

**ORIGINAL
STAMPED IN RED**

RESOLUTION NO.: R-2021-041

Authorizing the City Manager to execute a Purchase and Sales Agreement between the City of Columbia and Edens/Graham Partners for the purchase of approximately 2.34 acres known as 715 Bluff Road, Richland County TMS #11202-06-02

BE IT RESOLVED by the Mayor and City Council this 20th day of April, 2021, that the City Manager is hereby authorized to execute the attached Purchase and Sales Agreement and any documents necessary and approved by the City Attorney, between the City of Columbia and Edens/Graham Partners to consummate the purchase of approximately 2.34 acres known as 715 Bluff Road, Richland County TMS #11202-06-02 for the sum of Two Million Five Hundred Sixty-five and No/100 (\$2,565,000.00) Dollars.

(Funding Source: General Fund)

Requested by:

Assistant City Manager Gentry



Mayor

Approved by:

Jensen B. Wilson

City Manager

Approved as to form:



City Attorney

ATTEST:

Erica D. M. Hammond

City Clerk

Introduced: 4/20/2021

Final Reading: 4/20/2021



PO Box 50111
Columbia, SC 29250
+1 803 622 7012

PURCHASE AND SALE AGREEMENT

Both Seller and Purchaser acknowledge receiving, reading, and understanding the South Carolina Real Estate Commission's Agency Disclosure Form.

The [] Purchaser [] Seller is Licensed under the laws of South Carolina as a Real Estate Licensee.

This Purchase and Sale Agreement ("Agreement") made between the City of Columbia ("Purchaser") and Edens/Graham Partners, a L.C. a South Carolina ("Seller").

Limited Liability Company

- I. **DEFINITIONS.** As used herein the following terms shall have the following meanings:
 - A. **Property:** All that certain piece, parcel or lot of land with any improvements thereon, situate lying and being near the City of Columbia, County of Richland, State of South Carolina, consisting of an approximately 2.34 acres located at 715 Bluff Road. Said parcel is further described on the Richland County website as Tax Map number 11202-06-02, a copy of which is attached hereto and made a part of the Agreement as Exhibit "A."
 - B. **Purchase Price:** Two Million Five Hundred Sixty-Five Thousand and No/100 (\$2,565,000.00) Dollars
 - C. **Earnest Money:** Twenty Thousand and No/100 (\$20,000.00) Dollars
 - D. **Escrow Agent:** Burr & Forman, LLP
 - E. **Inspection Period:** The period commencing on the Effective Date and ending forty-five (45) days thereafter.
 - F. **Closing Date:** No later than forty-five (45) days after the end of the Inspection Period
 - G. **Effective Date:** The date on which this Agreement has been duly executed by both parties as indicated by the dates beneath the signature of each party and each party has been provided with a fully signed copy of this Agreement.
- 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. Purchaser is the current tenant of the Property; nothing in this Agreement shall amend the existing lease of the Property to Purchaser.
- III. **EARNEST MONEY.** Escrow Agent will hold Earnest Money in a non-interest bearing trust account, which Earnest Money will be applied as part payment of the Purchase Price.
- IV. **CLOSING AND CLOSING DATE.** The closing shall occur at a mutually agreeable location on the Closing Date or such earlier date established by Purchaser on reasonable notice to Seller. At closing Purchaser shall tender the Purchase Price (plus or minus normal closing adjustments) by cashier's check

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or wire transfer of collected funds and Seller shall deliver the following: (i) a duly executed limited warranty deed conveying marketable fee simple title in the Property to Purchaser subject to Permitted Exceptions (as hereinafter defined); (ii) bill of sale, (iii) termination of the existing lease of the Property to Purchaser and refund of the security deposit; (iv) Affidavits required by the title company, Certificate of Non-Foreign Status and SC Nonresident Withholding Affidavit; (v) Evidence of authority to sell the Property, satisfactory to Buyer; (vi) current tax compliance letter and 1099-S form, (vii) possession of the Property; (viii) keys, access codes and alarm codes, and (iii) such other documents as Purchaser may reasonably request.

