

RESOLUTION NO.: R-2020-034

Authorizing the City Manager to execute a Contract of Sale of Office Building between the City of Columbia and MS Joint Venture for the purchase of 1401 Main Street, Richland County TMS #09013-04-07

ORIGINAL  
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council this 25th day of February, 2020, that the City Manager is hereby authorized to execute the attached Contract of Sale of Office Building and any documents necessary and approved by the City Attorney, between the City of Columbia and MS Joint Venture, to consummate the purchase of 1401 Main Street, Richland County TMS #09013-04-07 for Twenty-two Million Five Hundred Thousand and No/100 (\$22,500,000.00) Dollars.

(Funding Source: Water and Sewer Fund and General Fund)

Requested by:


City Manager \_\_\_\_\_

  
\_\_\_\_\_  
Mayor

Approved by:

  
\_\_\_\_\_  
City Manager

Approved as to form:

  
\_\_\_\_\_  
City Attorney

ATTEST:

  
\_\_\_\_\_  
City Clerk

Introduced: 2/25/2020

Final Reading: 2/25/2020

## **CONTRACT FOR SALE OF OFFICE BUILDING**

This is a CONTRACT OF SALE ("Contract") dated to be effective as of the date this Contract has been last executed by either party hereto ("Effective Date") between MS Joint Venture, a South Carolina Partnership ("Seller") and The City of Columbia, a South Carolina municipality ("Purchaser").

Seller and Purchaser hereby covenant and agree as follows:

### **1. Sale of Premises and Acceptable Title**

1.1. Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, at the price and upon the terms and conditions set forth in this Contract: (a) the parcel of land more particularly described in Schedule A attached hereto ("Land"); (b) all buildings and improvements situated on the Land including but not limited to the 200,000 +/- square foot office building located thereon (collectively, the "Building"); (c) all right, title and interest of Seller, if any, in and to the land lying in the bed of any alley, right of way, street or highway in front of or adjoining the Land; (d) all appurtenances; (e) all furniture, fixtures, equipment and personal property of Seller located on or used in connection with the Building (the "Personal Property"); and (f) all the estate and rights of Seller in and to the Land and Building (collectively, the "Premises"), together with certain additional rights including all right, title and interest of Seller, if any, in and to (i) easements benefitting the Land; (ii) any strips or gores of land between the Land and abutting or adjacent properties; (iii) the leases, licenses and occupancy agreements for space in the Building, and all guarantees thereof and security deposits paid pursuant thereto (collectively, the "Leases"); (iv) plans, specifications, architectural and engineering drawings, prints, surveys, soil and substrata studies relating to the Premises in Seller's possession, whether or not stored, managed or contained on computer software or hardware; (v) all operating manuals and books, data and records regarding the Premises and its component systems in Seller's possession; (vi) all licenses, permits, certificates of occupancy and other approvals issued by any state, federal or local authority relating to the use, maintenance or operation of the Premises or the fixtures, machinery or equipment included in this sale to the extent that they may be transferred or assigned; (vii) all warranties or guaranties, if any, applicable to the Premises, to the extent such warranties or guaranties are assignable; (viii) air rights and development rights; (ix) all Service Contracts (as hereinafter defined) assumed by Purchaser; and (x) all rights of Seller in and to all generators owned by Seller or Seller's interest therein located on property adjacent to the Premises, together with easements allowing such generators to be located thereon (subsections (i) through (x) the "Additional Property").

1.2. Seller shall convey and Purchaser shall accept fee simple title to the Premises in accordance with the terms of this Contract, subject only to all matters of record except those set forth in Purchaser's title objection letter to Seller pursuant to Section 13 as objectionable to Purchaser. Purchaser shall have the right to update title and notify Seller of any further matters to which it objects and such matters shall not be Permitted Exceptions (collectively, "Permitted Exceptions").

## **2. Purchase Price and Downpayment.**

2.1. At Closing the Purchaser shall pay Seller the Purchase Price, which shall consist of the Base Purchase Price, with any increases and credits as set forth in this Contract.

2.2. The Base Purchase Price is Twenty Two Million Five Hundred Thousand Dollars (\$22,500,000.00).

2.3. The Purchaser shall pay a downpayment ("Initial Downpayment"; Initial Downpayment together with the Additional Downpayment (as hereinafter defined), if any, the "Downpayment") of 2 percent of the Base Purchase Price, viz Four Hundred Fifty Thousand Dollars (\$450,000) within five (5) business days after the Effective Date, to be held in escrow by Seller's attorneys at Turner Padgett Graham & Laney, P.A. ("Escrow Agent") and disbursed as provided herein. The Initial Downpayment shall be applied to the Purchase Price at Closing or disbursed as otherwise set forth in this Contract.

2.4. The Escrow Agent shall hold and disburse the Downpayment as provided herein and in accordance with Schedule F.

## **3. The Closing**

3.1. Except as otherwise provided in this Contract, the closing of title pursuant to this Contract ("Closing") shall take place on or before the Closing Date (as hereinafter defined), at a time and place mutually agreeable to the parties. "Closing Date" means on or before October 1, 2020 ("Initial Closing Date"), unless Purchaser notifies Seller in writing prior to the Initial Closing Date that the Closing Date is extended to on or before October 30, 2020 and pays an additional downpayment ("Additional Downpayment") of Two Hundred Fifty Thousand Dollars (\$250,000.00) to be held in escrow by the Escrow Agent and disbursed as provided herein. The Additional Downpayment shall be applied to the Purchase Price at Closing or disbursed as otherwise set forth in this Contract; if Purchaser does not close the transaction as provided herein for any reason, fifty percent (50%) of the Additional Downpayment shall be refunded to Purchaser.

