

ORDINANCE NO.: 2017-102

Authorizing the City Manager to execute a Contract of Sale and Parking Agreement and Easement between the City of Columbia and Jeannie M. Rubin for the purchase of 1231 Blanding Street, Richland County TMS #09014-03-03

ORIGINAL
STAMPED IN RED

BE IT ORDAINED by the Mayor and City Council this 5th day of December, 2017, that the City Manager is hereby authorized to execute the attached Contract of Sale and Parking Agreement and Easement, or on forms approved by the City Attorney, between the City of Columbia and Jeannie M. Rubin, and any other documents necessary and approved by the City Attorney, to consummate the purchase of 1231 Blanding Street, Richland County TMS #09014-03-03 for Seven Hundred Seventy-two Thousand One Hundred and No/100 (\$772,100.00) Dollars.

(Funding Source: to 5310000-150100)

Requested by:

Assistant City Manager Gentry



Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 11/21/2017
Final Reading: 12/5/2017

CONTRACT OF SALE

Contract of Sale made as of the date of the last signature hereto, by and between the CITY OF COLUMBIA ("Purchaser") and JEANNIE M. RUBIN ("Seller").

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

A. Property - Approximately 13,312 square feet located at 1231 Blanding Street, City of Columbia, SC; Richland County Tax Map No. 09014-03-03.

B. Purchase Price - Seven Hundred Seventy-two Thousand One Hundred and No/100 (\$772,100.00) Dollars

C. Closing Date - On or before the tenth (10th) day following adoption of an ordinance by Purchaser authorizing the execution of this Contract and the Parking Easement.

D. Parking Easement - The Parking Agreement and Easement attached as **Exhibit "A"**. The parties acknowledge that the Parking Easement to be granted by Purchaser to Seller is a substantial part of the consideration for the sale of the Property.

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

IV. CLOSING DATE. The closing shall occur at the offices of Purchaser's attorney on the Closing Date or such earlier date established by Purchaser on reasonable notice to Seller.

V. CLOSING. At Closing Purchaser shall duly execute and deliver the Parking Easement and shall tender the Purchase Price (plus or minus normal closing adjustments) by cashier's check or wire transfer of collected funds and Seller shall deliver the following:

A. A duly executed general 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. A duly executed counterpart of the Parking Easement.

C. 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.

D. 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.

E. A Form I-295 (Seller's Affidavit - South Carolina Withholding Tax) as prescribed by the South Carolina Department of Revenue, and if Seller is not a SC resident the appropriate amount shall be withheld and remitted to the Department of Revenue.

F. A Transferor's Affidavit, and/or if applicable, a Certificate of Tax Compliance from the South Carolina Department of Revenue dated within thirty (30) days of Closing.

G. Possession of the Property.

H. Such other documents as Purchaser or its title insurance company may reasonably request.

VI. PRORATIONS AND EXPENSES; 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 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. Purchaser and Seller represent that each has dealt with no real estate companies and no fees or commissions are or will be due.

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

VII. "AS IS" CONDITION / ENVIRONMENTAL.

A. The Property is being sold and conveyed on a strictly "AS-IS", "WHERE-IS" and "WITH ALL FAULTS AND DEFECTS" basis without representation, warranty, or covenant, express, implied, or statutory of any kind or nature whatsoever.

B. Without investigation or any obligation to perform same, Seller has no 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.

VIII. DEFAULT.

A. If either party fails to consummate the sale and is in default hereof, the other party, 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.

B. 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.

IX. MISCELLANEOUS.

A. This Contract and all terms, provisions, and covenants contained herein shall apply to, be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

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.*, FedEx, UPS, etc.), or (iv) sent by email (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 email (if sent by email, 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
Attn: City Manager
1737 Main Street
Columbia, SC 29217
Telephone: 803-545-3026
Email: tbwilson@columbiasc.net

With copy to: The City of Columbia
Attn: City Attorney
1401 Main Street, 10th Floor
Columbia, SC 29201
Telephone: 803-737-4242
Email: taknox@columbiasc.net

McNair Law Firm, P.A.
Attn: Joel E. Gottlieb, Esquire
1221 Main Street, Suite 1800
Columbia, SC 29201
Telephone: 803-753-3239
Email: jgottlieb@mcnair.net

If to Seller: Jeannie M. Rubin
c/o Hyman Rubin, Jr.
PO Box 58
Columbia, SC 29202
Telephone: 803-252-0500
Email: hyman@mrrml.com

D. Pending consummation of the sale as herein provided, Seller will not impose any easements, covenants, conditions, restrictions, or other encumbrances upon the Property.