V. PRORATIONS, EXPENSES AND COMMISSIONS

- A. Real property taxes attributable to the year of closing shall be prorated at closing with Seller giving Purchaser a credit against the Purchase Price for Seller's share. If current tax bills are not immediately available, such proration 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. Seller shall be responsible for the payment of any rollback taxes attributable to the years preceding the year of closing and Seller's prorata share for the year of closing.
- B. Rents, water rent, and all other items customarily prorated shall be prorated at closing.
- C. Purchaser and Seller represent that each has dealt with no real estate companies other than Avant Holdings, LLC ("Broker") which is the Seller's broker and shall be paid by Seller and that no commissions to other brokers shall be due as a result of this transaction.
- D. 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. Purchaser shall pay its own attorneys' fees, title examination, title insurance premiums and survey costs.

VI. TITLE. Seller shall convey to Purchaser at closing by limited warranty deed conveying marketable fee simple title in and to the Property. For the purposes of this Agreement, "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 Agreement, the term "Permitted Exceptions" shall mean: (i) current city, state and county ad valorem taxes not yet due and payable; (ii) existing 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 Effective Date not objected by Purchaser in its Title Objection Notice (as hereinafter defined) and cured by Seller.

Prior to the expiration of the Inspection Period, Purchaser shall give Seller written notice of any objections to Seller's title as disclosed in the title report/commitment obtained from Purchaser's title insurance company or on any survey obtained by Purchaser (the "Title Objection Notice"). Seller shall have the obligation, whether or not Purchaser makes a specific title objection, to satisfy any existing mortgage, lien or encumbrance that encumbers the Property (collectively, the "Monetary Encumbrances") on or at Closing, and Seller shall be entitled to use the sales proceeds from the Property to satisfy same. If there are liens or encumbrances which cannot be removed in accordance with the terms hereof or if there are any title or survey objections set forth in Purchaser's Title Objection Notice for which Seller is unwilling or unable to cure, Purchaser shall have the option, as its sole remedy, to terminate this Agreement, in which event this Agreement shall thereupon become null and void for all purposes except for those matters that expressly

Susan P. Johnson

survive termination hereof, and the Earnest Money shall be forthwith returned to Purchaser; otherwise, if Purchaser fails to make an objection as provided herein or if Purchaser makes an objection but fails to terminate this Agreement within twenty (20) days after receipt of notice from Seller that Seller is unable or unwilling to cure any title objections, title to the Property as disclosed in the Title Report or on any survey shall be deemed to be acceptable (other than Seller's obligation to cure Monetary Encumbrances), and any objection thereto shall be deemed to have been waived for all purposes.

VII. INSPECTION PERIOD, SURVEYS AND STUDIES. During the Inspection Period, Seller hereby grants permission to Purchaser to enter onto the Property at reasonable times for the purpose of conducting surveys and studies. At any time during the Inspection Period, Purchaser shall have the right and option to terminate this Agreement and receive a refund of all Earnest Money provided that Purchaser has given Seller notification as outlined in Article X-C of this Agreement of such termination prior to the end of the Inspection Period.

In the event Purchaser elects to terminate this Agreement, upon written request from Seller received by Purchaser no later than ten (10) days after termination of this Agreement, Purchaser, at its sole cost and expense, shall make available to Seller all due diligence materials and reports (including, without limitation, all environmental reports, any survey, and title reports obtained by Purchaser during the course of its due diligence), all without representation or warranty.

Any information obtained by Purchaser pursuant to this Agreement shall: (i) be held in strict confidence by Purchaser, (ii) not be used for any purpose other than the investigation and evaluation of the Property by Purchaser and its lenders, attorneys and consultants (collectively, "Purchaser's Agents"), and (iii) not be disclosed, divulged or otherwise furnished to any person or entity other than Purchaser's Agents, except to the extent required by law. Notwithstanding the foregoing, Seller acknowledges that Purchaser is a public municipal corporation and, as such, this Agreement, the terms hereof and information obtained pursuant to this Agreement are or may be available to the public. The provisions of this Paragraph shall survive the termination of this Agreement.

VIII. 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 Escrow Agent shall pay the Earnest Money to Seller on Purchaser's behalf 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 as its sole remedy to either terminate this Agreement and obtain a refund of the Earnest Money together with reimbursement by Seller of all of Purchaser's costs and expenses relating to this Agreement or proceed to enforce this Agreement by an action of specific performance in a court of competent jurisdiction.