## **4. Representations and Warranties of Seller**

Seller represents and warrants to Purchaser as follow:

4.1. Seller is the sole owner of the Premises and the Additional Property.

4.2. If the Premises are encumbered by an Existing Mortgage(s), no written notice has been received from the Mortgagee(s) asserting that a default or breach exists thereunder which remains uncured and no such notice shall have been received and remain uncured on the Closing Date.

4.3. The information concerning written leases, written licenses and written occupancy agreements (which together with all amendments and modifications thereof are collectively referred to as "Leases") set forth on the rent roll to be provided by Seller to Purchaser as part of the Due Diligence Materials (as hereinafter defined) ("Rent Schedule") is accurate as of the date set forth therein or, if no date is set forth therein, as of the Effective Date, and there are no

Leases of any space in the Premises other than those set forth therein and any subleases or subtenancies and no party has any right to occupy any portion of the Premises except as provided in the Leases. Except as otherwise set forth in the Rent Schedule or elsewhere in this Contract:

- a) all of the Leases are in full force and effect and, to Seller's knowledge, no default or event which with the giving of notice or the passage of time or both would become a default exists;
- b) none of the Leases has been modified, amended or extended, except as disclosed by Seller on the Rent Schedule;
- c) no renewal or extension options or options for additional space have been granted to tenants, occupants or licensees, except as set forth in the Leases;
- d) no tenant, occupant or licensee other than the Purchaser has an option to purchase the Premises or a right of first refusal or first offer with respect to a sale of the Premises;
- e) the rents and fees set forth in the Leases are being collected on a current basis and there are no arrearages in excess of one month;
- f) no tenant, occupant or licensee is entitled to rental concessions or abatements for any period subsequent to the scheduled date of Closing;
- g) Seller has not sent written notice to any tenant, occupant or licensee claiming that such tenant is in default, which default remains uncured;
- h) no action or proceeding instituted against Seller by any tenant, occupant or licensee of all or part of the Premises is presently pending in any court or other tribunal, except with respect to claims listed on Schedule D attached hereto involving personal injury or property damage which are covered by insurance;
- i) the Rent Schedule accurately sets out all security deposits held by Seller with respect to the Leases;
- j) the tenants, occupants and licensees under the Leases are in actual possession of the space demised;
- k) to Seller's actual knowledge, Seller has performed all of the landlord's obligations under the Leases;
- l) Seller has received no notice(s) of any default of the landlord under the Leases that remains pending; to Seller's actual knowledge, no action or proceeding, voluntary or involuntary, is pending against any tenant, licensee or occupant under any bankruptcy or insolvency act except as disclosed on Schedule D;
- m) no leasing commissions are due or owing with respect to any of the Leases and all leasing commissions have been paid in full with respect to all of the Leases,

except to the extent any brokerage agreements may provide for payment of a commission in case of any renewal, extension or expansion of space which has not yet occurred;

n) no tenant improvement allowances or payments are due and owing with respect to any of the Leases, and none of the Leases contain any provision for tenant improvement allowances or payments to become due in the future; and

4.4. Seller has in full force and effect, and shall maintain in full force and effect through the Closing Date, insurance policies ("Insurance Policies") insuring property damage and liability losses, injuries and damages, and will provide copies of same to Purchaser upon request.

4.5. The schedule of service, maintenance, supply and management contracts ("Service Contracts") to be provided by Seller to Purchaser as part of the Due Diligence Materials lists all such contracts affecting the Premises, and the information set forth therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the Effective Date. All Service Contracts except the EM&L Contract (as hereinafter defined) shall remain in full force and effect through the Closing unless Purchaser notifies Seller otherwise in writing.

4.6. The Personal Property, as of the Closing Date, is owned by Seller free of liens and encumbrances other than the lien(s) of the Existing Mortgage(s), if any.

4.7. Seller is not a "foreign person" as defined in the Code Withholding Section.

4.8. Seller is a South Carolina general partnership that has been duly organized and is in good standing under the laws of the state of its formation.

4.9. Seller has taken all necessary action to authorize the execution, delivery and performance of this Contract and has the power and authority to execute, deliver and perform this Contract and consummate the transaction contemplated hereby. The person signing this Contract on behalf of Seller is authorized to do so. Assuming this Contract has been duly authorized, executed and delivered by each of the other party(ies) to this Contract, this Contract and all obligations of Seller hereunder are the legal, valid and binding obligations of Seller, enforceable in accordance with the terms of this Contract, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.10. The execution and delivery of this Contract and the performance of its obligations hereunder by Seller will not conflict with any provision of any law or regulation to which Seller is subject or any agreement or instrument to which Seller is a party or by which it is bound or any order or decree applicable to Seller or result in the creation or imposition of any lien on any of Seller's assets or property which would materially and adversely affect the ability of Seller to carry out the terms of this Contract. Seller has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery or performance by Seller of this Contract.

4.11. Seller has not received written notice of and has no knowledge of any action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Seller with respect to the Premises which if adversely determined could have a material adverse effect on the Premises or interfere with the consummation of the transaction contemplated by this Contract.

4.12. Seller is not a, and is not acting directly or indirectly for or on behalf of any, person, group, entity or nation named by any Executive Order of the United States Treasury Department as a terrorist, "Specifically Designated National and Blocked Persons," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control and Seller is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

4.13. To Seller's knowledge, there are no underground fuel storage tanks at the Premises. Seller has received no written notice from any governmental agency having jurisdiction and Seller is not aware that the Premises is affected by the presence and/or harmful effects of any asbestos, toxic, or hazardous substances as defined by applicable federal, state or local laws affecting the Premises. Except to the extent provided in any environmental reports delivered by Seller to Purchaser, Seller has no knowledge of any hazardous substances currently located at the Premises or being located at the Premises in the past. Except to the extent provided in any environmental reports delivered by Seller to Purchaser, Seller has no knowledge that any portion of the Premises has been used for an onsite dry-cleaning facility.

