NOTICE OF MEETING

A meeting of the Committee on Real Estate will be held beginning at 3:30 p.m. Monday, January 24, 2022, Conference Call: 1-929-205-6099; Access Code: 835 678 884. The agenda will be as follows:

AGENDA

Invocation – Councilmember Shahid

Approval of Minutes:

January 10, 2022

a. An ordinance to authorize the Mayor to execute a permanent right-of-way and utility easement to the Commissioners of Public Works as part of the new force main for the Credit One Stadium. (TMS No. 275-00-00-078)

b. Request approval of the Port Facility License Agreement between the City of Charleston and the South Carolina State Ports Authority ("Ports Authority") for use of Building 313 at the Union Pier Terminal for the purpose of storing the Fire Department’s marine firefighting and rescue equipment. (32 Washington St., Charleston, SC (Union Pier Terminal, Building 313) (TMS No. 459-13-02-035). The property is owned by the South Carolina State Ports Authority.

c. Request that City Council authorize the Mayor to execute the necessary documents for the re-purchase of 3 Drews from the Estate of Lillian A. Miller for $171,504. The property will be rehabilitated and sold for its original purpose – affordable homeownership opportunities for persons whose income does not exceed 120 percent of the Area Median income. The cost of the acquisition of this will be borne from the Fee-in-lieu account. (3 Drews Court, Charleston, SC) (TMS No. 459-05-01-056)

d. Please consider the following annexation:

(i) 2309 Lazy River Drive (0.46 acre) (TMS# 310-14-00-017), West Ashley, (District 11). The property is owned by Seel Living Trust.

In accordance with the Americans with Disabilities Act, people who need alternative formats, ASL (American Sign Language) interpretation or other accommodation please contact Janet Schumacher at (843) 577-1389 or email to schumacherj@charleston-sc.gov three business days prior to the meeting.
COMMITTEE ON REAL ESTATE
GENERAL FORM

TO: Committee on Real Estate    DATE: November 24, 2021
FROM: Julia Copeland        DEPT: Legal
ADDRESS: N/A
TMS: TMS No. 275-00-00-078
PROPERTY OWNER: City of Charleston
Ordinance to authorize Mayor to execute permanent right-of-way and utility easement to the Commissioners of Public Works as part of the new force main for the Credit One Stadium.
ACTION REQUEST:

ORDINANCE: Is an ordinance required? Yes ☒ No ☐

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

Department Head
Legal Department
Chief Financial Officer
Director Real Estate Management
Signature
Attachments

FUNDING: Was funding needed? Yes ☐ No ☒
If yes, was funding previously approved? Yes ☐ No ☒
*If approved, provide the following: Dept/Div. _______________ Acct: _______________
Balance in Account _______________ Amount needed for this item _______________

NEED: Identify any critical time constraint(s). N/A
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY A PERMANENT RIGHT-OF-WAY AND UTILITY EASEMENT TO THE COMMISSIONERS OF PUBLIC WORKS AS PART OF THE NEW FORCE MAIN FOR THE CREDIT ONE STADIUM.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. That the Mayor is hereby authorized to execute on behalf of the City a permanent right-of-way utility easement, approved as to form by the Office of Corporation Counsel, to the Commissioners of Public Works, encumbering a portion of the City's real property designated as Charleston County TMS No. 275-00-00-078, as shown on the plat prepared by Southeastern Land Surveying for the City of Charleston, to accommodate a force main for the Credit One Stadium.

Section 2. That this Ordinance shall become effective upon ratification.

Ratified in City Council this ___ day of _____ in the year of Our Lord, 2022, in the 246th Year of the Independence of the United States of America.

By: ________________________________
    John J. Tecklenburg, Mayor

ATTEST: By: ________________________________
    Jennifer Cook
    Clerk of Council
WHEREAS, the undersigned own(s) a certain parcel of land bearing Berkeley County Tax Map number 275-00-00-078; and

WHEREAS, the Commissioners of Public Works of the City of Charleston, South Carolina has requested a permanent easement across said property for the purpose of constructing utility lines which the property owner(s) has/have agreed to grant.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the CITY OF CHARLESTON (hereinafter called the "Grantor"), in consideration of the sum of Ten and 00/100 ($10.00) Dollars to the Grantor in hand paid for the easements granted hereunder, at and before the sealing of these presents, by the COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON, SOUTH CAROLINA, the receipt of which is hereby acknowledged, has/have granted, bargained, sold and released, and by these presents does/do grant, bargain, sell and release unto the COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON, SOUTH CAROLINA (hereinafter called the "Commissioners"), its successors and assigns forever, the following right-of-way(s) and easement(s):

A permanent, transferable, assignable right-of-way and utility easement for a commercial purpose over, under and across a strip of land designated "NEW 15' CWS EASEMENT 0.10 ACRE/4,417.56 SQ. FT" and shown as being contained between the lines running between the letters designated A and Q on a plat entitled "A Plat for Establishment of a New 15' CWS Easement Prepared for Charleston Water System" by PHILIP R. BRYAN, JR. P.L.S. No. 28597 of Southeastern Land Surveying LLC dated December 23, 2021 and recorded in Plat Book ______ at page ___________ in the RMC Office or the Office of Register of Deeds for Berkeley County, South Carolina. Said strip of land has such size, shape, dimensions, butttings
and boundings, courses and distances as will by reference to said plat more fully appear. The permanent right-of-way and utility easement is hereinafter referred to as “Permanent Easement."

Together with the right by the Commissioners to lay, construct, locate, install, operate, maintain, inspect, repair, relocate and replace underground water lines and underground sewer lines with necessary valves, valve boxes, meters, fittings, manholes, service lines, controls, devices, equipment, fire hydrants and other usual appurtenances within the Permanent Easement.

TOGETHER with all the rights and privileges necessary or convenient for the full enjoyment or use thereof.

It is further agreed that:

(1) The Commissioners will have the right of ingress, egress, and access to and from the Permanent Easement across and upon such lands of the Grantor(s) as may be necessary or convenient for purposes connected with said Permanent Easement.

(2) The Commissioners shall have the right from time to time to trim, cut or remove trees, underbrush and other obstructions that are over, under or upon the Permanent Easement.

(3) The Grantor(s) and his/her/its/their heirs, successors and assigns, will have full use of the surface area of the Permanent Easement, provided, however, that neither Grantor(s) nor his/her/its/or their heirs, successors or assigns shall construct, build or place any permanent structure, or portion thereof, within, above, below or over the surface of the Permanent Easement, it being the purpose of the Commissioners to (1) protect the integrity of the said utility lines which will be located below the surface, and (2) to allow quick and ready access to the utility lines to facilitate repairs.

(4) Commissioners agrees that upon completion of construction, the surface of any unpaved portions of the Permanent Easement which are highland that are disturbed by construction
or maintenance, will be regraded and replanted with grass. Any pavement damaged by construction or maintenance will be repaired. The surface of any unpaved portions of the Permanent Easement which are wetlands or marsh that are disturbed by construction or maintenance, if any, will be restored in accordance with the permits issued by the authority or authorities having jurisdiction over said wetlands or marsh.

(5) The Permanent Easement will run with the land and continue to exist so long as it is used for utility purposes. In the event the Commissioners should determine to abandon its rights in the Permanent Easement, written notice will be given to the then owners of the property subject to the Permanent Easement stating that the Commissioners has given up all rights in the Permanent Easement.

(6) The Permanent Easement granted herein is for a commercial purpose and may be transferred and assigned by Commissioners and its successors and assigns.

(7) The agreements contained herein shall be binding upon the Commissioners and Grantor(s) and their respective heirs, successors and assigns.

TO HAVE AND TO HOLD, all and singular, the easements rights and privileges above described unto the COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON and its successors and assigns forever.

IN WITNESS WHEREOF, the undersigned have set their hands and seals this _____ day of January, 2022.

[SIGNATURE PAGE TO FOLLOW]
WITNESSES:

COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON, SOUTH CAROLINA

By: ________________________

Its: ________________________
SIGNATURE BLOCK AND ACKNOWLEDGMENT FOR GRANTOR

WITNESSES: City of Charleston
Grantor

__________________________ By: ________________________
______________ John J. Tecklenburg
Its: Mayor

__________________________

STATE OF SOUTH CAROLINA )
) ACKNOWLEDGEMENT
COUNTY OF Charleston )

I, ____________________________, Notary Public for the State of
__________________________, do hereby certify that ____________________________
by ____________________________ its ____________________________ personally
appeared before me this day and acknowledged the due execution of the foregoing
instrument.

Subscribed to and sworn before me this _____ day of January, 2022.

__________________________
Notary Public, State of ________________
My commission expires: ____________________
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee DATE: January 24, 2022

FROM: Leigh Bailey DEPT: BFRC

ADDRESS: 32 Washington St., Charleston, SC (Union Pier Terminal, Building 313)

TMS: 459-13-02-035

PROPERTY OWNER: South Carolina State Ports Authority

ACTION REQUEST: Request approval of the Port Facility License Agreement between the City of Charleston and the South Carolina State Ports Authority ("Ports Authority") for use of Building 313 at the Union Pier Terminal for the purpose of storing the Fire Department's marine firefighting and rescue equipment.

ORDINANCE: Is an ordinance required? Yes [ ] No [X]

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

<table>
<thead>
<tr>
<th>Department Head</th>
<th>Legal Department</th>
<th>Chief Financial Officer</th>
<th>Director Real Estate Management</th>
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<tr>
<td>Signature</td>
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</tbody>
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FUNDING: Was funding needed? Yes [ ] No [X]
If yes, was funding previously approved? Yes [ ] No [ ]

*If approved, provide the following: Dept/Div. ______ Acct: ______
Balance in Account ______ Amount needed for this item ______

NEED: Identify any critical time constraint(s).

*Commercial Property and Community & Housing Development have an additional form.
COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee  DATE: January 24, 2022
FROM: Leigh Bailey  DEPT: BFRC
ADDRESS: 32 Washington St., Charleston, SC (Union Pier Terminal, Building 313)
TMS: 459-13-02-035

PROPERTY OWNER: South Carolina State Ports Authority
Request approval of the Port Facility License Agreement between the City of Charleston and the South Carolina State Ports Authority (“Ports Authority”) for use of Building 313 at the Union Pier Terminal for the purpose of storing the Fire Department’s marine firefighting and rescue equipment.

ACTION REQUEST:

ORDINANCE: Is an ordinance required? Yes [ ] No [x]

ACTION: What action is being taken on the Property mentioned?