IX. SELLER'S REPRESENTATIONS AND WARRANTIES.

- A. Purchaser acknowledges that it is purchasing the Property "**AS IS physical condition**" as of the date hereof and not on the basis of representations or warranties made by Seller (or anyone claiming to act on Seller's behalf) either expressed or implied other than as set forth or provided for herein; provided, however, that the foregoing does not limit or effect the warranty of title to be made in the deed of conveyance. Seller represents and warrants as follows:
 - i. To the best of Seller's knowledge and belief, Seller has not received from any agency notice of, nor does the Seller have any actual knowledge of any condition of the Property which violates any environmental, business or building code or other governmental rules, regulations or guidelines to which the Property is or may be subject.

Seller P 

- ii. To the best of Seller's knowledge and belief, there are no pending suits, proceedings, judgments, liens or executions against or affecting the Seller that would or could affect title to the Property.
 - iii. Seller is the sole owner of the Property and has good and marketable title thereto and the sole authority to convey the Property.
 - iv. To Seller's knowledge, there are no tenants or parties with any right to possess all or any portion of the Property, except the Purchaser.
 - v. To Seller's knowledge, no person or entity has any right or option to acquire the Property or any portion thereof.
- B. Seller makes no representations or warranties as to 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 the property, provided, however, Seller shall disclose any report known to it which outlines the presence of any asbestos, toxins, or hazardous substances or contamination upon the Property.

X. MISCELLANEOUS.

- A. This Agreement 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.
- B. The captions employed in this Agreement 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) emailed, (iii) mailed by United States registered mail, return receipt requested, postage prepaid, (iv) sent by a reputable, national overnight delivery service, or (v) 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 a date of hand delivery, on the day following deposit in the United States 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, on the day sent by facsimile or the day sent by email.
- D. From the Effective Date through consummation of the sale as herein provided or termination of this Agreement, 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 Agreement 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 Agreement 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. Seller shall bear all risk of loss until the Closing. In the event that prior to the Closing, the Property (including without limitation the improvements thereon) are damaged by fire or other casualty

Signed P. J. J. J.

of any nature whatsoever, Seller shall promptly give Purchaser written notice thereof and Purchaser shall have the right to terminate this Agreement and receive a full refund of the Earnest Money or to continue to Closing with Seller assigning all insurance proceeds to Purchaser and crediting Purchaser at Closing for the amount of the insurance deductible.

H. TIME IS OF THE ESSENCE HEREUNDER.

SIGNED, SEALED AND DELIVERED as of the Effective Date.

Purchaser:

City of Columbia

By: Teresa B. Wilson
Teresa B. Wilson
City Manager

Date: 4/20/2021

Purchaser Address:

Attention: City Manager
P.O. Box 147
Columbia, South Carolina 29217

Telephone Number: (803) 545-3480

Facsimile: _____

Email: Teresa.Wilson@columbiasc.gov

Witness: [Signature]

Witness: Camela [Signature]

Seller:

Edens/Graham Partners, LLC
a South Carolina Limited Liability Company (SEAL)

By: [Signature]
H-Dan Avant
20210228

Date: 4/28/2021

Sellers' Address

2217 Terrace Way
Columbia, SC 29205

Telephone: _____

Facsimile: _____

Email: hdan.avant@gmail.com

Witness: [Signature]