4.14. Seller has received no notice of and has no knowledge of any actual or proposed taking in condemnation of all or any part of the Premises.

4.15. Seller has been known by no other name for the past ten (10) years.

4.16. Seller has no employees.

4.17. The representations and warranties of Seller set forth in Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, and 4.16 as restated as of the Closing shall survive the Closing for a period of one year (the "Survival Period"). None of Seller's other representations or warranties shall survive the Closing. Seller shall have no liability to Purchaser for any misrepresentation or breach of warranty of Seller unless written notice containing a description of the specific nature of such breach shall have been given by Purchaser to Seller prior to the expiration of the Survival Period, if any, and an action shall have been commenced by Purchaser against Seller within the Survival Period, if any. The prevailing party in any litigation arising from a claim under this Section 4.17 shall be entitled to reimbursement for all reasonable legal fees and expenses in connection therewith.

For purposes of this Section, the phrase "to Seller's knowledge" shall mean the actual knowledge of MS Joint Venture and its partners, officers, and agents, without any special investigation.

Except where limited specifically to the Effective Date of this Contract or other date, the representations and warranties made by Seller in this Contract are made as of the date of

execution and delivery of this Contract, and shall be deemed remade, restated and shall be true and accurate on the Closing Date.

**5. “As Is” Condition, No Representations Not Expressly Set Out in Contract, Representations and Warranties of Purchaser**

5.1.

(a) Purchaser shall inspect the Premises during the Due Diligence Period. Subject to the provisions of Section 7.1 and Section 8, Purchaser shall accept the Premises “as is” and in its condition as of the Effective Date, subject to reasonable use, wear, tear and natural deterioration between now and the Closing Date, without any reduction in the Purchase Price for any such change in condition. Seller shall not be liable for any latent or patent defects in the Premises.

(b) During the Due Diligence Period, Purchaser will make such examination of the Premises, the operation, income and expenses thereof and all other matters affecting or relating to this transaction as Purchaser deems necessary. In entering into this Contract, Purchaser has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller of any person representing or purporting to represent Seller, which are not expressly set forth in this Contract, whether or not such representations, warranties or statements were made in writing or verbally.

5.2. Purchaser represents and warrants to Seller that:

a) The funds comprising the Purchase Price to be delivered to Seller in accordance with this Contract are not derived from any illegal activity.

b) Purchaser has taken all necessary action to authorize the execution, delivery and performance of this Contract and has the power and authority to execute, deliver and perform this Contract and the transaction contemplated hereby. The person signing this Contract on behalf of Purchaser is authorized to do so. Assuming this Contract has been duly authorized, executed and delivered by each of the other party(ies) to this Contract, this Contract and all obligations of Purchaser hereunder are the legal, valid and binding obligations of Purchaser, enforceable in accordance with the terms of this Contract, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors’ rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

c) The execution and delivery of this Contract and the performance of its obligations hereunder by Purchaser will not conflict with any provision of any law or regulation to which Purchaser is subject or any agreement or instrument to which Purchaser is a party or by which it is bound or any order or decree applicable to Purchaser, and will not result in the creation or imposition of any lien on any of Purchaser’s assets or property which would materially and adversely affect the ability of Purchaser to carry out the terms of this Contract. Purchaser has obtained any consent,

approval, authorization or order of any court or governmental agency or body required for the execution, delivery or performance by Purchaser of this Contract.

d) Purchaser is a municipality that has been duly organized and is in good standing under the laws of South Carolina.

e) The representations and warranties of Purchaser set forth in this Section 5 are made as of the date of this Contract and are restated as of the Closing and shall survive the Closing for the Survival Period. Purchaser shall have no liability to Seller for any misrepresentation or breach of any warranty of Purchaser unless written notice containing a description of the specific nature of such breach shall have been given by Seller to Purchaser prior to the expiration of the Survival Period and an action shall have been commenced by Seller against Purchaser within the Survival Period. The prevailing party in any litigation arising from a claim under this Section shall be entitled to reimbursement for all reasonable legal fees and expenses in connection therewith.

For purposes of this Section 5.2, the phrase “to Purchaser’s knowledge” shall mean the actual knowledge of designated staff liaisons of the Purchaser without any special investigation.

## **6. Seller’s Obligations as to Leases**

6.1. Except for pending matters disclosed in writing to the Purchaser prior to the Effective Date and on such terms as so disclosed to Purchaser, Seller shall not, between the date of this Contract and the Closing, without Purchaser’s prior written consent (which consent shall not be unreasonably withheld or delayed): (a) amend, renew or extend any Lease in any respect, except to the extent required by law or by the express terms of such Lease; (b) grant a written lease to any person or entity not occupying space in the Premises as of the date hereof; (c) terminate any lease except by reason of a default by the tenant thereunder and with prior written consent of Purchaser; (d) consent to the assignment of a Lease or subletting by any tenant except as required by the terms of the applicable Lease or by law or (e) permit anyone to use or occupy any space pursuant to an oral agreement. Seller shall not, without Purchaser’s prior written consent (which may be granted or denied at Purchaser’s discretion) enter into any lease or other occupancy agreement with any person or entity directly or indirectly affiliated with or related to Seller, Seller’s managing agent, or any principal of Seller or Seller’s managing agent (a “Related Lease Transaction”).

6.2. Except for pending matters disclosed in writing to the Purchaser prior to the Effective Date and on such terms as so disclosed to Purchaser, Seller shall not, between the date of this Contract and the Closing, permit the occupancy of, or enter into any new lease, occupancy agreement or license agreement for, space in the Building without Purchaser’s prior written consent.

6.3. Seller shall not grant any concessions or rent abatements for any period following the Closing without Purchaser’s prior written consent.