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. Any time period provided for in this Contract, the last day of which falls on a Saturday, Sunday, or legal holiday, shall be extended until the next following business day.

SIGNED, SEALED AND DELIVERED as of the date last below set forth.

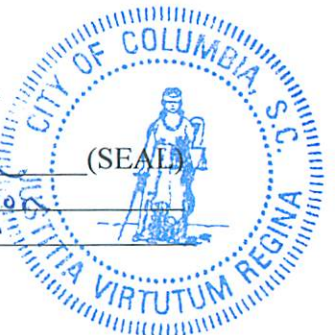
Date: December 13, 2017

THE CITY OF COLUMBIA

By: Teresa Wilson (SEAL)

Print Name: Teresa Wilson

Title: City Manager



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APPROVED AS TO FORM

JGL 11/2/17
Legal Department City of Columbia, SC

Date: _____, 2017

JEANNIE M. RUBIN (SEAL)

EXHIBIT "A"

Parking Easement

see attached

PARKING AGREEMENT AND EASEMENT

Parking Agreement and Easement made as of the ____ day of _____, 2017, between the CITY OF COLUMBIA ("City") and JEANNIE M. RUBIN ("Rubin").

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

- a. Parcel A - Land and improvements owned by Rubin located at 1700 Main Street and being described on the attached **Exhibit "A"**.
- b. Parcel B - Land and improvements owned by Rubin located at 1704 Main Street and being described on the attached **Exhibit "B"**.
- c. Parcel I - Land purchased or to be purchased by City from Rubin described on the attached **Exhibit "C"**.
- d. Parcel II - Land on Blanding Street currently owned by City and being described on the attached **Exhibit "D"**.
- e. City Parcels - Parcel I and Parcel II.
- f. Owner(s) - Rubin and future fee simple title holders of Parcel A and/or Parcel B.
- g. Authorized User(s) - The Owner(s) and their designated tenants and/or occupants of Parcel A or Parcel B.
- h. Parking Deck - The parking deck when constructed on Parcel II and any part of Parcel I.
- i. Surface Spaces - The thirty-six (36) parking spaces on Parcel I as contemplated by paragraph 1.
- j. Deck Spaces - Forty-five (45) parking spaces in the Parking Deck for the benefit of Parcel A and Parcel B as hereinafter provided.
- k. Parking Spaces - The Surface Spaces or Deck Spaces, as the context requires.
- l. Initial Period - The period ending on the last day of the sixtieth (60th) month following the date Rubin conveys Parcel I to City.
- m. Market Rate - The monthly rental rate from time to time prevailing for downtown public parking.

RECITAL: Rubin is selling Parcel I to City and City has agreed to grant parking rights and easements to Rubin for the benefit of Rubin and future owners of Parcel A and Parcel B as

hereinafter provided. City may construct the Parking Deck sometime in the future but is not obligated to do so.

1. City hereby grants and conveys to Rubin a right, license, and easement for vehicular parking on thirty-six (36) parking spaces within the surface parking lot on Parcel I. During the Initial Period there shall be no charge by City to Owner(s) for use of the Surface Spaces. Following the Initial Period Owner(s) shall be charged monthly rent for Surface Spaces used at a rate equal to fifty percent (50%) of the Market Rate. This right, license, and easement shall terminate upon construction of the Parking Deck and Owner's rights shall be governed by other provisions hereof. If construction of the Parking Deck interferes with Owner's ability to utilize the Surface Spaces on Parcel I City shall provide Owner(s) with access to thirty-six (36) parking spaces at the nearest available public parking facility of City (*i.e.*, nearest to Parcel I) upon the same terms as provided for Surface Spaces herein.

