NOTICE OF MEETING

A meeting of the Committee on Real Estate will be held beginning at 2:30 p.m. Monday, May 24, 2021, Conference Call: 1-929-205-6099; Access Code: 835 678 884. The agenda will be as follows:

AGENDA

Invocation – Councilmember Appel

Approval of Minutes:

May 10, 2021

a. Request authorization for the Mayor to execute, on behalf of the City of Charleston ("City"), the First Amendment to the Transfer Agreement between the City and JJR Development, LLC, to permit the closing on the transfer of the property located at 67 America Street and currently designated as Charleston County TMS No. 459-09-02-132, from the City to JJR Development, LLC, to occur on or before September 30, 2021, and authorization for the Mayor to execute all documents necessary to consummate the transaction described in the Transfer Agreement, as amended. (ORDINANCE) [67 America St., TMS: 459-09-02-132] *(Development Agreement to be sent under separate cover by the Legal Department)*

b. Request authorization for the Mayor to execute the necessary documents for the purchase of 3, 5, 7, and 9 Cunnington Avenue, a 1.45 acre property located in the Neck area of the City, for $1,425,000 subject to the conditions outlined in the attached Agreement of Purchase and Sale. [3, 5, 7 and 9 Cunnington Avenue, TMS: 464-14-00-139 and 464-14-00-119]

c. Approval of a Second Amendment to the Management Agreement between the City of Charleston and Charleston Digital Corridor Foundation for the lease space at 22 West Edge. Funds are budgeted in 2021 to continue the Management Agreement through the remainder of the year; will need to be budgeted for in 2022 if continued.

d. Request authorization for the Mayor to execute a Permanent Easement between the City of Charleston and the Commissioners of Public Works whereby the City grants to CWS Utility/Access Easement for access to Wastewater Tunnels and Wastewater Tunnel Shafts (Portion of Murray Blvd and intersection of Murray Blvd and Limehouse St) (Approximately). [Ordinance]

e. Request authorization for the Mayor to execute a Purchase and Sale Agreement between the City of Charleston and Michael Milhous Hollings, Helen Hollings Reardon, and Ernest Frederick Hollings, Ill,
for the City’s purchase of property located at 0 Canal Street, Charleston, South Carolina, TMS # 457-07-001-007 for a price of $43,500.00 for long term drainage protection of Lockwood Blvd.

f. Executive Session pursuant to Section 30-4-70(a)(2) of the South Carolina Code, to discuss negotiations for the acquisition of property for public safety purposes.

g. Executive Session pursuant to Section 30-4-70(a)(2) of the South Carolina Code, to discuss contractual negotiations for the purchase of a Greenbelt grant property.

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.
REAL ESTATE COMMITTEE
GENERAL FORM

TO: John J. Tecklenburg, Mayor DATE: May 17, 2021
FROM: Geona Shaw Johnson DEPT: Housing and Community Development
ADDRESS: 67 America Street, Charleston, SC 29401
TMS: 459-09-02-132

AUTHORIZE THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF CHARLESTON ("CITY"), THE FIRST AMENDMENT TO THE TRANSFER AGREEMENT BETWEEN THE CITY AND JJR DEVELOPMENT, LLC, TO PERMIT THE CLOSING ON THE TRANSFER OF PROPERTY LOCATED AT 67 AMERICA STREET AND CURRENTLY DESIGNATED AS CHARLESTON COUNTY TMS NO. 459-09-02-132 FROM THE CITY TO JJR DEVELOPMENT, LLC TO OCCUR ON OR BEFORE SEPTEMBER 30, 2021, AND BY AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY TO CONSUMMATE THE TRANSACTION DESCRIBED IN THE TRANSFER AGREEMENT, AS AMENDED.

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

Department Head

Legal Dept
s/Daniel S. McQueeney, Jr.

Property Coordinator

Property Manager

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).