6.4. Seller hereby indemnifies and agrees to defend Purchaser against any claims made by tenants in the Premises with respect to (a) their security deposits other than claims with respect to tenants’ security deposits to the extent paid, credited or assigned to Purchaser pursuant



to Section 10.1 and (b) matters arising prior to the Closing. The foregoing indemnity and agreement shall survive the Closing and shall be in lieu of any escrow, and Purchaser hereby waives any right it may have to require any such escrow. Seller shall have no liability to Purchaser for any claims pursuant to this Section 6.4 unless written notice containing a description of the specific nature of such claim shall have been given by Seller to Purchaser prior to the expiration of the Survival Period and an action shall have been commenced by Seller against Purchaser within the Survival Period.

## **7. Responsibility for Violations**

7.1. All notes or notices of violations of law or governmental ordinances, orders or requirements which were noted or issued prior to the date of this Contract by any governmental department, agency or bureau having jurisdiction as to conditions affecting the Premises and all liens which have attached to the Premises prior to the Closing shall be removed or complied with by Seller and Seller shall pay any fines or penalties imposed by reason of any such violations.

7.2. If Seller fails to cure violations as provided above, prior to closing, Purchaser may elect to proceed with closing and adjust the Purchase Price to reflect the cost of compliance.

## **8. Destruction, Damage or Condemnation**

### **8.1. Damage by Casualty.**

a) Damage less than \$500,000. If, prior to Closing, there shall occur damage to the Premises caused by fire or other casualty which would cost less than \$500,000 (the "Casualty Threshold") to repair, as reasonably determined by an engineer and/or contractor selected by Seller and reasonably satisfactory to Purchaser, and such fire or other casualty does not adversely affect the lobby, building-wide systems, or common areas and the continued operation of the balance of the Premises not damaged and does not give rise to rent abatement or termination rights of lessees under Leases covering more than 10% (the "Percentage") of the rentable square feet of the Building, then Purchaser shall not have the right to terminate this Contract by reason thereof, but Seller shall assign to Purchaser at the Closing, by written instrument in form and substance reasonably satisfactory to Purchaser, all of the insurance proceeds payable on account of any such fire or casualty, shall deliver to Purchaser any such proceeds actually paid to Seller, and shall afford to Purchaser at Closing a credit against the balance of the Purchase Price in an amount equal to any deductible. If the limit of Seller's insurance policy with respect to a casualty at the Premises is less than the cost of restoration, then Buyer shall be entitled to a further reduction in the Purchase Price in an amount equal to the difference between the cost of restoration and the limit of such insurance policy (less the deductible). The proceeds of rent interruption insurance, if any, shall on the Closing Date be appropriately apportioned between Purchaser and Seller.

b) Damage in Excess of \$500,000. If prior to the Closing there shall occur damage to the Premises caused by fire or other casualty which would cost an amount equal to the Casualty Threshold or more to repair, as reasonably determined by an engineer or contractor selected by Seller and reasonably satisfactory to Purchaser, or the damage affects the lobby, building-wide systems, or common areas or the continued operation of the balance of the Premises not damaged or gives rise to rent abatement or

termination rights of lessees under leases covering more than the Percentage of the rentable square feet of the Building, then Purchaser may elect to terminate this Contract by notice given to Seller within twenty (20) days after Seller has given Purchaser notice that such damage occurred, or at the Closing, whichever is earlier, upon which termination, Seller shall deliver the Downpayment to Purchaser, this Contract shall thereupon be null and void and neither party hereto shall thereupon have any further obligation to the other, except for those obligations and liabilities that are expressly stated to survive termination of this Contract. If Purchaser does not elect to terminate this Contract, then the Closing shall take place as herein provided, without abatement of the Purchase Price, and Seller shall assign to Purchaser at the Closing, by written instrument in form reasonably satisfactory to Purchaser, all of the insurance proceeds payable on account of any such fire or casualty, shall deliver to Purchaser any such proceeds or awards actually paid to Seller, and shall afford to Purchaser at Closing a credit against the balance of the Purchase Price in an amount equal to any deductible. The proceeds of rent interruption insurance, if any, shall on the Closing Date be appropriately apportioned between Purchaser and Seller.

c) Seller agrees not to repair any damage to the Premises (other than emergency repairs) without Purchaser's prior written consent and not to incur Reimbursable Amounts totaling in the aggregate in excess of \$10,000 without Purchaser's prior written consent. Purchaser shall have the right to participate in any discussions, claims adjustments or settlements with insurance companies regarding any damage to the Premises. Purchaser shall not unreasonably delay or withhold consent to repair damage that may affect the ongoing operations of the Premises.

d) The term "Reimbursable Amounts" shall mean costs and expenses actually and reasonably incurred by or for the account of Seller in connection with fire or other casualty for (x) compliance with governmental ordinances, orders or requirements of any governmental department, agency or bureau having jurisdiction of the Premises, (y) safeguarding the Premises or any part thereof, including any protective restoration or (z) emergency repairs made by or on behalf of Seller (to the extent Seller has not theretofore been reimbursed by its insurance carrier). All Reimbursable Amounts shall be paid by Seller no later than Closing.