2. Upon completion of construction of the Parking Deck the provisions of paragraph 1 above shall no longer apply. City hereby grants and conveys to Rubin a right, license, and perpetual easement for vehicular parking on the Deck Spaces. The Deck Spaces shall be located on the lowest level of the Parking Deck within close proximity to the closest pedestrian access point to 1700 and 1704 Main Street to be designated by appropriate signage reflecting that they are reserved for Authorized Users of 1700 and 1704 Main Street. During the Initial Period there shall be no charge by City for the Deck Spaces. For a period of twenty-five (25) years following the Initial Period Owner(s) shall be charged monthly rent for parking spaces used at a rate equal to fifty percent (50) of the Market Rate. After said twenty-five (25) year period the monthly rate shall increase to sixty-five percent (65%) of the Market Rate.

3. Deck Spaces leased by an Authorized User(s) shall be reserved to such Authorized User(s) from 6:00 am to 8:00 pm on Monday through Friday and from 6:00 am to 2:00 pm on Saturdays and Sundays. From 8:00 pm to 6:00 am on weekdays and from 2:00 pm to 6:00 am on weekends unoccupied Deck Spaces shall be available to Authorized User(s) and the general public on a first come first serve basis. Notwithstanding the foregoing, if the business operating on Parcel A is a restaurant then the weekday hours shall apply to the weekends for the Parking Spaces allocated to Parcel A.

4. Upon or after the sale by Rubin of Parcel A and/or Parcel B Rubin may designate the number of Parking Spaces to be allocated to each Parcel, which designation shall be in writing and recorded in the Office of the Register of Deeds for Richland County. The designation may be contained in the deed or other instrument. Until such designation is made and actual notice thereof given to City, seventy-five percent (75%) of the Parking Spaces shall be allocated to Parcel B and twenty-five percent (25%) to Parcel A. The rate structure for parking shall not change upon a sale.

5. Owner(s) of Parcel A and Parcel B may use the Parking Spaces only for Authorized Users and their guests. The Parking Spaces may not be leased or otherwise made available to other parties by Authorized Users. Parking spaces may be leased directly from City by Authorized Users.

6. Parking Spaces not being leased by Owner(s) may be leased by City to others provided that any such lease or other agreement shall allow City to terminate it on thirty (30) days' notice. City shall promptly give notice to the lessee of a space after Owner(s) give notice to City of such Owner(s)' need for such space, ensuring that no less than forty-five (45) spaces can be made available to Owner(s) when needed. City shall be entitled to all revenue from such leases.

7. If the Parking Deck is never built or is destroyed by casualty or is closed or demolished City shall provide Owner(s) with access to forty-five (45) parking spaces at the nearest available public parking facility of City (*i.e.*, nearest to Parcel I) upon the same terms as provided for Deck Spaces herein.

8. Enforcement and/or removal of unauthorized vehicles from Parking Spaces shall be by protocols from time to time established by City. To the extent permitted by law, Owner(s) shall have an independent right to tow trespassers from their assigned spaces. If an Owner elects to have a vehicle towed it shall (a) be deemed to and does hereby agree to indemnify City and hold it harmless from any claims, damages, liabilities, and legal costs in any way connected with such towing if liability in connection with such towing is judicially determined and (b) only use a towing company that City has approved for towing from City owned parking decks.

9. The easements herein are for the benefit of Rubin and future Owner(s) of Parcel A and Parcel B and are intended to be construed as appurtenant easements running with the land and in any event shall be assignable by Rubin and her heirs and assigns.

10. 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.*, FedEx, UPS, etc.), or (iv) sent by email (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 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 email (if sent by email, 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. In addition, City may from time to time change its notice address for the Parking Administrator by posting same on its website. Any notice provided for hereunder may be given by a party's attorney or other representative.