Witness: County Clerk

APPROVED AS TO FORM

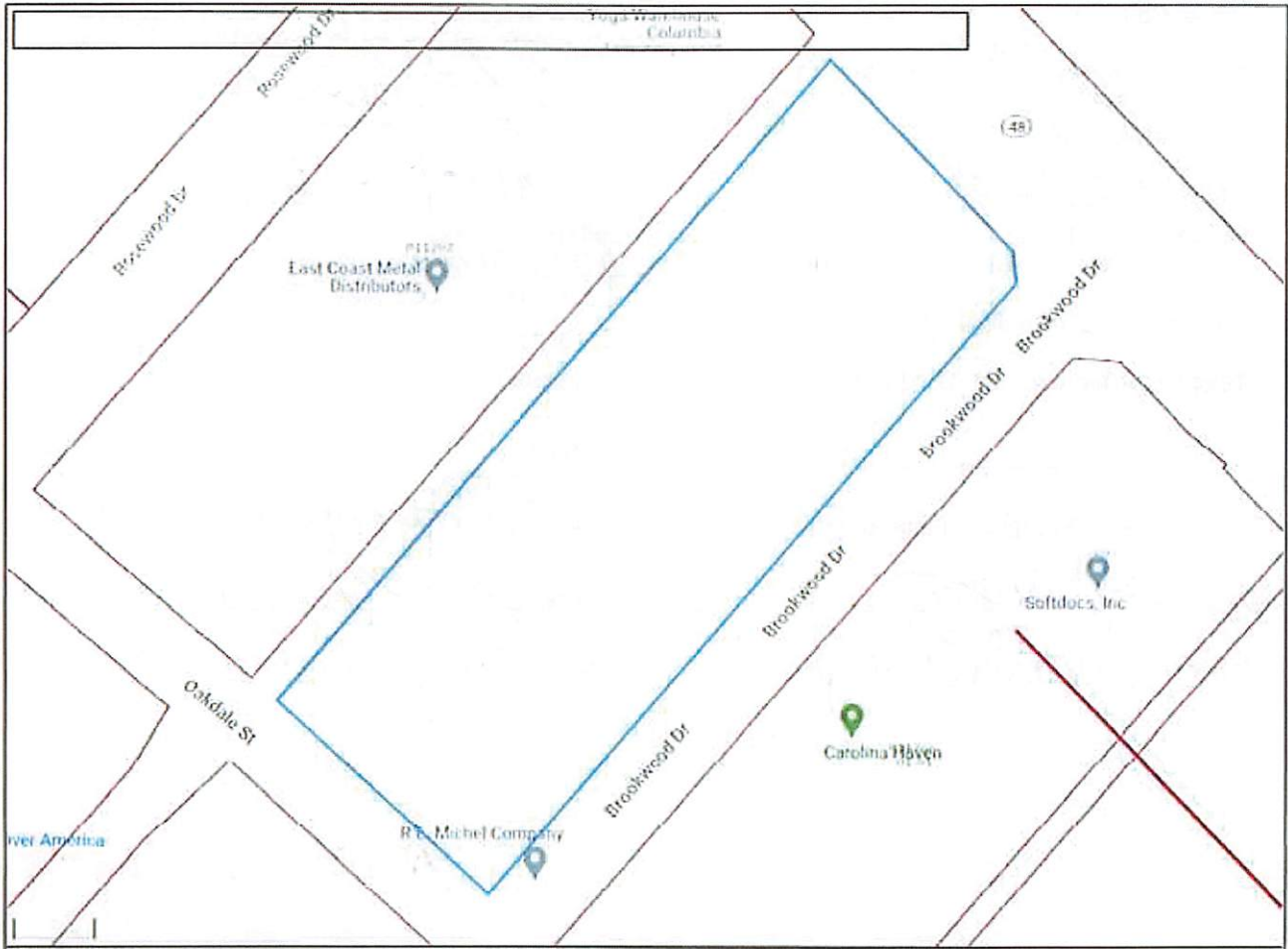
[Signature]
Legal Department City of Columbia, SC

[Signature]

Exhibit "A"

Tax Parcel 11202-06-02

Richland County Internet Mapping
715 Bluff Road, Richland County TMS #11202-06-02 - Richland County Internet Mapping



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SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS



South Carolina Real Estate Commission
PO BOX 11847, Columbia, S.C. 29211-1847
Telephone: (803) 896-4100 Fax: (803) 896-4427
<http://llr.sc.gov/POL/REC/>

Pursuant to South Carolina Real Estate License Law in S.C. Code of Laws Section 40-57-370, a real estate licensee is required to provide you a meaningful explanation of agency relationships offered by the licensee's brokerage firm. This must be done at the first practical opportunity when you and the licensee have substantive contact.

Before you begin to work with a real estate licensee, it is important for you to know the difference between a broker-in charge and associated licensees. The broker-in charge is the person in charge of a real estate brokerage firm. Associated licensees may work only through a broker-in-charge. In other words, when you choose to work with any real estate licensee, your business relationship is legally with the brokerage firm and not with the associated licensee.

A real estate brokerage firm and its associated licensees can provide buyers and sellers valuable real estate services, whether in the form of basic customer services, or through client-level agency representation. The services you can expect will depend upon the legal relationship you establish with the brokerage firm. It is important for you to discuss the following information with the real estate licensee and agree on whether in your business relationship you will be a customer or a client.