8.2. Condemnation. If after the execution and delivery of this Contract and prior to Closing, any proceedings are instituted by any governmental authority which shall relate to the proposed taking of all or any portion of the Premises by eminent domain, or if all or any portion of the Premises is taken by eminent domain after the date of this Contract and prior to the Closing, Seller shall promptly notify Purchaser in writing no later than two business days after Seller's receipt of any notification or the date of Closing, whichever occurs earlier. Purchaser shall thereafter have the right and option to terminate this Contract by giving written notice to Seller within thirty (30) days after receipt by Purchaser of the notice from Seller or on the Closing Date, whichever is earlier, but in no event sooner than fifteen (15) days after receipt by Purchaser of such notice. If the Closing Date was scheduled to occur after the institution of such proceeding, then, at Purchaser's Option, the Closing Date shall be deemed adjourned in order that Purchaser shall have its full thirty-day period within which to determine whether or not to proceed with Closing. If Purchaser timely terminates this Contract, Purchaser shall be entitled to receive the Downpayment and this Contract shall thereupon be terminated and become void and

of no further effect, and neither party hereto shall have any obligations of any nature to the other hereunder or by reason hereof, except for those obligations and liabilities that are expressly stated to survive termination of this Contract. If Purchaser does not elect to terminate this Contract, the parties hereto shall proceed to the Closing and at the Closing, Seller shall assign to Purchaser all of its right, title and interest in all awards in connection with such taking and shall pay to Purchaser any award paid to Seller with respect to such taking. Purchaser shall have the right to participate in discussions or proceedings with any governmental authority relating to the proposed taking of any portion of the Premises.

8.3. The provisions of this Section 8 shall survive the Closing.

## **9. Covenants of Seller**

Seller covenants that between the date of this Contract and the Closing:

9.1. Seller shall maintain in full force and effect until the Closing the Insurance Policies.

9.2. No fixtures, equipment or personal property included in this sale shall be removed from the Premises unless the same are replaced with similar items of at least equal quality prior to the Closing.

9.3. Seller shall allow Purchaser or Purchaser's representatives access to the Premises (provided such access shall not unreasonably interfere with the occupancy of tenants), the Leases and other documents required to be delivered under this Contract upon reasonable prior notice at reasonable times.

9.4. Seller shall operate the Premises in substantially the same manner as the Premises are being operated on the date of this Contract.

## **10. Seller's Closing Obligations**

10.1 At the Closing, Seller shall deliver the following to Purchaser, all of which shall be acceptable to Purchaser:

- a) A limited warranty deed for the Premises.
- b) All Leases, assignments of leases, subleases, subordination, nondisturbance and attornment agreements and tenant files and records, as well as, to the extent required by the Leases, tenant estoppel letters.
- c) A schedule of all security deposits and a check or credit to Purchaser in the amount of any cash security deposits, including any interest thereon, held by Seller on the Closing Date.
- d) A schedule updating the Rent Schedule and setting forth all arrears in rents and all prepayments of rents. Such updated Rent Schedule must show all Leases remaining in full force and effect with no defaults thereunder.

e) An assignment to Purchaser, without recourse or warranty, of all of the interest of Seller in the certificates, permits and other documents to be delivered to Purchaser at the Closing which are then in effect and are assignable by Seller.

f) To the extent they are then in Seller's possession and not posted at the Premises, certificates, licenses, permits, authorizations and approvals issued for or with respect to the Premises by governmental and quasi-governmental authorities having jurisdiction.

g) Seller shall make all other Building and tenant files and records which were given, received or had activity during the three (3) years prior to the Effective Date, including those contained on computer software, available to Purchaser for copying, which obligation shall survive the Closing.

h) An original letter, executed by Seller or by its agent, advising the tenants of the sale of the Premises to Purchaser and directing that rents and other payments thereafter be sent to Purchaser or as Purchaser may direct.

i) The written consent of the partners to the extent required by the partnership agreement of Seller and delivery of a certificate executed by the authorized agent of the partnership attaching true and correct copies of the applicable organizational documents of Seller to affirm that the sale and conveyance of title comply with the requirements of such organizational documents.

j) Possession of the Premises in the condition required by this Contract, subject to the Leases, and keys and codes therefor.

k) A blanket assignment, to the extent transferable, of all Seller's right, title and interest, if any, to all contractors', suppliers', materialmen's and builders' guarantees and warranties of workmanship and/or materials in force and effect with respect to the Premises on the Closing Date and a true and complete copy of each thereof.

l) A certificate of Seller confirming that the warranties and representations of Seller set forth in this Contract are true and complete on and as of the Closing Date (the statements made in such certificate shall be subject to the same limitations on survival as are applicable to Seller's representations and warranties under Section 4).

m) A blanket assignment of all Leases and an agreement to indemnify and defend Purchaser against any claims made by tenants, subtenants, occupants or licensees arising out of any failure of Seller to perform its obligations prior to the Closing Date.

n) Upon request of Purchaser, a bill of sale transferring to Purchaser the Personal Property free and clear of all liens and encumbrances.

o) Closing Statement.

p) South Carolina Department of Revenue tax compliance letter or other evidence satisfactory to Purchaser as to the subject thereof.

q) Estoppel letters from tenant under the Leases of at least ninety percent (90%) of the square footage of the Building dated within thirty (30) days of the Closing and acceptable to Purchaser, together with Subordination, Nondisturbance and Attornment Agreements from such tenants if requested by Purchaser. Seller shall use good faith efforts to obtain estoppels from tenants under all Leases; Seller shall provide landlord estoppel certificates for any not obtained from tenants, up to ten percent (10%) of the square footage of the Building.

r) An assignment of all Service Contracts that Purchaser elects to assume.

s) Any other documents required by this Contract to be delivered by Seller.

## **11. Purchaser's Closing Obligations**

At the Closing, Purchaser shall:

11.1. Pay to Seller the portion of the Purchase Price payable at the Closing, as adjusted for apportionments under Section 12 and any other credits, increases, or adjustments provided in this Contract.

11.2. [Intentionally deleted]

11.3. Deliver to Seller an agreement to be contained in the assignment of Leases assuming all of landlord's obligations under the Leases from and after the Closing Date and any subordination, nondisturbance and attornment agreement given by Seller to a subtenant from and after the Closing Date.

11.4. Deliver to Seller a certificate confirming that the warranties and representations of Purchaser set forth in this Contract are true and complete as of the Closing Date (the statements made in such certificate shall be subject to the same limitations on survival as are applicable to Purchaser's representations and warranties under Section 5).

