

RESOLUTION NO.: R-2002-011

Authorizing execution of a Contract of Sale for the purchase of property known as Richland County TMS #09013-13-02 and 09

BE IT RESOLVED that the City Manager or Commissioner for Public Safety/First Assistant City Manager is authorized to execute the attached Contract of Sale for the purchase of property known as Richland County TMS #09013-13-02 and 09 as shown on the attached tax map sheet, for the sum of One Million Five Hundred Thousand and No/100 (\$1,500,000.00) Dollars.

Approved this 6th day of March, 2002.

Requested by:



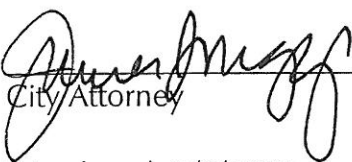
Mayor

Approved by:



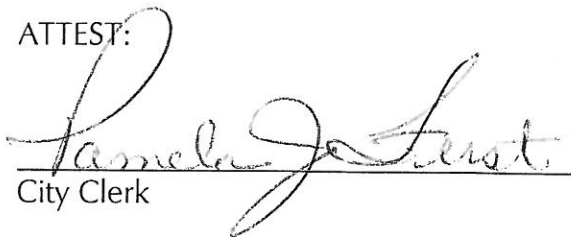
City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 3/6/2002

Final Reading: 3/6/2002

ORIGINAL
STAMPED IN RED

CONTRACT OF SALE



Agreement made as of the Effective Date (as hereinafter defined) between THE CITY OF COLUMBIA ("Purchaser") and JOE EDENS, JR., H. DAN AVANT, LLOYD M. KAPP, W. RAY WESTON, JR., EDWARD K. BUTLER, III, and FRANK E. ROBINSON, II (collectively the "Seller").

RECITAL: Purchaser wishes to acquire the Property (as hereinafter defined) from Seller for public purposes and the parties have agreed upon the following terms and conditions under threat and in lieu of Purchaser invoking its power of eminent domain as contemplated by and in accordance with Section 1033 of the *Internal Revenue Code* of 1986, as amended.

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

A. Property - The land and improvements in Columbia, SC known as the Pleasant's Hardware property, Richland County TMS #09013-13-02 and 09.

B. Purchase Price - One Million Five Hundred Thousand Dollars (\$1,500,000.00).

C. Rent Roll - The rent roll for the Property, a copy of which is attached as Exhibit "A".

D. Earnest Money - Fifty Thousand Dollars (\$50,000.00), when deposited, together with interest earned thereon, if any.

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

F. Effective Date - The date on which this Contract has been duly executed by both parties as indicated by the dates beneath the signature of each party and delivered to Purchaser.

G. Inspection Period - The period ending on the thirtieth (30th) day following the Effective Date.

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. If Purchaser elects to proceed following the Inspection Period it shall deposit the Earnest Money with Escrow Agent as hereinafter provided. The Earnest Money shall be deposited into an FDIC insured account and shall be held subject to the conditions set forth on the attached Exhibit "B". 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 or allows same to terminate as provided herein Escrow Agent shall refund the Earnest Money upon receipt of notice of such termination. At Closing Escrow Agent shall pay the Earnest Money to Seller to be credited against the Purchase Price. Notwithstanding anything in this Contract to the contrary, if Escrow Agent receives notice of termination from Purchaser, or Purchaser's attorneys, prior to the end of the Inspection Period, Escrow Agent shall and is hereby directed by Seller to refund the Earnest Money to Purchaser.

IV. SURVEYS AND STUDIES. 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 allow this Contract to terminate. If Purchaser desires to continue this Contract beyond the Inspection Period it shall give written notice of same to Seller and deposit the Earnest Money with Escrow Agent within the next business day following the end of the Inspection Period. During the Inspection Period Seller shall promptly provide Purchaser with information and documentation (to the extent same is reasonably available) requested by Purchaser to facilitate its evaluation of the Property. To the extent permitted by law, 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. Purchaser agrees to restore any damage to the Property caused by Purchaser, its employees, agents, or contractors.

V. TITLE. Seller shall convey to Purchaser at Closing by limited warranty deed 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; (iii) all, if any, other easements and other matters of record as of the date of Seller's execution of this Contract provided same do not interfere with the development and use of

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 receive a refund of the Earnest Money.

VI. EXISTING TENANTS. The Property is currently leased to the tenants named on the Rent Roll (the "Tenant(s)"). To the best of Seller's knowledge, the Rent Roll is true and correct. As a condition of closing Seller shall provide Purchaser with an estoppel letter ("Estoppel Letter(s)") executed by each Tenant in form reasonably satisfactory to Purchaser confirming, among other things,

the rent, security deposit, and other similar material matters and the fact that each lease terminates (or can be terminated not later than the termination dates set forth on the Rent Roll). If the foregoing condition is not satisfied by the Closing Date Purchaser may terminate this Contract and receive a refund of the Earnest Money. If a Tenant fails to execute an Estoppel Letter Purchaser will accept a certificate from Seller (if Seller elects to give same) in form satisfactory to Purchaser, which certificate shall include an indemnification as to the correctness of the certificate.

VII. CLOSING DATE. The closing shall occur at the offices of Escrow Agent or another mutually agreeable location on the Closing Date or such earlier date established by Purchaser on reasonable notice to Seller.