- [ ] ACQUISITION
  - (Property Owner) ____________________________ Purchaser ____________________________

- [ ] DONATION/TRANSFER
  - Donated By: ____________________________

- [ ] FORECLOSURE
  - Terms: ____________________________

- [ ] PURCHASE
  - Terms: ____________________________

- [ ] CONDEMNATION
  - Terms: ____________________________

- [ ] OTHER
  - Terms: ____________________________

- [ ] SALE
  - (Property Owner) ____________________________ Purchaser ____________________________

- [ ] NON-PROFIT ORG, please name ____________________________
  - Terms: ____________________________

- [ ] OTHER
  - Terms: ____________________________

- [ ] EASEMENT
  - (Property Owner) ____________________________ Grantee ____________________________
COMMERCIAL REAL ESTATE FORM

☐ PERMANENT
Terms: ____________________________________________

☐ TEMPORARY
Terms: ____________________________________________

☒ LEASE
Lessor: ____________________ Lessee: ____________________

☐ INITIAL
Terms: ____________________________________________

The City will use Building 313 for the sole purpose of storing the Fire
Department’s marine firefighting and rescue equipment. The license fee is $5.00,
with a month to month term. Either party may terminate the agreement for any
reason by providing 30 days written notice.

☐ RENEWAL
Terms: ____________________________________________

☐ AMENDMENT
Terms: ____________________________________________

BACKGROUND CHECK: If Property Action Request is for the sale or lease of city
property, has a background check been completed?

Yes ☐ No ☐ N/A ☐ ☒

Results: ____________________________________________

Signature: ________________________________

Director Real Estate Management

ADDITIONAL: Please identify any pertinent detail (Clauses, Agreement Terms,
Repeals, etc.) regarding City Property.

____________

NEED: Identify any critical time constraint(s).
STATE OF SOUTH CAROLINA  
)  
)  
PORT FACILITY LICENSE  
AGREEMENT  
)  
)  
COUNTY OF CHARLESTON  
)  

THIS PORT FACILITY LICENSE AGREEMENT (this "Agreement"), dated as of __________, 2022 (hereinafter, the "Commencement Date"), is entered into by and between the South Carolina State Ports Authority, an instrumentality of the State of South Carolina, also known as the South Carolina Ports Authority (the "Ports Authority"), and City of Charleston ("Licensee"). The Ports Authority and Licensee are sometimes collectively referred to as the "parties" or singularly as a "party."

WITNESSETH:

WHEREAS, the Ports Authority operates the Union Pier Terminal ("Terminal") and related facilities serving the Port of Charleston ("Port"); and

WHEREAS, Licensee desires to license certain space in Building 313 at the Terminal for the sole purpose of storing Licensee’s marine firefighting and rescue equipment; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE I. GRANT AND DESCRIPTION OF LICENSED AREA

1.01 Grant of License. The Ports Authority hereby grants to Licensee, and Licensee hereby accepts, a license for the use of certain space in Building 313 located at the Terminal, said space and its dimensions being more fully shown, described, and/or designated on Schedule A attached to and made a part of this Agreement (hereinafter individually and collectively the "Facility"), together with a nonexclusive license to use other facilities at the Terminal, as set forth in Section 1.02 of this Agreement, for the purposes and upon the terms stated herein. The parties agree that this Agreement is a license and not a lease, and that no estate in real property or other interest in property is created by this Agreement. Notwithstanding anything herein to the contrary, the Ports Authority reserves the right in its sole discretion to relocate the entire Facility, or any portion of the Facility, within the Terminal or Port upon thirty (30) calendar days’ prior written notice to Licensee. If all or a portion of the Facility is relocated, Schedule A of this Agreement shall be updated to reflect the new location(s) of the Facility; and Licensee shall promptly surrender the vacated location(s) of the Facility in accordance with the terms and conditions of this Agreement. The gate at the Terminal is currently manned twenty-four hours, seven days per week.

1.02 Common Facilities. Attendant to this Agreement, Licensee may use, in common with other users of the Port, passageways between the Facility and highways and other public access to Terminal facilities, driveways and other facilities made available from time to time by the Ports Authority. The Ports Authority shall have the right to change the designated common facilities,
and to designate certain common facilities for the exclusive use of one or more users of the Port or Terminal so long as such activities do not impair Licensee’s use of the Facility. Use of the common facilities shall be on a first-come, first-served basis, and subject to such rules and regulations as may be adopted from time to time by the Ports Authority, and subject to scheduling of the Ports Authority, which, in its sole discretion, it deems necessary or useful for proper management of the other facilities on the Terminal and at the Port.

1.03 **Acceptance.** Licensee agrees to accept possession of the Facility in “as is” condition. Licensee represents and warrants to the Ports Authority that Licensee has fully inspected the Facility and is relying solely upon its own inspections and examinations of the Facility in entering into this Agreement. This License is subject to all matters, easements, records, restrictions, permits, regulations, ordinances, and covenants of record, including but not limited to zoning. THE PORTS AUTHORITY MAKES NO WARRANTY, EXPRESS OR IMPLIED AS TO THE CONDITION OF THE FACILITY, TERMINAL, OR ANY EQUIPMENT OR MECHANICAL APPARATUS CONSTITUTING ANY PORTION OF THE FACILITY OR TERMINAL, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Any additional alterations or improvements to the Facility required by Licensee for the conduct of its operations shall be made by Licensee at its sole cost and expense in accordance with the requirements set forth in this Agreement. Licensee shall deliver to the Ports Authority copies of all licenses, permits and other governmental approvals required for the conduct of its operations at the Port prior to commencing any activities at the Port, the Terminal, or the Facility, and prior to each renewal or modification thereof.

1.04 **Trade Fixtures, Machinery, and Equipment.** Title to and the right to remove from the Facility any trade fixtures, machinery, equipment, apparatus or other personal property owned or installed from time to time by Licensee in or about the Facility (all hereinafter referred to as “Licensee Equipment”) shall remain in Licensee during the time and life of this Agreement, regardless of the method of installation thereof and shall not vest in the Ports Authority by reason of affixation to the realty or otherwise.

**ARTICLE II. TERM**

2.01 **Term.** The term of this Agreement shall be for thirty (30) days beginning on the Commencement Date and continuing on a month-to-month basis. This Agreement may be terminated by either party, for any reason or no reason at all, upon thirty (30) days’ prior written notice to the other party.

**ARTICLE III. LICENSE FEE AND OTHER ITEMS**

3.01 **License Fee.** Licensee shall pay to the Ports Authority a License Fee (“License Fee”) in the amount of Five and no/100 Dollars ($5.00), in advance, due in full on the Commencement Date.

3.02 **MTOS.** Except as specifically covered in this Agreement, the use of the Facility and Terminal and all matters, arrangements, services, and charges between the parties shall be governed by the rules, regulations, rates, and terms of the Authority’s then-current Marine
Terminal Operator Schedule / Terminal Tariff No. 8, as may be amended from time to time, or its successor (“MTOS”). This Agreement and the MTOS shall be read to be consistent and complimentary. Any conflict among this Agreement and the MTOS shall be resolved by giving priority to this Agreement.

3.03 **Security Deposit.** Licensee shall deposit with the Ports Authority a sum equal to the amount of the first month’s License Fees for the Facility to be retained by the Ports Authority as security for the full and faithful performance of the terms, covenants, and conditions of this Agreement (“Security Deposit”). No interest shall be due or payable with respect to the Security Deposit. The Ports Authority shall have the right, in addition to any other rights or remedies it may have, to increase the amount of the Security Deposit upon any failure by Licensee to timely comply (following appropriate notice and cure periods) with all of the terms and conditions of this Agreement. Licensee shall deposit with Ports Authority the sum so requested within ten (10) days following written notice from Ports Authority. The Ports Authority may commingle the Security Deposit with other funds of the Ports Authority. The Ports Authority may use, apply or retain the whole or any part of the Security Deposit to the extent required for the payment of any License Fees or other sums payable hereunder as to which Licensee is in default. If Ports Authority uses any portion of the Security Deposit as permitted hereunder, Licensee shall pay to Ports Authority on demand the amount necessary to replenish the Security Deposit. If Licensee shall fully and faithfully comply with all of the covenants, agreements and conditions of this Agreement, the Security Deposit shall be returned to Licensee without interest within thirty (30) days after the expiration of this Agreement and the surrender of the Facility to Ports Authority in accordance with the terms of this Agreement. If the Facility or Terminal is sold, the Ports Authority shall have the right to transfer the Security Deposit to the purchaser and Licensee shall thereafter look solely to the purchaser for the return of the Security Deposit. Any action taken by Ports Authority under this paragraph shall not be construed to be a waiver of any of its rights under this Agreement or of its rights in case of subsequent default to enforce any remedy available to it by law, equity, or under the provisions of this Agreement, including the remedies set forth in this paragraph.

3.04 **Taxes, Assessments, and User Fees.** The Facility currently is not subject to taxes. Licensee shall, however, pay any and all future taxes or assessments (ad valorem or otherwise) that may be levied upon the Facility and/or upon any structures or personal property, machinery, or equipment of Licensee on the Facility, or that may be levied upon the Ports Authority in connection with the Facility. Licensee shall also pay any user fee, such as solid waste disposal fees, imposed upon the Ports Authority in proportion to the activities or the uses of occupancy enjoyed by Licensee under this Agreement. Should the Facility become subject to taxes, assessments, or additional user fees during the term of this Agreement, then such shall be invoiced to Licensee and Licensee shall pay said taxes, assessments and user fees on the Facility within thirty (30) days of the Ports Authority’s invoice.

3.05 **Payment of Fees and Other Charges.** All License Fee payments and other payments due hereunder shall be made payable to the Ports Authority and shall be delivered to the Ports Authority at 200 Ports Authority Drive, Mount Pleasant, South Carolina 29464, Attention: Accounting, or at such other place as the Ports Authority may designate in writing to Licensee. Any fees or other payments due hereunder which are not received by the Ports Authority within fifteen (15) days following the date specified herein for payment or under the terms of any invoice generated by the
Ports Authority shall be subject to a late charge equal to three percent (3%) of the amount then due. Assessment of late charges shall be in addition to any other rights or remedies of the Ports Authority.

3.06 **Payment Obligation.** Except as otherwise provided in this Agreement, the obligation of Licensee to make the payments required in this Agreement, and to perform and observe all other agreements on its part contained herein, shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim Licensee might otherwise have against the Ports Authority. Any sums, charges, or amounts of whatever nature to be paid by Licensee to the Ports Authority in addition to the License Fees and any monies paid or expenses incurred by the Ports Authority to correct violations of any covenants of Licensee hereunder shall be an additional license fee. All additional license fees shall be immediately due and payable upon notice from the Ports Authority.

**ARTICLE IV. FACILITY OPERATIONS**

4.01 **Permitted Use.**

a. The Facility shall be used and occupied by Licensee solely for storing Licensee’s marine firefighting and rescue equipment (“**Permitted Use**”).

b. Licensee, at its sole cost and expense, shall install a keypad at the Facility to allow Licensee to access the Facility without having to contact the Ports Authority. Licensee shall provide the Ports Authority with the access code to the Facility.

c. Licensee shall not use, nor permit the Facility or any part of the Terminal to be used, to perform maintenance or repairs of any kind on Licensee’s marine firefighting and rescue equipment.

d. Licensee shall not use, nor permit the Facility or any part of the Terminal to be used, for any disorderly or unlawful purpose.

e. Licensee shall not permit anyone to use tobacco products on the Facility. The Facility shall be a tobacco free and smoke free zone.

f. Licensee must submit a Hurricane Plan to the Ports Authority which details the sequence of events and responsibilities for securing the Facility in the event of a potential impact to the Facility of a named wind storm (“**Hurricane Plan**”). The Hurricane Plan should clearly define the duties and responsibilities of Licensee and the Ports Authority and provide an anticipated timeline for completing those duties.