11.5. Closing Statement.

11.6. Deliver any other documents required by this Contract to be delivered by Purchaser.

## **12. Apportionments**

12.1. The parties will arrange for reading of meters and transfer of accounts for water, sewer, and power on Closing Date, so as to avoid the need of apportionment of those expenses. Notwithstanding the foregoing, expenses that are passed through to tenants shall be apportioned as provided below for Additional Rents.

12.2. The following apportionments shall be made between the parties at the Closing as of the close of business on the day prior to the Closing Date:

- a) prepaid rents and Additional Rents;
- b) real estate taxes;
- c) charges under transferable Service Contracts that Purchaser has elected to assume;

d) If any tenant is in arrears in the payment of rent on the Closing Date, rents received from such tenant after the Closing shall be applied in the following order of priority unless otherwise designated by such tenant: (a) first to the month in which the Closing occurred; (b) then to any month or months following the month in which the Closing occurred; and (c) then to the period prior to the month in which the Closing occurred. If rents or any portion thereof received by Seller or Purchaser after the Closing are payable to the other party by reason of this allocation, the appropriate sum shall be promptly paid to the other party, which obligation shall survive the Closing.

e) Tenants are required to pay percentage rent, escalation and pass-through charges for items such as real estate taxes, operating expenses, utilities, and other charges, ("Additional Rents"). For any Additional Rents collected by Purchaser after the Closing which are attributable in whole or in part to any period prior to the Closing, Purchaser shall promptly pay to Seller Seller's proportionate share thereof, less a proportionate share of any reasonable attorneys' fees, costs and expenses of collection thereof, if and when the tenant paying the same has made all payments of rent and Additional Rent then due to Purchaser pursuant to the tenant's Lease, which obligation shall survive the Closing. If any tenant is or becomes entitled to a refund of overpayments of Additional Rent which are attributable in whole or in part to any period prior to the Closing, Seller shall pay to Purchaser an amount equal to the amount of such refund attributable to any such period within ten days after notice from Purchaser, which obligation shall survive the Closing. If the parties are able to agree on an estimated amount for Additional Rents as of the Closing Date, Purchaser and Seller may elect to adjust the Purchase Price by the estimated amount, in which case no obligations related to Additional Rents shall survive Closing.

f) Prior to Closing Seller shall terminate the existing management agreement with Executive Management & Leasing, Inc. ("EM&L Contract") and any Service Contracts Purchaser has elected not to assume and pay any expenses related to such termination.

g) Seller shall pay the cost of all deed stamps and transfer taxes, all costs to satisfy all Existing Mortgages and Seller's attorneys' fees. Purchaser shall pay the nominal deed and assignment recording costs, title and survey costs and Purchaser's attorneys' fees.

**13. Objections to Title, Vendee's Lien, Remedies for Purchaser's Default, Procedure on Termination of Contract by Purchaser**

13.1. Purchaser shall promptly order an examination of title and shall cause a copy of the title report to be forwarded to Seller's attorney along with Purchaser's title objections. Purchaser, at its option, may order a survey of the Premises and notify Seller of its objections thereto. Seller shall be entitled to up to 30 days to remove any defects in or objections to title (other than Permitted Exceptions) noted in such title objection letter or survey and any other defects or objections (other than Permitted Exceptions) which may be disclosed in subsequent title or survey updates on or prior to the Closing Date.

13.2. If Seller shall be unable to convey title to the Premises at the Closing in accordance with the provisions of this Contract, Purchaser, nevertheless, may, in its sole discretion, elect to accept such title as Seller may be able to convey without any credit against the monies payable at the Closing or liability on the part of Seller. If Purchaser shall not so elect, Purchaser may terminate this Contract, receive a refund of the Downpayment and Seller shall reimburse Purchaser for its expenses in connection with this Contract. Seller shall not be required to bring any action or proceeding or to incur any expense in excess of \$10,000 to cure any title defect or to enable Seller otherwise to comply with the provisions of this Contract, but the foregoing shall not permit Seller to refuse to pay off at the Closing, to the extent of the monies payable at the Closing, mortgages or other liens on the Premises which can be satisfied or discharged by payment of a sum certain, other than Existing Mortgages.

13.3. Any unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon to a date not less than two days following the Closing Date, and any other liens and encumbrances which Seller is obligated to pay and discharge or which are against corporations, estates or other persons in the chain of title, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds of the monies payable at the Closing.

13.4. Notwithstanding anything to the contrary contained herein, if Purchaser shall default in the performance of its obligations under this Contract, the sole remedy of Seller shall be to retain the Initial Downpayment and fifty percent (50%) of the Additional Downpayment as liquidated damages for all loss, damage and expense suffered by Seller, including without limitation the loss of its bargain.

13.5. If Seller shall default in the performance of its obligations under this Contract, Purchaser shall have the right

(a) to seek specific performance of such obligations, or

(b) to terminate this Contract, receive a refund of the Downpayment, and receive reimbursement by Seller of reasonably documented Purchaser's expenses associated with this Contract not to exceed \$100,000.00,

## 14. Broker

14.1. Real Estate Brokers and Commission. Seller and Purchaser hereby acknowledge the services of Executive Management and Leasing, Inc. as Real Estate Broker and agent for the Seller in this transaction. All commissions and fees of Seller's Broker are to be paid by Seller at Closing, and Purchaser shall have no obligations with respect thereto. Seller shall indemnify, defend and hold the Purchaser harmless against any claims for real estate commissions made by anyone claiming representation of the Seller in this transaction, other than Executive Management and Leasing, Inc. acting as the Seller's Broker, the commissions and fees for which shall be paid by Seller at Closing. Such obligation to indemnify and hold harmless shall include, without limitation, all costs and attorneys' fees relating to litigation and other proceedings, which obligations shall survive Closing and the delivery of the Deed or the termination of this Agreement for any reason.