VIII. CLOSING. At Closing Purchaser shall tender the Purchase Price (plus or minus normal closing adjustments) by cashiers check or wire transfer of collected funds and Seller shall deliver the following:

A. A duly executed limited warranty deed conveying marketable fee simple title in the Property to Purchaser subject to easements, conditions, and restrictions of record as of the date hereof.

B. An owner's affidavit sufficient to enable Purchaser's title insurance company 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. If Seller is not a foreign person, a certificate and affidavit of non-foreign status (FIRPTA affidavit), and if Seller is not a qualified United States taxpayer the appropriate amount shall be withheld according to law.

D. The Estoppel Letters.

E. Possession of the Property.

F. Such other documents as Purchaser may reasonably request.

IV. PRORATIONS AND EXPENSES

Closing with Seller giving Purchaser a credit against the Purchase Price for Seller's share. If current tax bills are not immediately available, such prorations shall be made on the basis of the taxes assessed for the preceding year and shall be adjusted when taxes for the year of sale are assessed. Any payment due by Seller or Purchaser to the other as a result of any such adjustment shall be paid by the party owing such amount within thirty (30) days after receipt of written notice of the amount of the adjustment.

B. Rents, water rent, and all other items customarily prorated shall be prorated at

Closing.

C. Seller shall pay for its own attorneys' fees and for deed stamps, transfer tax, or other similar taxes or fees for recording based in whole or in part upon the consideration for or value of the Property, if any. Purchaser shall pay all other closing costs, including its own attorneys' fees, title examination, title insurance premiums, and survey costs.

X. 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.

XI. ENVIRONMENTAL. Except as may be set forth in any environmental reports which Seller shall give Purchaser during the Inspection Period, Seller has no actual knowledge 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. Seller shall disclose any report known to it which outlines the presence of any asbestos, toxins, or hazardous substances or contamination upon or under the Property.

XII. REAL ESTATE BROKERS. Purchaser and Seller represent that neither has dealt with any real estate agents or brokers.

XIII. MISCELLANEOUS.

A. This Contract and all terms, provisions, and covenants contained herein shall

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 below 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.

If to Purchaser: The City of Columbia
1737 Main Street, 2nd Floor
Columbia, SC 29201
Attn: Ms. Leona K. Plough
Telephone: (803) 733-8223
Telecopy: (803) 733-8317

With copy to: Columbia Development Corporation
911 Lady Street, Suite C
Columbia, SC 29201
Attn: Mr. Frederick M. Delk
Telephone: (803) 988-8040
Telecopy: (803) 988-8039

and: Gottlieb & Smith, P.A.
1901 Main Street, Suite 600
Columbia, SC 29201
Attn: Joel E. Gottlieb, Esquire
Telephone: (803) 765-9291
Telecopy: (803) 765-9291

 1901 Main Street, Suite 900
Columbia, SC 29201
Telephone: (803) 799-4420
Telecopy: (803) 254-4983

With copy to: Richardson Plowden Carpenter & Robinson
1600 Marion Street
Columbia, SC 29201

Attn: Frank E. Robinson, II, Esquire
Telephone: (803) 771-4400
Telecopy: (803) 779-0016

If to Escrow Agent: Gottlieb & Smith, P.A.
1901 Main Street, Suite 600
Columbia, SC 29201
Attn: Joel E. Gottlieb, Esquire
Telephone: (803) 765-9291
Telecopy: (803) 254-2682

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.

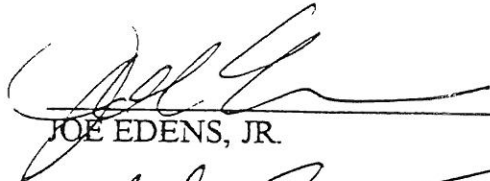
F. All terms and conditions of this Contract which by their nature and effect if required to be observed, kept or performed after Closing shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

G. TIME IS OF THE ESSENCE HEREUNDER.

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

THE CITY OF COLUMBIA

By: *Anna K. DeLoach* (SEAL)
Print Name: _____
Title: CITY MANAGER



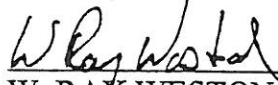
JOE EDENS, JR. (SEAL)



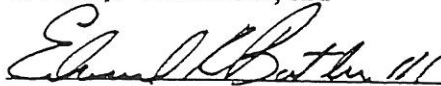
H. DAN AVANT (SEAL)




LLOYD M. KAPP (SEAL)



W. RAY WESTON, JR. (SEAL)



EDWARD K. BUTLER, III (SEAL)



FRANK E. ROBINSON, II (SEAL)

Date: 2-7-02, 2002

EXHIBIT "A"

Rent Roll

TENANT	TERM EXPIRATION	ANNUAL RENT	TAXES & INSURANCE
Pleasant's Hardware	February 28, 2003	\$60,289.20	Billed annually - Tenant's prorata share = 57.8%
Champ Screen Printing	April 30, 2003 *	\$16,008.00	Paid monthly - \$188.48
Carrier Enterprises, LLC	December 14, 2004 **	\$37,970.88	Paid monthly - \$412.44 Tenant improvements paid monthly - \$58.08

* Tenant will vacate on 90 days written notice upon sale of building

** Landlord may terminate on December 14, 2002, or on December 14, 2003, upon at least 180 days prior written notice. Tenant may terminate on same dates on 180 days prior notice upon payment of sums specified in Lease, as amended.

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

of such review (hereby) incident to the matters covered by the immediately preceding clause (1).

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
Attn: Joel E. Gottlieb, Esquire
Telephone: (803) 765-9291
Telecopy: (803) 254-2682

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