4.02 **Maritime Transportation Security Act.** Licensee and all Licensee’s agents, employees and contractors shall fully comply with all applicable provisions of the Maritime Transportation Security Act (the “**MTSA**”) and all applicable policies, procedures, and regulations of the Ports Authority and the Department of Homeland Security pertaining to security and operations at the
Port and the Terminal. Where applicable, Licensee's agents, employees and contractors must successfully complete MTSA training within thirty (30) days following the date of this Agreement for existing personnel, and within thirty (30) days following the hire date for personnel hired or retained during the term of this Agreement. Where applicable, the Ports Authority may require a permit decal for certain motor vehicles for a fee. Where applicable, personnel at the Terminal must apply for and receive a Transportation Workers Identification Card ("TWIC") or any other identification that may be required by the Ports Authority or the Department of Homeland Security. All Licensee’s employees, agents, contractors, and operators located at the Facility shall be citizens of the United States or legally documented persons entitled to work in the United States.

4.03 **Compliance with Laws and Other Restrictions.** Licensee shall fully comply with all applicable rules and regulations of the Ports Authority, including those in the Ports Authority’s MTOS, and all other applicable laws, rules, regulations, ordinances, building, fire and safety codes, orders, decrees, permits, approvals and determinations, whether or not presently contemplated, of all federal, state, county and local governmental bodies (the “Laws and Regulations”) including, without limitation, all immigration laws, all environmental laws, and the terms of all easements, covenants, conditions and restrictions affecting: (a) use and operation of the Facility, Port, or Terminal; (b) any activities or operations of Licensee at the Facility, Port or Terminal; (c) any equipment, machinery, improvements or other property installed or operated at the Facility, Port or Terminal by or on behalf of Licensee; or (d) any cause or condition created by or at the instance of Licensee, its agents, employees, contractors, licensees, invitees or any other person or entity claiming by or through Licensee. Licensee shall pay all costs, expenses, fines, penalties and damages which may be imposed upon the Ports Authority by reason of or arising out of the failure by Licensee to fully and promptly comply with and observe the Laws and Regulations. Licensee shall promptly notify the Ports Authority and deliver to the Ports Authority a copy of any notice Licensee receives respecting any violation of the Laws and Regulations relating to its operations at the Facility, Port or Terminal.

4.04 **Waste and Nuisance Prohibited.** Licensee shall not commit waste, or suffer or permit waste to be committed, or allow or permit any nuisance at the Facility, Port or Terminal. Licensee shall not permit any action at the Facility, Port or Terminal which would disturb or endanger occupants of adjoining facilities or unreasonably interfere with the use of their respective facilities or do anything which would tend to injure the reputation of the Ports Authority or the Terminal. Licensee shall not cause, maintain or permit any storage outside of the Facility.

4.05 **Sanitary Condition.** Licensee shall at its expense (a) maintain the Facility in as clean, orderly and sanitary condition as possible, and free of insects, rodents, vermin and other pests; (b) keep any garbage, trash, rubbish or other refuse in appropriate containers until removed; (c) have such garbage, trash, and any other unusable materials removed on a regular basis; (d) control surface dust in unpaved areas; and (e) conduct its operations in all respects in a dignified manner in accordance with standards adopted from time to time by the Ports Authority.

4.06 **Hazardous Materials.**

a. As used herein, the term “Hazardous Materials” shall mean any substance presenting a risk to human health or the environment as defined pursuant to applicable federal, state, or local
environmental laws, ordinances, or regulations, as now or as may be passed or promulgated in the future.

b. Licensee covenants and agrees throughout the term of this Agreement: (i) that Licensee shall not generate, manufacture, refine, treat, store, handle, dispose, produce, or process Hazardous Materials at the Facility or any other area of the Terminal or the Port, except activities which are conducted in compliance with this Agreement and all applicable Laws and Regulations, provided such activities do not involve the use or disposal of radioactive materials; (ii) to take reasonable steps to ensure that no agent, employee, contractor, licensee or invitee of Licensee, as a result of any intentional or unintentional act or wrongful omission, uses, stores or in any manner locates or releases any Hazardous Materials in or at the Facility or elsewhere at the Port or the Terminal, or suffers the presence of Hazardous Materials thereon except as expressly permitted by subsection (i) of this section; (iii) to promptly notify the Ports Authority in writing following receipt of any notice respecting Hazardous Materials at, on, under, from or possibly affecting the Facility, the Terminal or the Port; (iv) to conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required to clean up and remove any Hazardous Materials at, on, under, emanating from or affecting the Facility, other areas of the Terminal or the Port as a result of any action or wrongful omission by Licensee or any agent, employee, contractor, licensee or invitee of Licensee, in accordance with applicable Laws and Regulations; and (v) to comply with any reasonable programs instituted by the Ports Authority for the purpose of testing, containment, remediation, removal or other actions necessary to contain, clean up or remove any Hazardous Materials at, on, under, emanating from or affecting the Facility, other areas of the Terminal or the Port, including, without limitation, any soil management plan, asbestos and petroleum containment programs and the like.

c. Upon reasonable written notice to the Licensee, the Ports Authority shall have the right, but not the obligation, to conduct inspections of the Facility and to take samples of substances located on the Facility, as reasonably required to determine the presence, nature and extent of any Hazardous Materials at, on, under, emanating from or affecting the Facility and compliance with applicable Laws and Regulations.

**ARTICLE V. UTILITIES AND OTHER SERVICES**

5.01 **Utilities, Solid Waste Disposal Fees, and Other Services.** Electricity, water, sewer, and stormwater fees are included in the License Fee. Licensee shall pay directly to the purveyors thereof, installation, service charges, and consumption invoices for any other utilities Licensee uses at the Facility, including but not limited to communication and data lines. Licensee shall pay the applicable county solid waste disposal user fee if Licensee utilizes dumpsters at the Facility. The Ports Authority shall not be liable for any loss or damage arising from the interruption or inadequacy of any utility or other service or the failure to furnish or delay in furnishing any utilities or other services.
ARTICLE VI. REPAIRS, MAINTENANCE, AND ALTERATIONS

6.01 Repairs and Maintenance.

a. Licensee shall, at Licensee's expense, maintain the Facility a clean, orderly, safe, and sanitary condition. Licensee shall not cause or permit any waste, damage, or injury to the Facility, Port, or Terminal and shall promptly notify the Ports Authority of the need for repairs or maintenance. Licensee shall pay, on demand, the cost of any repairs or replacements required because of any damage caused by the negligence or misconduct of Licensee or Licensee's employees. The Ports Authority shall not be required to furnish any services or facilities or to make any repair or alteration in or to the Facility.

b. Within ten (10) days of each anniversary of the Commencement Date, Licensee and the Ports Authority agree to inspect the Facility and prepare a report indicating the condition of the Facility and specifying any damages which shall be repaired by Licensee and/or the Ports Authority. The party responsible for any such repairs shall see that the necessary repairs are started within thirty (30) days after such report, completed promptly, and that the purveyors of such repairs are timely paid.

6.02 Alterations by Licensee.

a. Licensee shall not make any material alterations, renovations, improvements or other installations in, on or to the Facility or any part thereof (including, without limitation, any alterations of the entrance way(s) or signs, structural alterations, or any cutting or drilling into any part of the Facility or any securing of any fixture, apparatus, or equipment of any kind to any part of the Facility) unless and until Licensee shall have caused plans and specifications therefore to have been prepared, at the sole cost and expense of Licensee, by an architect or other duly qualified person, and shall have obtained the Ports Authority’s written approval thereof, said approval shall be in the Ports Authority’s sole and absolute discretion.

b. If such approval is granted, Licensee shall cause the work described in such plans and specifications to be performed, at its expense, promptly, efficiently, competently and in a good and workmanlike manner by duly qualified or licensed persons or entities reasonably acceptable to the Ports Authority, using first grade materials, without interference with or disruption to the operations of occupants of adjoining properties. Licensee shall not obstruct the sidewalks, alleyways or entrances to the Facility or any adjacent properties during construction. All such work shall comply with all applicable Laws and Regulations.

c. All improvements and additions made by or for Licensee shall be deemed part of the Facility, shall remain at the Facility, and shall be surrendered to the Ports Authority at the expiration or earlier termination of this Agreement, unless the Ports Authority shall elect to have Licensee remove all or any portion of such alterations, additions, or improvements, in which event Licensee prior to expiration or earlier termination of this Agreement shall accomplish such removal at its sole cost and repair any damage to the Facility caused by such removal.
6.03 **Mechanic's Liens.**

a. No person shall be entitled to any lien upon the Facility, or any portion thereof, directly or indirectly derived through or under Licensee, or through or by virtue of any act or omission of Licensee, or for any improvements or fixtures made thereon or installed therein, or for or on account of any labor or material furnished thereon or thereto, or for or on account of any matter or thing whatsoever; and nothing in this Agreement shall be construed to constitute a consent by the Ports Authority to the creation of any such lien.

b. Licensee shall pay promptly all persons furnishing labor or materials with respect to any work performed by Licensee or its contractor on or about the Facility. In the event any mechanic’s or other lien shall at any time be filed against the Facility by reason of work, labor, services, or materials performed or furnished, or alleged to have been performed or furnished, to Licensee or to anyone holding the Facility through or under Licensee, Licensee shall, within thirty (30) days following notice thereof, cause the same to be discharged of record or bonded to the satisfaction of the Ports Authority. If Licensee shall fail to cause such lien to be so discharged or bonded, then, in addition to any other right or remedy of the Ports Authority, the Ports Authority may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by the Ports Authority including reasonable attorney’s fees incurred by the Ports Authority either defending against such lien or in procuring the discharge of such lien, shall be due and payable by Licensee to the Ports Authority on demand.

6.04 **The Ports Authority’s Right to Inspect and View Facility.** The Ports Authority, its agents and representatives may at all reasonable times with reasonable prior written notice enter the Facility for the purpose of inspections.

6.05 **Security.** The Ports Authority shall not be liable for the safety or security of any persons or property on the Facility or Terminal. Licensee, in its discretion, may provide appropriate surveillance or security and alarm systems to assure the security and safety of the Facility and protection of persons or property at the Facility. The Ports Authority shall not be liable for any loss or damage or theft arising from criminal activities at the Facility, Port, or Terminal or the inadequacy or alleged inadequacy of any security service or the failure to furnish or delay in furnishing any such service. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of any portion of the Facility or other property of the Ports Authority, shall first be reported to the Ports Authority Port Police, then to the Terminal Manager or his/her designee.