## 15. Notices

15.1. All notices under this Contract shall be in writing and shall be delivered personally with receipt acknowledged or shall be sent by (i) prepaid certified mail, or (ii) prepaid nationally recognized overnight courier for next business day delivery with receipt acknowledged, in each case addressed as set forth below or as Seller or Purchaser shall otherwise have given notice as herein provided. Notice sent by certified mail shall be deemed received on the third business day following mailing. Notice sent by overnight courier shall be deemed received on the first business day following delivery to the overnight courier. Any notice under this Contract may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

### **To Purchaser:**

City of Columbia, South Carolina  
1737 Main Street (P.O. Box 147)  
Columbia, SC 29201 (20217)  
Attn: Teresa Wilson, City Manager  
Email: [Teresa.Wilson@columbiasc.gov](mailto:Teresa.Wilson@columbiasc.gov)

### **To Seller:**

MS Joint Venture  
Attention: David Loy  
P. O. Box 1239  
Columbia, SC 29202

and

1401 Main Street, Suite 670  
Columbia, SC 29201  
Email: [dloy@emandl.com](mailto:dloy@emandl.com)



**Broker:**

EM&L, Inc.  
1401 Main Street, Suite 670  
Columbia, SC 29201  
803-771-9884  
Email: [jschaffer@emandl.com](mailto:jschaffer@emandl.com)

**16. Limitations on Survival of Representations, Warranties, Covenants and other Obligations**

16.1. Except as otherwise provided in this Contract, no representations, warranties, covenants or other obligations of Seller set forth in this Contract shall survive the Closing, and no action based thereon shall be commenced after the Closing.

16.2. The delivery of the deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations of Seller which are expressly stated in this Contract to survive the Closing.

**17. Due Diligence Period**

17.1. During the Due Diligence Period (as hereinafter defined), Purchaser shall have the right to have the Premises evaluated and inspected during reasonable hours, after reasonable notice to Seller, and to obtain such reports and assessments as Purchaser may desire including without limitation the following inspection reports with respect to the Premises, at Purchaser's sole cost and expense:

a) An inspection and report (the "Environmental Report") from a licensed environmental inspection laboratory or a licensed engineer (the "Inspection Company") with respect to the presence or absence of hazardous or toxic substances or conditions at the Premises including, without limitation, asbestos, mold, polychlorinated biphenyls, petroleum products and those hazardous substances defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* and all amendments thereto, the Superfund Amendments and Reauthorization Act, 42 U.S.C. §9601 *et seq.*, and the rules and regulations promulgated thereunder; and

b) An inspection and report (the "Engineering Report") from a licensed engineer and other appropriate professionals (collectively, the "Engineer") with respect to the structural and general physical condition of the Premises, all mechanical systems and utilities servicing the Premises, curtain walls, roofs, wells, septic and drainage systems, and compliance with the Americans with Disabilities Act (collectively, "Building Conditions").

"Due Diligence Period" means the time period commencing on the Effective Date and ending on the date which is ninety (90) days thereafter ("Initial Due Diligence Period"), unless

extended for thirty (30) additional days by written notice of Purchaser to Seller prior to the end of the Initial Due Diligence Period, which extension shall not alter the Closing Date.

17.2.

a) Purchaser shall cause copies of the Environmental Report and Engineering Report, if any (collectively, the "Reports") to be delivered to Seller prior to the expiration of the Due Diligence Period.

b) In the event that Purchaser determines, in Purchaser's sole discretion, during the Due Diligence Period that the Premises is not suitable for Purchaser's intended use thereof, then Purchaser may terminate this Contract by delivery of written notice thereof to Seller on or before the end of the last day of the Due Diligence Period, and if Purchaser terminates this Contract pursuant to this Section 17.2, Purchaser shall have the right to receive an immediate refund of all Downpayment, whereupon this Contract shall automatically terminate and the parties shall have no further obligation to each other, except as expressly provided in this Contract to the contrary with respect to those matters which survive the expiration or earlier termination of this Contract. If Purchaser does not so terminate this Contract, this Contract shall remain in full force and effect, the Downpayment shall be applied toward the Purchase Price at Closing, and the Initial Downpayment shall thereafter be nonrefundable to Purchaser and payable to Seller if Purchaser does not close for any reason except in the event of a default by Seller under this Contract or as otherwise provided herein.

17.3. Within ten (10) days after the date hereof (or prior to execution hereof), Seller shall provide one copy of each of the materials listed on Schedule E ("Due Diligence Materials") to Purchaser with respect to the Premises to the extent same are in Seller's possession or control and not previously provided to Purchaser. During the Due Diligence Period, Seller agrees to cooperate in all reasonable respects with Purchaser and agrees to make available to Purchaser and its agents all of the books, files and records relating to the Premises which are in the possession or under the control of Seller. Notwithstanding the foregoing, Purchaser shall not have the right to conduct a Phase II Environmental Assessment or make any other intrusive tests without Seller's prior written consent, which shall not be unreasonably withheld, delayed or conditioned.

**18. Miscellaneous Provisions**

18.1. Contracts relating to the Premises.

a) Service contracts. Service Contracts for maintenance of the Premises will be provided by Seller to Purchaser as part of the Due Diligence Materials. Seller and Purchaser agree to cooperate prior to and after Closing with respect to the Service Contracts as follows:

1) Except for EM&L Contract, Seller will not terminate any Service Contracts prior to Closing, except with written consent of Purchaser or at the direction of Purchaser. Purchaser, at its option, may require Seller

to terminate any or all of the Service Contracts prior to Closing at Seller's expense;

2) If any Service Contracts terminate prior to Closing, Seller will cooperate with Purchaser in extending, renewing, or replacing such contracts if so desired by Purchaser; and

3) Seller agrees to assign to Purchaser, and Purchaser agrees to assume such Service Contracts as Purchaser desires to assume whose terms continue beyond the date of Closing.

