of judgments, demands, assessments, costs, fines, or penalties, and amounts paid in compromise or settlement, incurred or sustained by Escrow Agent by reason of, in connection with, or as a result of any claim, demand, action, suit, investigation, or proceeding (or any appeal thereof or relating thereto or other review thereof) incident to the matters covered by the immediately preceding clause (i).

4. If Escrow Agent shall notify Seller and Purchaser of its desire to be relieved of any further duties and liabilities hereunder, then Escrow Agent shall deliver the Earnest Money to a successor escrow agent designated by Seller and Purchaser. If Seller and Purchaser shall fail to agree upon and designate a successor escrow agent within ten (10) days after having been requested by Escrow Agent to do so, then Escrow Agent shall in its discretion designate the successor escrow agent. The successor escrow agent designated by Seller and Purchaser or by Escrow Agent, as the case may be, shall be a bank or trust company having trust powers in good

standing and located in Columbia, South Carolina, and shall agree to be bound by all the terms and conditions of this agreement. Immediately upon agreement by the successor escrow agent to be bound by all the terms and conditions of this agreement, the original Escrow Agent shall be relieved of any and all duties and liabilities under or in connection with this agreement; provided, however, that no successor escrow agent shall assume any liability for the acts or omissions of its predecessor escrow agent(s) hereunder.

5. The agency created in Escrow Agent hereby is coupled with an interest of Seller and Purchaser and shall be binding upon and enforceable against the respective heirs, successors, legal representatives and assigns of Seller and Purchaser. This escrow shall not be revoked or terminated by reason of the death, incompetency, dissolution, or liquidation of Seller or Purchaser, but shall continue to be binding upon and enforceable against the respective heirs, successors, legal representatives and assigns of Seller and Purchaser in the manner provided herein. In the event of the death, incompetency, dissolution, or liquidation of Seller or Purchaser, Escrow Agent may rely and act upon any notices permitted or required to be given hereunder from any person, firm, partnership, or corporation believed by Escrow Agent in good faith to be the heir, successor, legal representative or assign of such dissolved or liquidated party.

6. The address for the receipt of notices and other communications by Escrow Agent hereunder is as follows:

Gottlieb & Smith, P.A.
1901 Main Street, Suite 600
Columbia, SC 29201
Attention: Joel E. Gottlieb, Esquire
Telecopier: 803-239-4801

7. Purchaser hereby expressly consents to Escrow Agent's acting both as legal counsel for Seller and as Escrow Agent hereunder, including, without limitation, in connection with any dispute regarding the disbursement of the Earnest Money hereunder.