**ARTICLE VII. INSURANCE**

7.01 **Insurance in General.** Licensee shall, at its own expense, maintain in effect for the benefit of the Ports Authority and Licensee insurance coverage as set forth in this Article VII. The Ports Authority shall have the right, but not the obligation, to maintain commercial liability and such other insurance as the Ports Authority may deem reasonably necessary to protect its interests throughout the term of this Agreement. Except in instances of Ports Authority negligence or willful misconduct, any insurance obtained by the Ports Authority will not cover the loss of any cargo, equipment, or contents at the Facility. Such coverage shall be solely for the benefit of the
Ports Authority and upon such terms as the Ports Authority may require. Licensee shall not intentionally violate, or permit the intentional violation of, any condition imposed by any of Licensee’s insurer(s), surety(ies) or other issuer(s) of Licensee’s coverage(s).

7.02 **Insurance to be Purchased and Maintained by Licensee.** At all times during the term of this Agreement, or from and after any earlier entry on the Facility by Licensee, its agents, contractors or employees, Licensee shall purchase and maintain in full force and effect insurance providing coverage as follows:

a. Commercial general liability insurance with coverage for Facility operations, independent contractors, products-completed operations, personal injury and contractual liability (contractual liability must include the tort liability of another assumed in a business contract), with limits for each occurrence of no less than $1,000,000 for bodily injury/property damage liability and $1,000,000 for personal injury liability.

b. “All Risk” property insurance including, but not limited to, coverage for special perils, wind, vandalism, theft, and malicious mischief, written at replacement cost value and with replacement cost endorsement, covering all improvements made to the Facility by Licensee and all personal property of Licensee located at the Facility, Port, or Terminal.

c. Worker’s compensation as required by South Carolina law.

d. Automobile liability insurance with minimum limits of no less than $1,000,000 covering Licensee owned or hired vehicles (not including privately owned vehicles) operated at the Terminal or Port by Licensee and its employees.

e. Additional coverage as reasonably warranted by Licensee operations at the Facility, Terminal, or Port or to reflect evolving industry standards and/or customary trade practices.

7.03 **Contractor Insurance.** Licensee shall require any contractor performing work at the Facility to carry and maintain, at no expense to the Ports Authority, policies of insurance sufficient to cover the work and standard risks associated with the work being performed, including adherence to all Laws and Regulations. The Ports Authority shall have the right to require such additional coverage as the Ports Authority may reasonably deem appropriate based upon the work to be performed by the contractor. All contractors shall comply with the Ports Authority’s Annual Business Registration program.

7.04 **Policy Requirements.** The insurance coverage required to be maintained by Licensee hereunder shall be primary and non-contributing with any insurance carried by the Ports Authority. Each insurance policy required to be maintained by Licensee and any contractor performing work on behalf of Licensee shall: (i) name the Ports Authority as a loss payee; (ii) require not less than thirty (30) days prior written notice to the Ports Authority of any material change, impairment, cancellation or non-renewal of coverage; and (iii) provide that the interest of the Ports Authority shall not be invalidated by any act or negligence of Licensee, the Ports Authority, any person or entity having an interest in or occupying any portion of the Facility, or any of their agents,
employees, contractors or invitees, or by the use of the Facility for any purpose that is more hazardous than permitted by such policy.

7.05 **Delivery of Certificates, Policies, Annual Business Registration.** Licensee shall deliver to the Ports Authority a certificate of insurance and endorsements evidencing the existence or renewal of such coverage prior to the Commencement Date, and, with respect to insurance which its contractors are required to carry, prior to commencement of any work at the Facility, and prior to the expiration date of each policy. Licensee shall deliver a certified copy of each policy and endorsements to the Ports Authority upon reasonable request. If any policy provides for payment of a deductible by the insured, Licensee shall be liable for the full deductible amount. The limits of any insurance required by this Agreement shall not limit the liability of Licensee pursuant to this Agreement. If Licensee fails to procure and maintain any insurance required by this Agreement, the Ports Authority may, but shall not be required to, procure and maintain the same at the expense of Licensee, whether or not an Event of Default has occurred with respect thereto. Licensee shall comply with the Ports Authority’s Annual Business Registration program.

7.06 **Repair and Reconstruction.** If the Facility shall be materially damaged by fire or any other casualty customarily covered by the insurance Licensee or the Ports Authority maintains on the Facility, the Ports Authority shall have the option to either: (i) repair and restore the Facility (to the extent of the proceeds collectible from the insurance carried thereon) with reasonable diligence to substantially the condition as existed immediately prior to such damage; (ii) relocate the Facility; or (iii) terminate this Agreement by written notice to Licensee. The Ports Authority shall not be liable for interruption of operations at the Facility or for damage to or replacement or repair of any personal property at the Facility or any improvements made to the Facility by Licensee, all of which damage, replacement or repair shall be undertaken and completed by Licensee promptly and in the manner set out in Article VI of this Agreement.

**ARTICLE VIII. ASSIGNMENT PROHIBITED**

8.01 **Assignment Prohibited.** Licensee shall neither transfer nor assign this Agreement or any interest herein nor delegate any of its duties hereunder nor grant any license or other right of occupancy or permit the use of the Facility or any portion thereof by any party other than Licensee without the prior written consent of the Ports Authority, such consent shall be in the Ports Authority’s sole and absolute discretion. Any purported assignment, delegation, or transfer in violation with this Section 8.01 shall be null and void.

8.02 **Right to Remove Unauthorized Parties.** The Ports Authority shall have the right to reenter the Facility and to remove any party occupying the same because of any assignment or grant by Licensee of any license, right of occupancy or use without the prior written consent of the Ports Authority, and Licensee shall pay to the Ports Authority promptly on demand, the reasonable costs and expenses (including but not limited to reasonable attorney and professional fees) incurred by the Ports Authority in connection therewith.

**ARTICLE IX DEFAULT**
9.01 **Event of Default.** Any one or more of the following events shall constitute a default by Licensee:

a. The failure of Licensee to pay any License Fees, additional fees or other sums of money within five (5) business days following the giving of written notice of nonpayment by the Ports Authority.

b. The failure of Licensee to maintain insurance, to require its contractors to maintain insurance or to deposit certificates of insurance and endorsements with the Ports Authority, as and when required pursuant to the terms of this Agreement, which failure is not cured within ten business (10) days after the giving of written notice thereof by the Ports Authority.

c. Default by Licensee in the performance or observance of any covenant or obligation of Licensee pursuant to this Agreement (other than a default described elsewhere in this Section 9.01), which default is not cured within ten calendar (10) days after the giving of notice thereof by the Ports Authority, unless such default is of such nature that it cannot be cured within a ten (10) calendar day period and Licensee immediately undertakes and diligently pursues such action as is necessary to cure the default and the default is cured within thirty (30) days.

d. The transfer of any rights of Licensee hereunder by attachment, execution or similar legal process; and such adjudication or order is not vacated within thirty (30) calendar days after its entry.

e. The commencement of a case under any chapter of the Federal Bankruptcy Code by or against Licensee or the filing of a voluntary or involuntary petition proposing the adjudication of Licensee a bankrupt or insolvent, or the reorganization of Licensee or an arrangement by Licensee with its creditors, unless the petition is filed or case commenced by a party other than Licensee and is withdrawn or dismissed within sixty (60) calendar days after the date of its filing.

f. The appointment of a receiver or trustee for the business or property of Licensee unless such appointment shall be vacated within thirty (30) calendar days after its entry.

9.02 **Remedies.** Upon the occurrence and continuance of a default by Licensee, the Ports Authority shall have the following rights, without further notice to Licensee in any instance, but in accordance with applicable law in all instances:

a. Perform, on behalf and at the expense of Licensee, any obligation of Licensee under this Agreement which Licensee has failed to perform, the reasonable cost of which performance by the Ports Authority shall be payable by Licensee to the Ports Authority on demand;

b. Elect to terminate the rights of Licensee and remove Licensee and any other persons from the Facility;

c. Re-license all or any portion of the Facility, alone or together with other facilities, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the term of this Agreement) and on such terms and conditions (which
may include fee concessions and alterations of the Facility) as the Ports Authority, in its sole and absolute discretion, may determine, but the Ports Authority shall not be liable for, nor shall the obligations of Licensee hereunder be diminished by reason of, any failure by the Ports Authority to re-license the Facility or any failure by the Ports Authority to collect any license fees due upon such re-licensing. The Ports Authority shall not be obligated to re-license the Facility or any portion thereof in preference to any other facilities owned or controlled by the Ports Authority. Licensee shall have no right in or to any surplus which may be derived by the Ports Authority from any such re-licensing; and

d. Pursue any combination of such remedies and any other legal or equitable right or remedy which it may have. The right of the Ports Authority to terminate the rights of Licensee hereunder and to remove Licensee and any other persons from the Facility shall be effective notwithstanding any dispute respecting the Licensee default.

9.03 **Damages.** If the Ports Authority elects to terminate the right of Licensee to use the Facility, Licensee shall nevertheless remain liable for all damages which may be due or sustained by the Ports Authority and all reasonable costs, fees and expenses incurred by the Ports Authority in pursuit of its remedies hereunder or in re-licensing the Facility to others from time to time including, but not limited to reasonable attorneys’ and professional fees and the cost of removing any property of Licensee and retrofitting or altering the configuration of the Facility, less the net amount of license fees, if any, received by the Ports Authority from other parties operating the Facility during the remainder of the term together with interest on the unpaid balance at a rate equal to no greater than eight percent (8%) per annum.

9.04 **Force Majeure.** If the Ports Authority or Licensee shall be delayed, hindered or prevented from the performance of any act required hereunder by reason of any governmental restriction, civil commotion, war, insurrection, sabotage, military or usurped power, scarcity of labor or materials, strike, lock-out, fire or other natural catastrophe, or any other reasons beyond its control (“Force Majeure”), the period for the performance of any such act shall be excused for the period in which performance is prevented by Force Majeure. If Force Majeure hinders Licensee’s Permitted Use of the Facility, then Licensee shall not be responsible for payment of the License Fee or any other charges, fees, or rates or otherwise until the Force Majeure event has ended. Notwithstanding anything herein, the provisions of this Section 9.04 shall not apply to any obligation to maintain insurance pursuant to this Agreement.

**ARTICLE X. SURRENDER**

10.01 **Delivery of Possession to the Ports Authority.** Licensee shall surrender the Facility to the Ports Authority at the expiration or earlier termination of this Agreement (i) free and clear of all liens, encumbrances, security interests, pledges, charges, restrictions and claims of any nature; and (ii) in the same or better condition as received, ordinary wear and tear excepted. This provision shall survive any termination of this Agreement.

10.02 **Removal.** If the Ports Authority shall elect to have Licensee remove all or any portion of the equipment, alterations, additions, or improvements made to or installed at the Facility by Licensee, Licensee shall remove the same and promptly repair any damage to the Facility caused
by such removal. If Licensee shall fail to remove such property for any cause whatsoever, the Ports Authority may, at its option, remove and dispose of or store it without liability to Licensee for loss thereof. In that event, Licensee shall pay to the Ports Authority on demand, all costs and expenses incurred by the Ports Authority and storage charges for the length of time it shall be in the possession of the Ports Authority. Alternatively, the Ports Authority may, at its option, without notice, and without legal process, sell the property or any part thereof at a private sale and apply the proceeds to any amounts due under this Agreement and the expenses incident to removal and sale of the property. This provision shall survive any termination of this Agreement.