You Are a Customer of the Brokerage Firm

South Carolina license law defines customers as buyers or sellers who choose **NOT** to establish an agency relationship. The law requires real estate licensees to perform the following *basic duties* when dealing with any real estate buyer or seller as customers: *present all offers in a timely manner, account for money or other property received on your behalf, provide an explanation of the scope of services to be provided, be fair and honest and provide accurate information, provide limited confidentiality, and disclose "material adverse facts" about the property or the transaction which are within the licensee's knowledge.*

Unless or until you enter into a written agreement with the brokerage firm for agency representation, you are considered a "customer" of the brokerage firm, and the brokerage firm will not act as your agent. As a customer, you should not expect the brokerage firm or its licensees to promote your best interest.

Customer service does not require a written agreement; therefore, you are not committed to the brokerage firm in any way unless a transaction broker agreement or compensation agreement obligates you otherwise.

Transaction Brokerage

A real estate brokerage firm may offer transaction brokerage in accordance with S.C. Code of Laws Section 40-57-350. Transaction broker means a real estate brokerage firm that provides customer service to a buyer, a seller, or both in a real estate transaction. A transaction broker may be a single agent of a party in a transaction giving the other party customer service. A transaction broker also may facilitate a transaction without representing either party. The duties of a brokerage firm offering transaction brokerage relationship to a customer can be found in S.C. Code of Laws Section 40-57-350(1)(2).

You Can Become a Client of the Brokerage Firm

Clients receive more services than customers. If client status is offered by the real estate brokerage firm, you can become a client by entering into a written agency agreement requiring the brokerage firm and its associated licensees to act as an agent on your behalf and promote your best interests. If you choose to become a client, you will be asked to confirm in your written representation agreement that you received this agency relationships disclosure document in a timely manner.

A seller becomes a client of a real estate brokerage firm by signing a formal listing agreement with the brokerage firm. For a seller to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the seller and the brokerage firm which becomes the agent for the seller.

A buyer becomes a client of a real estate brokerage firm by signing a formal buyer agency agreement with the brokerage firm. For a buyer to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the buyer and the brokerage firm which becomes the agent for the buyer.

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SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS



South Carolina Real Estate Commission
PO BOX 11847, Columbia, S.C. 29211-1847
Telephone: (803) 896-1400 Fax: (803) 896-4427
<http://llr.sc.gov/POL/REC/>

If you enter into a written agency agreement, as a client, the real estate brokerage has the following *client-level duties: obedience, loyalty, disclosure, confidentiality, accounting, and reasonable skill and care*. Client-level services also include advice, counsel and assistance in negotiations.

Single Agency

When the brokerage firm represents only one client in the same transaction (the seller or the buyer), it is called single agency.

Dual Agency

Dual agency exists when the real estate brokerage firm has two clients in one transaction – a seller client and a buyer client. At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the brokerage firm to represent both you and the other client in a disclosed dual agency relationship.

Disclosed Dual Agency

In a disclosed dual agency, the brokerage firm's representation duties are limited because the buyer and seller have recognized conflicts of interest. Both clients' interests are represented by the brokerage firm. As a disclosed dual agent, the brokerage firm and its associated licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning the price negotiations, terms, or factors motivating the buyer/client to buy or the seller/client to sell. Each Dual Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

Designated Agency

In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the brokerage firm's agency relationship with the other client, but instead have a duty to promote the best interest of their clients, including negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients. At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the brokerage firm to designate a representative for you and one for the other client in a designated agency. Each Designated Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

It's Your Choice

As a real estate consumer in South Carolina, it is your choice as to the type and nature of services you receive.

- You can choose to remain a customer and represent yourself, with or without a transaction broker agreement.
- You can choose to hire the brokerage firm for representation through a written agency agreement.
- If represented by the brokerage firm, you can decide whether to go forward under the shared services of dual agency or designated agency or to remain in single agency.

If you plan to become a client of a brokerage firm, the licensee will explain the agreement to you fully and answer questions you may have about the agreement. Remember, however that until you enter into a representation agreement with the brokerage firm, you are considered a customer and the brokerage firm cannot be your advocate, cannot advise you on price or terms, and only provides limited confidentiality unless a transaction broker agreement obligates the brokerage firm otherwise.

The choice of services belongs to you – the South Carolina real estate consumer.

Acknowledgement of Receipt by Consumer:

Signature Ceresab. Wilson Date 4/20/2021
Signature _____ Date _____

THIS DOCUMENT IS NOT A CONTRACT.
This brochure has been approved by South Carolina Real Estate Commission for use in explaining representation issues in real estate transactions and consumer rights as a buyer or seller. Reprinting without permission is permitted provided no changes or modifications are made.

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Legal Department City of Columbia, SC

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