18.2. Assignment of Contract. Purchaser shall not assign this Contract or its rights hereunder without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion for any reason. No permitted assignment of Purchaser's rights under this Contract shall be effective against Seller unless and until an executed counterpart of the instrument of assignment shall have been delivered to Seller and Seller shall have been furnished with the name and address of the assignee. The term "Purchaser" shall be deemed to include the assignee under any such effective assignment.

18.3. This Contract together with the attached Schedules embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Contract. Neither this Contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

18.4. This Contract shall be governed by, and construed in accordance with, the laws of the State of South Carolina.

18.5. The captions in this Contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Contract or any of the provisions hereof.

18.6. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns.

18.7. This Contract shall not be binding or effective until reduced to final form in a writing properly executed and delivered by both Seller and Purchaser.

18.8. As used in this Contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

18.9. If the provisions of any schedule or rider to this Contract are inconsistent with the provisions of this Contract, the provisions of such schedule or rider shall prevail.

18.10. This Contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall be one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first above written.

PURCHASER:

The City of Columbia, South Carolina,

By *Ceresa Wilson*  
Its *City Manager*

APPROVED AS TO FORM  
*[Signature]*  
Legal Department City of Columbia, SC

SELLER:

**MS JOINT VENTURE,**

a South Carolina general partnership

By: *Melinda G. Parrish* (SEAL)  
Melinda G. Parrish, Executive  
Committee Member as Representative  
of MS Investments, L.P.

By: *[Signature]* (SEAL)  
David R. Loy, Executive  
Committee Member as Representative  
of MS Investments, L.P.

By: *[Signature]* (SEAL)  
David R. Loy, Executive  
Committee Member as Representative  
of MS Limited Two, LLC

**Schedule A**  
**Description of Land**

The Land on which the Building is located designated as Richland County Tax Map Parcel No. 09013-04-07 as generally shown on the GIS Map attached hereto.

2/12/2020

Richland County Geodetic

1401 MAIN ST | R09013-04-07

Print



Address

Property

Political

Address	1401 MAIN ST
Municipality	Columbia
School District	Richland School District 1
Garbage Coll. Day	No Pickup
Recycling Coll. Day	No Pickup
Yard Trash Coll. Day	No Pickup
Latitude	34.00410
Longitude	-81.03525
Elevation	308 ft

TMS	R09013-04-07
Owner	MS JOINT VENTURE
Beds	0.0
Baths	26.0
Heated Sqft	228,005
Year Built	1976
Tax District	10C
Land Value	\$708,400
Building Value	\$12,614,700
Taxable Value	\$13,323,100
Market Value	\$13,323,100
Last Sale	\$0 (1/2/24/1990)
Secondary Zoning	C-5
Owner Occupied	No

Voting Precinct	Ward 30
Voting Location	Arsenal Hill Park
County Council Dist.	4
County Council Rep.	Paul Livingston
SC Senate Dist.	20
SC Senate Rep.	Richard Harpoolian
SC House Dist.	72
SC House Rep.	Sehn C. Rose
County Magistrate Dist.	COLUMBIA
County Magistrate	JUDGE STEPHANIE BESS
Congressional Dist.	6
Congressional Rep.	James Clyburn
Sheriff Region	3

Census

Year	2010	2000	1990
Avg Hhhd Income	\$42,554	\$15,455	\$5,416
Avg Home Value	\$236,100	\$0	\$87,500
Pop. Density (/sqmi)	0	0	100

Disclaimer: This appraiser's opinion is the estimator's only best estimate. The data displayed here is for informational purposes only and should not be used as a basis for any financial or legal decision. The appraiser is not responsible for any errors or omissions in the data displayed here.

www.richlandmaps.com/apps/geointo/?map=34.00410&lon=-81.03525&zoom=17&lat=34.00410&lon=-81.03525

**Schedule B**

[Intentionally deleted]

**Schedule C**

[Intentionally deleted]



**Schedule D**  
**Pending Litigation**

**None**

## **Schedule E**

### **Due Diligence Materials**

The following, to the extent they are in Seller's possession or control:

1. Copy of any owner's title insurance commitment and/or policy with all exhibits.
2. Copies of the 2018 and 2019 property tax bills.
3. A copy of any surveys and plats.
4. A copy of any environmental, engineering and soils reports, including reports of test borings.
5. Copy of all inspections, plans, reports or permits pertaining to the Premises.
6. Copy of insurance policies and certificates on the Premises.
7. Copy of all zoning information related to the Premises.
8. Copies of all covenants, restrictions and declarations that encumber the Premises.
9. Copies of all Leases and all amendments and copies of notices relating thereto given or received during the last three (3) years prior to the Effective Date or which have not yet been resolved.
10. Current rent roll.
11. Copies of all notices received from governmental entities during the last three (3) years prior to the Effective Date or which have not yet been resolved.
12. Any other information pertaining to the Premises that Purchaser requests from Seller; such items shall be provided to Purchaser (or Seller shall notify Purchaser that such information is not within its possession or control) within five (5) business days after Purchaser's request therefor; these items may be requested and provided throughout the Due Diligence Period.

## Schedule F

### ESCROW CONDITIONS

(1) In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses, or expenses, unless such action or omission is negligent, willful or inconsistent with the provisions of this Contract. Escrow Agent may rely upon any instrument 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:

Turner Padget Graham & Laney, P.A.  
1901 Main Street, 17<sup>th</sup> Floor  
Columbia, SC 29201  
Attn: Lanneau W. Lambert, Jr.  
Telephone: 803-227-4284  
Telecopy: 803-400-1501  
Email: LLambert@TurnerPadget.com