ARTICLE XI. LIMITATION OF LIABILITY AND RISK OF LOSS

11.01 Limitation of Liability. The Ports Authority shall not be liable for any bodily injury or damage or theft to property sustained by Licensee or others at the Facility, Port, or Terminal, including but limited to any part thereof being out of repair, or due to the leakage of gas, smoke, steam, electricity, ice, rain, or snow, or due to the happening of any accident in or about the Facility, Port, or Terminal, or due to any negligence of any other person or entity, in all cases unless due to the negligence or intentional acts of the Ports Authority. This provision shall survive any termination of this Agreement.

11.02 Risk of Loss. Licensee shall bear all risk of loss, damage or injury to persons or property within the Facility or arising out of use or occupancy of the Facility, Port, or Terminal by Licensee or Licensee’s employees, occurring because of any risk customarily covered by the insurance Licensee is required to maintain pursuant to this Agreement. All personal property brought onto the Facility, Port, or Terminal by Licensee shall be at the risk of Licensee only, and the Ports Authority shall not be liable for theft thereof or loss or any damage thereto. This provision shall survive any termination of this Agreement.

ARTICLE XII. NOTICES

12.01 Sending of Notices. Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing and directed to a party at its address as set forth below. Either party may designate a new address by written notice to the other party. All notices shall be effective and deemed delivered: (i) upon transmission when sent on a business day prior to 5:00 PM via email with written confirmation of successful transmission; (ii) upon deposit with the carrier when sent via an overnight delivery or courier service providing written confirmation of delivery; and (iii) three (3) calendar days from deposit with the United States Postal Service when mailed postage prepaid by United States registered or certified mail, return receipt requested.

If to the Ports Authority:
S.C. State Ports Authority
Attn: Chief Financial Officer
200 Ports Authority Drive

Mount Pleasant, SC 29464
Email: ppagettt@scspa.com

With a copy to:
S.C. State Ports Authority  
Attn: General Counsel  
200 Ports Authority Drive  
Mount Pleasant, SC 29464  
Email: rlowell@scspa.com

If to Licensee:  
City of Charleston  
Attention: Corporation Counsel  
80 Broad Street  
Charleston, SC 29401  
Email: copelandj@charleston-sc.gov

With a copy to:  
City of Charleston  
Attention: Real Estate Management Division  
PO Box 304  
Charleston, SC 29401  
Email: baileyl@charleston-sc.gov

ARTICLE XIII. MISCELLANEOUS

13.01 No Agency or Partnership. The parties shall not in any way or for any purpose be deemed to be or become partners, joint venturers, agents, employees or employers with respect to each other by virtue of this Agreement or for purposes hereof. Neither party shall be responsible for supervising any activities or conduct of the other party, its agents or employees.

13.02 Entire Agreement. This Agreement (including the Schedules attached hereto, the MTOS, and any documents incorporated herein by reference) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreements or understandings, whether written or oral, which the parties, their agents or representatives may have had relating to the subject matter hereof. No modification, alteration, or waiver of any term, condition, or covenant of this Agreement shall be valid unless in writing signed by the Ports Authority and Licensee.

13.03 Successors and Assigns. This Agreement and the covenants and conditions herein contained shall inure to the benefit of and be binding upon the Ports Authority, its successors and assigns, and shall be binding upon and inure to the benefit of Licensee, its successors and permitted assigns. The Ports Authority shall be relieved of any obligations under this Agreement occurring after any sale or other transfer by the Ports Authority of its interest in the Facility, Port, or Terminal.

13.04 Waivers and Modification. No covenant, term, or condition hereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition of this Agreement. Acceptance by the Ports Authority of any performance by Licensee after the time it shall have become due
shall not constitute a waiver by the Ports Authority of the breach or default of any covenant, term, or condition of this Agreement unless otherwise expressly agreed to by the Ports Authority in writing. No modification of this License shall be effective unless submitted in writing and agreed to in writing by the parties hereto. No modification of one provision hereof shall be considered a waiver, breach, or cancellation of any other provision hereof.

13.05 **Construction of Ambiguity.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by the parties and their counsel and, in the case of any ambiguity or uncertainty, shall be construed according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto, and not against the party who drafted or had its counsel draft this Agreement or any section herein.

13.06. **Captions.** The Article and Section captions and headings are for convenience of reference only and shall not be used to construe or interpret the terms of this Agreement.

13.07 **Severability.** If any term or provision, or any portion thereof, of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13.08 **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed so as to confer upon any other party the rights of a third-party beneficiary.

13.09 **Applicable Law.** This Agreement and the rights and obligations of the parties hereunder and all matters arising out of or relating to this Agreement shall exclusively be governed by and construed in accordance with the laws of the State of South Carolina, without regard to its choice of laws and conflicts of law provisions, and the parties hereto specifically agree, exclusive of any other jurisdiction, to submit to and be bound by the jurisdiction of the state courts of the State of South Carolina. Venue for any action brought to enforce this Agreement shall lie in Charleston County, South Carolina.

13.10 **Waiver of Jury Trial.** Each party hereby irrevocably waives any and all rights which either may have to request a jury trial in any proceeding at law or in equity arising out of or in any way related to this Agreement or the relationship of the parties. This waiver extends to any and all rights to demand a trial by jury arising from any source, including but not limited to the Constitution of the United States, the Constitution of any state, common law or any applicable statute or
regulation. Each party hereby acknowledges that it is knowingly and voluntarily waiving the right to demand trial by jury.

13.11 **Effective Date.** This Agreement shall become effective on the date it is executed on behalf of the Ports Authority, following proper execution and delivery on behalf of Licensee, and delivered to Licensee. The Ports Authority shall not be bound by any of the terms or conditions set forth herein until this Agreement has been properly executed and delivered by both the Ports Authority and Licensee, and the Ports Authority reserves the right to terminate negotiations with Licensee at any time prior thereto.

13.13 **Time of the Essence.** Time shall be of the essence in the performance of all covenants and obligations of Licensee hereunder.

13.14 **Signature by Licensee Representatives.** Any individual executing this Agreement on behalf of Licensee: (i) represents and warrants that he or she has been duly authorized to execute and deliver this Agreement as a representative of the Licensee and has the power and authority to enter into and perform its obligations pursuant to this Agreement; and (ii) agrees to deliver to the Ports Authority, upon request, appropriate evidence of the existence, power and authority of the Licensee for whom such individual is acting.

13.15 **Electronic Signatures.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument and shall become effective when counterparts have been signed by each of the parties and delivered to the other parties; it being understood that all parties need not sign the same counterpart. The exchange of copies of this Agreement and of signature pages by electronic mail in "portable document format" (".pdf" format), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of an original Agreement for all purposes. Signatures of the parties transmitted by email or other electronic means shall be deemed to be their original signatures for all purposes.

[Remainder of page intentionally left blank. Signature page follows.]
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed by their proper officers as of the Commencement Date.

South Carolina State Ports Authority

By: ________________________________

Print Name: __________________________

Title: _______________________________

Date: ________________________________

City of Charleston

By: ________________________________

Print Name: __________________________

Title: _______________________________

Date: ________________________________
SCHEDULE A

[Drawing of Facility – Area in UPT Bldg. 313]
TO: John T. Tecklenburg, Mayor
DATE: January 13, 2022

FROM: Geona Shaw Johns on
DEPT: Housing and Community Development
ADDRESS: 3 Drews Court, Charleston, SC
TMS: 459-05-01-056

Request that City Council authorize the Mayor to execute the necessary documents for the re-purchase of 3 Drews from the Estate of Lillian A. Miller for $171,504.00. The property will be rehabilitated and sold for its original purpose — affordable homeownership opportunities for persons whose income does not exceed 120 percent of the Area Median Income. The cost of the acquisition of this will be borne from the Fee-in-lieu account.

ACTION REQUEST: 

COORDINATION: The request has been coordinated with: Homeownership Initiative Commission (HIC)

All supporting documentation must be included

Department Head
Legal Dept
Property Coordinator
Property Manager

FUNDING: Was funding needed? Yes X No
If yes, was funding previously approved? Yes □ No X

*If approved, provide the following: Dept/Div. Fee-in-Lieu Acct: 473020-42200
Balance in Account $4,735,985 Amount needed for this item $171,504

NEED: Identify any critical time constraint(s).

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED PACKAGE IS DUE IN THE CLERK OF COUNCIL’S OFFICE NO LATER THAN 10:00A.M. THE DAY OF THE CLERK’S AGENDA MEETING.

*Commercial Property and Community & Housing Development have an additional form.
COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: January 13, 2022
FROM: Geona Shaw Johnson DEPT: HCD
ADDRESS: 3 Drews Court, Charleston, SC
TMS: 459-05-01-056

PROPERTY OWNER: Estate of Lillian A. Miller
Request that City Council authorize the Mayor to execute the necessary documents for the re-purchase of 3 Drews from the Estate of Lillian A. Miller for $171,504.00. The property will be rehabilitated and sold for its original purpose – affordable homeownership opportunities for persons whose income does not exceed 120 percent of the Area Median Income. The cost of the acquisition of this will be borne from the Fee-in-lieu account.

ORDINANCE: Is an ordinance required? Yes [ ] No [x]

ACTION: What action is being taken on the Property mentioned?

[ ] ACQUISITION
Seller (Property Owner) Estate of Lillian A. Miller Purchaser City of Charleston

[ ] DONATION/TRANSFER
Donated By: __________________________

[ ] FORECLOSURE
Terms: __________________________

[ ] PURCHASE
Terms: __________________________

[ ] CONDEMNATION
Terms: __________________________

[ ] OTHER
Terms: __________________________

[ ] SALE
Seller (Property Owner) __________________________ Purchaser __________________________

[ ] NON-PROFIT ORG, please name __________________________
Terms: __________________________

[ ] OTHER
Terms: __________________________
**COMMERCIAL REAL ESTATE FORM**

- **EASEMENT**
  - Grantor (Property Owner): 
  - Grantee: 

- **PERMANENT**
  - Terms: 

- **TEMPORARY**
  - Terms: 

- **LEASE**
  - Lessor: 
  - Lessee: 

- **INITIAL**
  - Terms: 

- **RENEWAL**
  - Terms: 

- **AMENDMENT**
  - Terms: 

- **Improvement of Property**
  - Owner: 
  - Terms: 

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**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

- Yes [ ]
- No [ ]
- N/A [ ]

Results: ________________________________

**Signature:** ____________________________

Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

---

**NEED:** Identify any critical time constraint(s).
AGREEMENT OF PURCHASE AND SALE

This AGREEMENT OF PURCHASE AND SALE ("Agreement") is made as of the _____ day of _____________, 2022 by and between CITY OF CHARLESTON, having a notice address of 80 Broad Street, Charleston, South Carolina 29401 (hereinafter referred to as the "Buyer") and THE ESTATE OF LILLIAN A. MILLER, having a notice address of 3667 Highwood Drive, SE, Washington, DC 20020 (hereinafter referred to together as the "Seller").