If to City: City of Columbia Parking Services Division
Attn: Parking Administrator
820 Washington Street
Columbia, SC 29201
Telephone: 803-545-4015
Email: parkingservices@columbiasc.net

With copy to: City of Columbia
Attn: City Manager
1737 Main Street
Columbia, SC 29201
Telephone: 803-545-3026
Email: tbwilson@columbiasc.net

If to Rubin: Jeannie M. Rubin
c/o Hyman Rubin, Jr.
PO Box 58
Columbia, SC 29202
Telephone: 803-252-0500
Email: hyman@mrrml.com

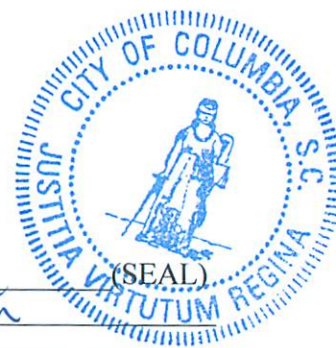
Signed, sealed, and delivered as of the date first above set forth.

WITNESSES:

Erik D. Meow
Tasha Watson

CITY OF COLUMBIA

By: Cheresa Wilson
Print Name: Teresa Wilson
Title: City Manager



JEANNIE M. RUBIN (SEAL)

APPROVED AS TO FORM

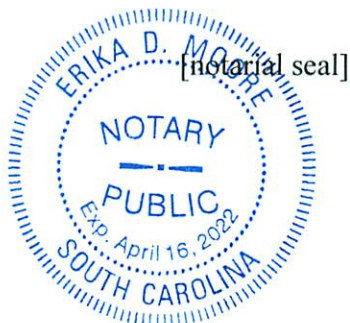
ggd 11/2/17
Legal Department City of Columbia, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ACKNOWLEDGEMENT

I, Erika D. Moore, a Notary Public of the county and state aforesaid, do hereby certify that Teresa Wilson personally appeared before me this day and acknowledged that s/he is the City Manager of CITY OF COLUMBIA and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name.

Witness my hand and seal this 13th day of December, 2017.



Erika D. Moore
Notary Public
Print Name: Erika D. Moore
My commission expires: 4.16.2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ACKNOWLEDGEMENT

I, _____, a Notary Public of the county and state aforesaid, do hereby certify that JEANNIE M. RUBIN personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this ____ day of _____, 2017.

[notarial seal]

Notary Public
Print Name: _____
My commission expires: _____

Exhibit "A"

Parcel A

Land and improvements located at 1700 Main Street, Columbia, South Carolina, being more particularly described in deed from Ruth J. Warren to Jeannie M. Rubin dated August 8, 1997, recorded in the Office of the Register of Deeds for Richland County on October 6, 1997, in Deed Book D-1411 at page 371.

TMS No. 09014-03-07

Exhibit "B"

Parcel B

Land and improvements located at 1704 Main Street, Columbia, South Carolina, being more particularly described in deed from Hyman Rubin, Jr. to Jeannie M. Rubin dated December 30, 1994, recorded in the Office of the Register of Deeds for Richland County on December 30, 1994, in Deed Book D-1236 at page 620.

TMS No. 09014-03-08

Exhibit "C"

Parcel I

All that certain piece, parcel, or lot of land together with any improvements thereon situate, lying, and being on the northwest corner of Blanding and Sumter Streets, in the City of Columbia, County of Richland, State of South Carolina, and being bounded and described as follows: on the North by property of the City of Columbia whereon it measures seventy-nine feet (79'), more or less; on the East by Sumter Street whereon it measures one hundred sixty-eight feet and six inches (168' 6"), more or less; on the South by Blanding Street whereon it measures seventy- nine feet (79'), more or less; and on the West by property of the City of Columbia whereon it measures one hundred sixty-eight feet and six inches (168' 6") more or less.

TMS No. 09014-03-03

Exhibit "D"

Parcel II

Those certain parcels of land situate in Columbia, Richland County, South Carolina, being shown and designated as Remainder of Parcel "A" containing 0.74 acre and Parcel "B" containing 0.46 acre on Boundary and Topographical Map Prepared For City of Columbia, South Carolina by Cox and Dinkins, Inc. dated August 22, 2002, revised September 10, 2002, recorded in the Office of the Register of Deeds for Richland County in Book 702 at page 3370, said property having such courses, metes, measurements, and boundaries as shown on the aforesaid plat, which plat is incorporated herein by reference.

TMS No. 09014-03-04