WITNESSETH

1. SALE OF THE PROPERTY. The Seller agrees to sell and the Buyer agrees to purchase on the terms hereafter stated all of the Seller's right, title, and interest as of the Closing Date (hereafter defined), in and to the real property located in Charleston County, South Carolina, and known generally as 3 Drews Court, Charleston, South Carolina, bearing Charleston County Tax Map No.459-05-01-056, together with all improvements located thereon and appurtenances thereto, if any (the "Property").

1.1 Property Description. The Property being described as all that lot of land with the buildings thereon in the City of Charleston in the State of South Carolina, situate, lying and being on the North side of Lee Street and being a portion of Lot No. (71) on a plat of Wm. H. Hume, Surveyor, of the Blake lands dated December 12, 1872.

Measuring and containing in front on Drew Alley Thirty-Six (36') feet more or less. Same on the back line, and bounded on lot on Lee Street owned by _____________ and in depth Forty-Five (45') feet more or less.

Butting and bounding as follows: South by lands formerly owned by R. Cubsted, North by Drews Alley, East by lands of H.C. Burn, West by lands of ________________.

Said also being described as follows, to wit: All that certain lot, parcel or tract of land situate, lying and being in the City of Charleston School District 7-1, Charleston County, State aforesaid, consisting of one (1) lot, 5 Drews Court; this being the same property sold by the Sheriff for Charleston County, South Carolina, by virtue of tax executions issued to said Sheriff by the Treasurer of Charleston County for the years 1986 and 1987.

Said property also being more specifically shown and described on that certain plat by Absolute Surveying, Inc., dated February 6, 2002, entitled "CLOSING SURVEY 3 DREW'S COURT TMS 459-05-01-056 0.038 ACRES (1,662 SQFT) BEING CONVEYED TO: THE CITY OF CHARLESTON, CHARLESTON, COUNTY, SC", a copy of which plat is attached as Exhibit "A" to the Order of Judgment dated February 17, 2003, in the condemnation case entitled The City of Charleston v. Lillie Mae James, et al., Charleston County Court of Common Pleas Case Number
2002-CP-10-1882.

Being the same property conveyed to the Grantor herein by Master's Deed of Roger M. Young Master in Equity for Charleston County dated March 14, 2003 and recorded in the RMC Office for Charleston County in Book Z441, Page 194.

TMS #: 459-05-01-056

2. **PURCHASE PRICE.** Subject to the adjustments and the prorations hereafter described, the total purchase price to be paid by the Buyer to the Seller on the Closing Date for the Property (the "**Purchase Price**") is the sum of One Hundred Seventy-one Thousand Five Hundred & Four and No/100 Dollars ($171,504.00) calculated as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calculated Resale Value of the property</td>
<td>$261,736.00</td>
</tr>
<tr>
<td>Permanent City Subsidy retained by Buyer</td>
<td>($90,232.00)</td>
</tr>
<tr>
<td>Purchase Price</td>
<td>$171,504.00</td>
</tr>
</tbody>
</table>

At closing, the net proceeds remaining after customary transactional costs will be wired to the Seller’s estate and all financial obligations to the buyer would be considered final.

2.1 From the Purchase Price, an amount of Thirty-Two Thousand and no/100 ($32,000) Dollars will be set aside and paid into an Escrow Account subject to the terms and conditions of an Escrow Agreement, attached hereto as an exhibit to this Agreement. Notwithstanding any delays beyond its control, Buyer anticipates the repairs to be completed within 120 days.

3. **TITLE.** At the closing of the transfer of the Property from Seller to Buyer (the "**Closing**"), Seller shall convey good and marketable fee simple title to the Property free and clear of all leases, liens, encumbrances and security interests. Buyer shall cause the title to the Property to be examined, and at the Buyer’s option, shall cause a survey to be performed, all at the Buyer’s expense. Prior to the expiration of the Inspection Period, the Buyer shall submit to Seller notice in writing of its reasonable objections to title, including but not limited to any matters shown on any survey of the Property (the "**Title Objections**"). Seller shall have until the Closing to correct, at Seller’s sole cost and expense, the Title Objections. If, at the Closing, Seller has not corrected the Title Objections to Buyer’s satisfaction in Buyer’s sole and absolute discretion, notwithstanding the terms of Paragraph 7, the Buyer shall have as its sole and exclusive remedy the following options:

3.1 Buyer may accept such title as Seller may be able or willing to deliver, in which case, there will be no reduction in the Purchase Price and Buyer shall be deemed to have waived such objections and defects and neither party shall have further claim against the other by reason of such objections and defects; or

3.2 Buyer may terminate this Agreement, in which case this Agreement shall automatically become null and void.
4. CONDITIONS PRECEDENT TO CLOSING BY BUYER. The obligation of the Buyer to consummate this Agreement is subject to and conditioned upon the satisfaction, at or prior to the Closing Date, of each of the following conditions:

4.1 The representations and warranties of Seller made herein shall be deemed to have been made again on the Closing Date and then be true and correct, subject to any changes contemplated by this Agreement;

4.2 All terms, covenants and conditions to be complied with and performed by Seller under this Agreement on or before the Closing Date shall have been duly complied with and duly performed; and

4.3 No matters affecting title to which the Buyer objects shall have occurred between the time of the Buyer’s examination of title and the date of Closing.

5. CLOSING. The Buyer and the Seller agree that the purchase will be consummated as follows:

5.1 Title Transfer. The Seller agrees to convey title to the Property to the Buyer on or before the close of business on the Closing Date and, effective on the delivery of such deed by Seller to the Buyer, beneficial ownership and the risk of loss of the Property will pass from Seller to the Buyer.

5.2 Closing Date and Location. Unless otherwise agreed to by the parties in writing, the date of the Closing (the “Closing Date”) shall be on or before the date that is fifteen (15) days after the expiration of the Inspection Period. TIME IS OF THE ESSENCE. Unless otherwise agreed in writing, Closing will take place at the offices of Buyer’s attorney in Charleston, South Carolina.

5.3 Seller’s Instruments. At Closing, the Seller will deliver or cause to be delivered to the Buyer the following items:

5.3.1 General Warranty Deed. A general warranty deed (the “Deed”) executed by the Seller conveying the Property to the Buyer.

5.3.2 Affidavits. Any and all affidavits, certificates or other documents required by the title insurer in order to cause it to issue an owner’s title insurance policy in a form and condition acceptable to Buyer.

5.3.3 Authorizations. A certified copy of the resolutions adopted by the Seller and such other evidence of Seller’s power and authority to enter into this Agreement and to convey the Property as Buyer reasonably requests.
5.3.4 Non-Foreign Affidavit. Seller’s affidavit stating, under penalty of perjury, Seller’s U.S. taxpayer identification number and that Seller is not a foreign person within the meaning of Paragraph 1445 of the Internal Revenue Code.

5.3.5 Additional Documents. Such additional documents as might be reasonably required by Buyer or Buyer’s title insurer in order to perfect the conveyance, transfer and assignment of the Property to Buyer and issue an owner’s title insurance policy.

5.4 Buyer’s Instruments. At Closing, the Buyer will deliver to the Seller the following items:

5.4.1 Purchase Price. The payment required by Paragraph 2 hereof, subject to the terms in Section 2.1.

5.4.2 Additional Documents. Such additional documents as might be reasonably required by the Seller to consummate the sale of the Property to the Buyer.

5.5 Closing Costs. With respect to the conveyance of the Property, the Seller shall pay its own legal expenses, deed and other seller document preparation costs, any sum necessary to correct any Title Objections raised by Buyer in writing prior to expiration of the Inspection Period, and that Seller agrees, in writing, to pay, and recording fees or stamps applicable to the Deed, if any. The Buyer will pay the following costs: the Buyer’s attorney’s fees, recording charges, and all other costs to include appraisal and survey costs, and title insurance costs.

6. POSSESSION. Possession of the Property will be delivered to the Buyer on the Closing Date free from leases and parties claiming rights to possession of the Property.

7. DEFAULT; REMEDY. In the event that Seller or the Buyer fails to perform their obligations hereunder, the party claiming default will make written demand for performance. If Seller defaults and fails to comply with such written demand within ten (10) days after receipt thereof, the Buyer shall be entitled to seek any remedy available at law or in equity. If the Buyer defaults and fails to comply with such written demand within ten (10) days after receipt thereof, Seller’s sole remedy will be to terminate this Agreement.

8. ADJUSTMENTS AND PRORATIONS. All receipts and disbursements of the Property, if any, will be prorated on the Closing Date and the Purchase Price will be adjusted on the following basis:

8.1 Property Taxes. All real and personal property ad valorem taxes and installments of special assessments and user fees, if any, for the calendar
year 2021 and prior years will be paid by Seller. All real and personal property ad valorem taxes and special assessments and user fees, if any, whether payable in installments or not, for the calendar year in which the Closing occurs will be prorated to the Closing Date, based on the latest available tax rate and assessment valuation.

9. **BUYER’S RIGHT OF INSPECTION.** Buyer shall have thirty (30) days from the Approval Date to inspect the Property to determine its suitability for purchase (the “**Inspection Period**”). As used herein, the “**Approval Date**” shall mean the date that all necessary approvals have been received from City of Charleston City Council. Buyer shall use its best efforts to complete all inspections and approvals promptly. If, in its sole and absolute discretion, the Buyer is not satisfied with the inspection for any reason, Buyer, at its option and its sole discretion, may terminate this Agreement. Buyer shall notify Seller in writing of its intention to terminate on or before the expiration of the Inspection Period. Upon termination by Buyer in accordance with this Paragraph 9, all rights and obligations set forth under the terms of this Agreement shall automatically become null and void.

10. **REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller hereby represents and warrants to Buyer as follows:

10.1 Now and at the Closing, Seller will be the sole owner of the Property to be sold pursuant to this Agreement and Seller will possess all requisite right, authority and power to execute and perform this Agreement in accordance with its terms.

10.2 Seller has good and marketable title in fee simple to the Property which will be conveyed to Buyer at Closing free and clear of any and all liens, encumbrances, leases, restrictions or easements except for those specifically consented to by Buyer prior to the expiration of the Inspection Period.

10.3 There are no actions, suits or proceedings pending or threatened against Seller or the Property affecting any portion of the Property, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

10.4 There are not presently pending any condemnation actions or special assessments of any nature with respect to the Property or any part thereof, nor has Seller received any notices of any condemnation actions or special assessments being contemplated, nor does Seller have any knowledge of any being contemplated.

10.5 Seller has not received any notice of any violation of any ordinance, regulation, law or statute of any governmental agency pertaining to
the Property or any portion thereof which has not been complied with.

10.6 All of the Property has direct access to public streets.

10.7 Seller has taken all necessary action in connection with the execution of this Agreement and the consummation of the transactions contemplated hereby. The Agreement, and the agreements contemplated herein, upon execution, shall be a legal and binding obligation of Seller and shall be enforceable against Seller in accordance with their terms. Seller has the right, power, legal capacity, and authority to enter into and perform Seller’s obligations under this Agreement, and no approvals or consents of any other persons are necessary in connection with the sale of the Property.

10.8 Seller agrees to cooperate with Buyer as may be necessary in the pursuit of soil and environmental testing, property inspections and the like, to include without limitation, providing Buyer with copies of previous reports, inspections, etc.

11. **MISCELLANEOUS.** It is further agreed as follows:

11.1 **Notice.** All notices required hereunder will be in writing and served by certified mail, return receipt requested, postage prepaid, at the addresses shown above, until notification of a change of such addresses. Notice may also be sent by a nationally recognized overnight courier service to the addresses set forth above.

11.2 **Entire Agreement.** This Agreement, together with the attachments hereto, constitutes the entire agreement between the Buyer and the Seller and there are no agreements, understandings, warranties or representations between the Buyer and the Seller except as set forth herein. The Agreement cannot be amended except in writing executed by the Buyer and the Seller.

11.3 **Binding Effect.** This Agreement will inure to the benefit of and bind the respective successors and permitted assigns of the parties hereto.

11.4 **Assignment.** This Agreement shall not be assigned by either party without first obtaining the other party’s written consent, which consent may be withheld with or without cause.

11.5 **South Carolina Law.** This Agreement shall be governed, enforced and construed in accordance with the laws of the State of South Carolina.

11.6 **Survival.** All representations made within this Agreement, or in
instruments, certificates, opinions, or other writings provided for in this Agreement, shall survive the Closing and shall not merge with the deed.

11.7 **Counterparts / Electronic Transmittal.** This Agreement may be executed by all parties in counterparts, each of which will be deemed an original, but all of such counterparts taken together will constitute one and the same agreement. Facsimile or e-mail copies of this Agreement containing signatures of the parties shall be deemed to be originals and shall be binding.

11.8 **Attorneys Fees/ Costs.** In the event of any dispute arising under this Agreement, the prevailing party shall be entitled to recover reasonable attorney’s fees and costs incurred in connection therewith.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date first written above.

**WITNESSES:**

**SELLER:**

ESTATE OF LILLIAN A. MILLER

By: Robin L. Miller

Its: Representative

**BUYER:**

CITY OF CHARLESTON

By: John J. Tecklenburg

Its: Mayor
ESCROW AGREEMENT
Regarding Necessary Renovations to 3 Drews Court

This Escrow Agreement (the “Agreement” or “Escrow Agreement”) is made and entered into this ___ day of January, 2022 by and between the Estate of Lillian A. Miller (the “Seller”); the City of Charleston, South Carolina (the “Buyer”); and Haynesworth Sinkler Boyd (the “Escrow Agent”).

RECITALS

Whereas, Buyer is purchasing real property located at 3 Drews Court, Charleston, SC, having 0.038 acres as appearing in Plat Book B 664, page 523 and bearing Charleston County TMS# 459-05-01-056 (the “Property”) from Seller under a purchase and sale agreement entitled Purchase Agreement, effective January __, 2022 (the “Contract”); and

WHEREAS, a portion of the sale proceeds, Thirty-Two Thousand and no/100 ($32,000) Dollars will be set aside for the Buyer’s use to make repairs to the Property.

WHEREAS, to facilitate the closing of the transaction contemplated in the Contract (the “Sale”), the Buyer and Seller agree to escrow the sum of $32,000 with Escrow Agent, and Escrow Agent has agreed to act as Escrow Agent in accordance with this Agreement, for the purpose of funding the needed repairs to the property.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, Seller, Buyer and Escrow Agent hereby agree as follows:

1. Establishment Of Escrow Arrangement.

1.1 Appointment And Acceptance. Seller and Buyer hereby appoint Escrow Agent, and Escrow Agent hereby accepts such appointment, to serve as escrow agent under this Escrow Agreement in accordance with the terms and conditions and for the uses and purposes set forth hereinafter.

1.2 Purposes. This Escrow Agreement is established for the sole purposes of placing in escrow funds sufficient to fund the needed repairs to the Property. Accordingly, the parties hereby establish with Escrow Agent an account (the “Escrow Account”) into which Seller authorizes the sum of Thirty-Two Thousand and no/100 ($32,000) Dollars (collectively with any additional funds made available to Escrow Agent pursuant to Section 1.6, the “Escrow Deposit”) to be paid from Seller’s proceeds of the sale of the Property to Buyer. Escrow Agent hereby acknowledges receipt of the Escrow Deposit. The Escrow Deposit shall be held and disbursed by Escrow Agent as set forth herein.
1.3 **Establishment and Maintenance of Escrow Account.** Escrow Agent will keep the Escrow Deposit in Escrow Agent’s **non-interest bearing** trust account. It is agreed that Escrow Agent’s duties are solely such as are herein specifically provided, being purely ministerial in nature, that no implied duties shall be read into this Agreement against the Escrow Agent, and that the Escrow Agent shall incur no liability whatsoever except for willful misconduct or gross negligence as described herein below with respect to the Escrow Deposit. Subject to the foregoing, the Escrow Agent shall have no responsibility in respect of any funds deposited with it other than to follow the instructions herein contained. The Buyer and Seller specifically agree that Escrow Agent shall have no duty to invest the Escrow Deposit or otherwise make the Escrow Deposit productive. Further, for so long as the Escrow Account is maintained at a financial institution insured by the FDIC, Escrow Agent shall have no liability for such institution’s failure or delay in complying with Escrow Agent’s instructions.

1.4 **Disbursement of Escrow Account.** Escrow Agent shall hold the Escrow Deposit in the Escrow Account until such time as Escrow Agent has received from the Buyer an invoice for payment that details the repairs planned for the Property.

1.5 **Completion and Termination of Escrow Account.** Upon Escrow Agent’s fulfillment of the foregoing requirements of Section 1.4, Escrow Agent shall release and disburse to Seller all remaining funds in the Escrow Account. Except as specifically stated otherwise to the contrary, this Agreement shall remain in full force and effect until the Escrow Agent is notified in writing by the Buyer that the repairs are completed and no additional funds from the Escrow Account are needed.

2. **Rights Of Escrow Agent.**

2.1 **Actions by Escrow Agent.** Nothing contained in this Escrow Agreement shall be deemed to impose any duty upon Escrow Agent to exercise discretion, excepting however, Escrow Agent may consult with legal counsel pursuant to Section 2.4. Seller and Buyer intend that Escrow Agent shall not be obligated to act except as specifically provided in this Escrow Agreement or as set forth in subsequent written instructions to Escrow Agent executed by Seller, Buyer and Escrow Agent; that Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith, provided that it acts in good faith; and that Escrow Agent shall incur no liability for any act or omission hereunder except for those resulting from the gross negligence or willful misconduct of the Escrow Agent. In the event of adjudication decreeing Escrow Agent was willfully malfeasant or grossly negligent, Escrow Agent’s sole liability shall be limited to the amount of the Escrowed Funds so determined to have been actually mishandled. Specifically, Escrow Agent shall not be liable for any consequential or special damages, or other damages measured by a loss of opportunity, even if the same are foreseeable.

2.2 **Reliance.** Escrow Agent shall at all times be protected in acting on any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney, or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be. Furthermore, the Escrow Agent shall have no responsibility for the genuineness or validity of any item delivered to or deposited with the Escrow Agent, and the Escrow Agent shall be fully protected in acting in accordance with any written instructions, notices or requests for
disbursement given to the Escrow Agent hereunder or believed by the Escrow Agent to have been delivered by the proper officers or other representative of the parties thereto, and Escrow Agent shall be entitled to rely on any such written instruction, notice or request for disbursement without duty or obligation to investigate same.

2.3 Advice of Counsel. Although Escrow Agent has no duty or obligation to exercise discretion under this Agreement, Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of any provision of this Escrow Agreement or its rights and/or duties under this Agreement, any law or regulation, or the Rules of Professional Conduct; and it shall incur no liability and shall be fully protected in acting in good faith in accordance with the good faith opinion and instruction of its counsel. Such legal counsel may be Escrow Agent’s general counsel or his or her designee who has had no involvement in the Sale. Escrow Agent will bear all expenses of any such consultations. All such communications and all documents relating thereto shall be confidential and protected both by Escrow Agent’s attorney-client privilege and as attorney work product.

2.4 Interpleader. (a) In the event that Escrow Agent, in good faith, shall be in doubt as to what action it should take hereunder, Escrow Agent may, at its option, interplead the Escrow Account (including statements of the Escrow Account) into a court of competent jurisdiction, and thereafter refuse to comply with any claims or demands on it and refuse to take any other action hereunder, so long as such disagreement continues or such good faith doubt exists. In such event, Escrow Agent shall not be or become liable in any way to Seller or Buyer for its failure or refusal to act, and Escrow Agent shall be entitled to continue to refrain from acting until (i) the rights of the parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjusted and all doubt resolved by agreement among all parties. In both such events, the Escrow Agent thereafter shall have no further liability to Buyer and or Seller hereunder.

(b) In the event that the Escrow Agent resigns, as contemplated in Section 2.5, before Buyer and Seller appoint a successor escrow agent who has agreed to serve, Escrow Agent may, at its option, interplead the Escrow Account (including statements of the Escrow Account) into a court of competent jurisdiction and thereafter decline to comply with any claims or demands on it from any person or entity other than such court. Upon delivery of notice of such interpleader to both the Buyer and Seller, the Escrow Agent shall have no further obligation to either of both of them hereunder except as described in Section 2.8.

(c) Notwithstanding anything herein to the contrary, the Escrow Agent shall not be required to institute legal proceedings of any kind. The foregoing interpleader rights are cumulative to all other rights which Escrow Agent may have by law or otherwise.

2.5 Successor Escrow Agent. The Escrow Agent, or any successor Escrow Agent, may at any time resign by giving written notice of resignation to Seller and Buyer. Such resignation shall be effective upon the earlier of (i) the appointment of a successor Escrow Agent in accordance with the provisions set forth hereinafter, or (ii) the expiration of sixty (60) days following the giving of such written notice. In the event the Escrow Agent gives written notice of resignation, Seller and Buyer shall appoint a substitute or successor Escrow Agent, which
appointment shall become effective upon the execution of a written instrument of appointment confirming the same signed by Seller, Buyer and the successor Escrow Agent. Such successor Escrow Agent shall thereupon succeed to all of the rights and duties of the Escrow Agent hereunder, the original Escrow Agent shall deliver the Escrow Account (including statements of the Escrow Account) to such successor Escrow Agent, and such successor Escrow Agent shall hold and administer the Escrow Account pursuant to the terms hereof. The original Escrow Agent shall cooperate fully with any successor in transferring the Escrow Account to such successor and in rendering such accountings of its activities hereunder as shall enable such successor to fully perform all duties imposed by this Escrow Agreement.

2.6 Waiver of Conflict and Acknowledgment of Non-Representation. Seller and Buyer consent to and waive any potential conflict of interest relating to Burr & Forman LLP’s simultaneous representation of Buyer in connection with the Sale and otherwise and its service hereunder as Escrow Agent. Seller further acknowledges that Seller has been represented by counsel of its choice in connection with the Sale and this Agreement, and agrees that Escrow Agent’s role does not create any attorney-client relationship between the Seller and Escrow Agent. Buyer agrees that Escrow Agent’s role as Escrow Agent under this Agreement does not create an additional attorney-client relationship beyond that relationship which may exist as a result of Burr & Forman LLP’s representation of the Buyer in the Sale and other matters.

2.7 Fees and Expenses of Escrow Agent. Seller’s charges, which are intended to cover all of its fees and expenses for its service as Escrow Agent, shall be US $500.00 (the “Escrow Fee”), payable in collected funds at the closing of the Sale. The Escrow Fee shall be borne by Seller and shall be deemed fully earned when paid. The Escrow Fee is charged in connection with Escrow Agent’s drafting of this Agreement as an accommodation to the parties, filing periodic tax and/or information reports regarding the Escrow Account, providing accountings upon written request from Buyer or Seller (but not more than twice in any calendar year), and handling any disbursements under this Agreement.

2.8 Periodic Reports. Escrow Agent may be required to file periodic tax and/or information reports with respect to the Escrow Account. Both the Buyer and Seller consent to all such filings and will cooperate fully with Escrow Agent, at their respective expenses, in providing information requested by Escrow Agent as necessary or desirable for Escrow Agent to prepare and file such reports timely and efficiently. All parties to this Agreement acknowledge that one or more of such reports may be required with respect to a period after the Escrow Agent has disbursed the Escrow Account as provided for in this Agreement. Escrow Agent shall have no liability for a failure to file any such report timely where such failure is attributable to the failure of the Buyer or Seller to provide timely information requested by Escrow Agent. Upon written request from Buyer or Seller, Escrow Agent shall provide an accounting to the parties, but in no event shall the Escrow Agent provide more than two (2) accountings in any calendar year.

3. Miscellaneous.

3.1 Notices. Excepting (i) refunds to Seller in the event the Escrow Deposit is not exhausted by the Buyer for repairs to the Property, prior to any other disbursements from the
Escrow Deposit by Escrow Agent, the Escrow Agent shall provide notice via electronic mail (read receipt confirmed) to the below parties at the address listed below. In the event the below parties fail to respond with written approval within seven (7) days of such notice, the Escrow Agent may elect to avail itself, but is under no obligation, of any rights under this Agreement, including but not limited to: (i) seeking legal counsel pursuant to Section 2.3; or (ii) resigning as Escrow Agent pursuant to Section 2.5. All notices required or permitted to be given under this Agreement shall be sent to the parties at the addresses below or at such other address as a party may provide to the other parties by notice. All notices shall be deemed received as of the earliest of (a) the date of actual receipt, (b) the date of confirmed electronic receipt, or (c) three (3) business days after such notice has been deposited into a U.S. Mail facility, properly addressed and with first class postage affixed.

**IF TO SELLER:**

Robin Miller  
3667 Highwood Drive, SE  
Washington, DC 20020  
Rlm1686@netzero.net

**WITH A COPY TO:**

**IF TO BUYER:**

City of Charleston  
Attn: Geona Shaw-Johnson  
johnsong@charleston-sc.gov

**WITH A COPY TO:**

City of Charleston  
Legal Department  
copelandj@charleston-sc.gov

3.2 **Enforceability.** Any performance required hereunder shall be enforceable by specific performance, which right shall be in addition to any other rights or remedies available to a party hereto at law or in equity.

3.3 **Severability.** Unenforceability or invalidity for any reason of any provision of this Escrow Agreement shall not limit or impair the operation, validity or enforceability of any other provision hereof.

3.4 **Amendments.** No amendments, conditions, deletions, modifications or changes to or of this Escrow Agreement shall be of any force or effect whatsoever unless reduced to writing and signed by the duly authorized representatives of Seller, Buyer and Escrow Agent.
3.5 Headings. The headings and captions in this Escrow Agreement are included only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Escrow Agreement, or the intent of any provision hereof.

3.6 Counterparts. This Escrow Agreement shall be executed in three (3) or more counterparts, each of which when fully executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same Escrow Agreement.

3.7 Governing Law. This Escrow Agreement is executed in, is performable under, and shall be governed by and construed in accordance with the laws of the State of South Carolina, to which jurisdiction the parties hereto irrevocably consent.

3.8 Binding Effect. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, legal representatives and assigns.

3.9 Knowledge and Doubt of Escrow Agent. The concepts of knowledge and doubt of the Escrow Agent as used in this Agreement shall mean the actual knowledge or doubt of the Haynesworth Sinkler Boyd lawyer who has responsibility for authorizing disbursements from the Escrow Account. Initially, such lawyer is David Humphreys, III.

(signature page attached)
The parties have set their hands and seals to this Agreement on this _____ day of January, 2022.

Seller:

__________________________________________
Estate of Lillian Miller
By: ________________________________

Buyer:

City of Charleston

__________________________________________
By: John J. Tecklenburg
Its: Mayor

Escrow Agent:

Haynesworth Sinkler Boyd

__________________________________________
By: David Humphreys, III
Its: Partner
3 Drews Alley
Home Inspection - Estimated Cost
26-Aug-21

Lead Based Paint Risk Assessment (per HUD guidelines) $ 900
LBP Clearance examination - exterior (Per HUD guidelines) $ 500
Wall Cladding replacement (Per pictures -see detail below / $25 per LF) $ 8,700
Exterior Trim replacement (Per pictures -see detail below / $20 per LF) $ 440
Exterior Paint (siding and trim / $3 per LF) $ 1,110
Door - Exterior (Replace with 28x68 metal exterior door / add 2 flashing at top of door install) $ 750
Windows (18 total) Original window (clean / repair [operable and lockable] / putty) 5 wdw $ 2,500
Sash replaced (clean / repair [operable and lockable] / putty) 3 wdw $ 1,200
Replaced windows (clean / repair [operable and lockable] / putty) 8 wdw $ 2,400
Transom (original windows but no service needed) 2 wdw $ -
Front Porch railing (front railing in good shape / right side - remove and reinstall / handrails - secure) $ 600
Front Porch landing (landing at front stairs) $ 450
Landscape (remove vines and cut back tree) $ 300
Fascia Repair (2x material was installed to support gutters / paint) $ 200
Other * (storage shed / remove and reinstall hvac condensor / repair roof and add jacks) $ 1,500
Floors - Hardwood repair (two areas have cosmetic issues / sand & stain to match) $ 500
Floors - Carpet stretch (several areas in bedrooms and upstairs) $ 500
Counters - (reinstall upstairs bath vanity door) $ 100
Doors - (inspect and adjust interior doors and attic doors) $ 250
Plumbing - (add seismic strap / secure toilet tank / remove and reinstall upstairs bath tub spout) $ 400
Electrical - (separate the neutral and ground on bus bar / rework one outlet / 6 new smoke detector) $ 800
HVAC - (add missing foam insulation / reattach and secure main condensate line) $ 400
Insulation - (remove and reinstall 1066 sf of insulation & add vapor barrier) $ 2,166
Appliance - (replace older dishwasher / install anti-tip on range / metal washing machine hoses) $ 750

Total $ 27,415.50
Contingency (20%) $ 5,483.10

Total cost with contingency $ 32,898.60

NOTE: additional detail in the spreadsheet cell
* Shed was locked when we inspected and could not inspect inside - cost is worse case. Maybe possible to add additional joists.

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<th>Exterior Trim</th>
<th>Exterior Paint</th>
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<td></td>
</tr>
<tr>
<td>13</td>
<td>36</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total LF 348  22  370
Cost per SF $ 25  $ 20  $ 3
Extended Total $ 8,700  $ 440  $ 1,110
AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 2309 LAZY RIVER DRIVE (0.46 ACRE) (TMS# 310-14-00-017), WEST ASHLEY, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON. SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 11. THE PROPERTY IS OWNED BY SEEL LIVING TRUST.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.

C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 11 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 2309 Lazy River Drive, (0.46 acre) is identified by the Charleston County Assessors Office as TMS# 310-14-00-017, (see attached map) and includes all marshes, public waterways and public rights-of-way, shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this _____ day of
____________________ in the Year of Our Lord,
________________, in the_____ Year of the Independence of
the United States of America.

By:

______________________________
John J. Tecklenburg
Mayor

Attest:

______________________________
Jennifer Cook
Clerk of Council
Annexation Profile

Parcel Address: 2309 Lazy River Drive
Owner Names: Seel Living Trust
Parcel ID: 3101400017

Presented to Council: 1/25/2022
Status: Received Signed Petition
Year Built: 1995
Number of Units: 1
Number of Persons: 1
Race: Caucasian
Acreage: 0.46
Current Land Use: Residential
Current Zoning: R-4
Requested Zoning: Not specified
Recommended Zoning: RR-1
Appraised Value: $1,023,600.00
Assessed Value: $33,650.00
Stormwater Fees: To Be Calculated

<table>
<thead>
<tr>
<th>Police</th>
<th>Located in existing service area - Team 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire</td>
<td>Located in existing service area - Station 11</td>
</tr>
</tbody>
</table>

Public Service

<table>
<thead>
<tr>
<th>Sanitation</th>
<th>Located in existing contract area. One additional stop.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storm Water</td>
<td>Contiguous to existing service area.</td>
</tr>
<tr>
<td>Streets and Sidewalks</td>
<td>Additional State-maintained right-of-way</td>
</tr>
</tbody>
</table>

Traffic and Transportation

<table>
<thead>
<tr>
<th>Signalization</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signage</td>
<td>None</td>
</tr>
<tr>
<td>Pavement Markings</td>
<td>None</td>
</tr>
</tbody>
</table>

Charleston Water System

| CWS service area.     |                                                          |

Planning

<table>
<thead>
<tr>
<th>Urban Growth Line</th>
<th>Property is a developed site within the line.</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Plan</td>
<td>Low-Impact/Conserved</td>
</tr>
<tr>
<td>Elevation Range</td>
<td>3-12 ft</td>
</tr>
</tbody>
</table>

Parks

| Already being served. |                                                          |

Notes/Comments:

City Plan Recommendation: The existing development and proposed zoning is consistent with the City Plan. Recommend annexation.
STATE OF SOUTH CAROLINA )
COUNTY OF CHARLESTON )

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the
annexation of an area or property which is contiguous to a City by filing with the municipal
governing body a petition signed by all persons owning real estate in the area requesting
annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting
annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

SAID PROPERTY, located in West Ashley (approximately 46 acres) to be annexed is
identified by the Charleston County Assessors Office as Property Identification Number: TMS# 310-14-00-011 (Address: 2309 Lazy River Dr., Chas. SC 29414).

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the
above described area into the municipal limits of the City of Charleston.

FREEHOLDERS (OWNERS) SIGNED DATE OF SIGNATURE

Signature: Wanda B. Seel Trustee Jan 4, 2022
(Print Name)

(Date)