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

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: John J. Tecklenburg, Mayor  DATE: May 17, 2021
FROM: Geona Shaw Johnson  DEPT: Housing and Community Development
ADDRESS: 67 America Street, Charleston, SC 29401
TMS: 459-09-02-132

AUTHORIZE THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF CHARLESTON ("CITY"), THE FIRST AMENDMENT TO THE TRANSFER AGREEMENT BETWEEN THE CITY AND JJR DEVELOPMENT, LLC, TO PERMIT THE CLOSING ON THE TRANSFER OF PROPERTY LOCATED AT 67 AMERICA STREET AND CURRENTLY DESIGNATED AS CHARLESTON COUNTY TMS NO. 459-09-02-132 FROM THE CITY TO JJR DEVELOPMENT, LLC TO OCCUR ON OR BEFORE SEPTEMBER 30, 2021, AND BY AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY TO CONSUMMATE THE TRANSACTION DESCRIBED IN THE TRANSFER AGREEMENT, AS AMENDED.

ACTION REQUEST:  

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

☐ ACQUISITION BY
☐ DONATION/TRANSFER
  Donated By: 
  Terms: 

☐ FORECLOSURE
  Terms: 

☐ PURCHASE
  Terms: 

☐ CONDEMNATION
  Terms: 

☐ OTHER
  Terms: 

☐ SALE TO
  ☒ FOR-PROFIT ORG, please name JJR Development, LLC
    Extending closing date in current transfer agreement and approving development agreement
  Terms: 

☐ OTHER
  Terms: 

1
COMMERICAL REAL ESTATE FORM

☐ LEASE
   ☐ INITIAL
     Lessor: ______________________  Lessee: ______________________
     Terms: ______________________
   ☐ RENEWAL
     Lessor: ______________________  Lessee: ______________________
     Terms: ______________________
   ☐ AMENDMENT
     Lessor: ______________________  Lessee: ______________________
     Terms: ______________________

☐ Improvement of Property
   Owner: ______________________
   Terms: ______________________

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

Yes ☐ No ☐

Results: _______________________________________________________________

Signature: _____________________________________________________________

Property Manager

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

________________________

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

AMENDING ORDINANCE NO. 2020-007 BY AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF CHARLESTON ("CITY"), THE FIRST AMENDMENT TO THE TRANSFER AGREEMENT BETWEEN THE CITY AND J JR DEVELOPMENT, LLC, TO PERMIT THE CLOSING ON THE TRANSFER OF PROPERTY LOCATED AT 67 AMERICA STREET AND CURRENTLY DESIGNATED AS CHARLESTON COUNTY TMS NO. 459-09-02-132 FROM THE CITY TO J JR DEVELOPMENT, LLC TO OCCUR ON OR BEFORE SEPTEMBER 30, 2021, AND BY AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY TO CONSUMMATE THE TRANSACTION DESCRIBED IN THE TRANSFER AGREEMENT, AS AMENDED.

INCIDENT TO THE ADOPTION OF THIS ORDINANCE, CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT:

1. On January 14, 2020, City Council adopted Ordinance No. 2020-007, authorizing the Mayor to execute, on behalf of the City of Charleston (the "City"), a transfer agreement (the "Agreement") and other necessary documents to convey certain property located at 67 America Street, currently designated as Charleston County TMS No. 459-09-02-132, as more particularly described in the Ordinance No. 2020-007 (the "Property") to J Jr Development, LLC (the "Developer"), for $30,000, for the development of between four and ten affordable housing units, subject to the City’s Homeownership Initiative Guidelines.

2. Section 4 of the Agreement requires closing to occur within one (1) year of the date of the Agreement.

3. Section 8(B) of the Agreement requires City Council to approve a development agreement with the Developer as a contingency to the closing.

4. The City and the Developer desire to extend the closing date in the Agreement, to permit closing to occur on or before September 30, 2021.

5. The City and the Developer desire to clarify that the Mayor shall have the authority to execute all documents necessary to facilitate the transaction outlined in the Agreement upon approval of the substance and form of such documents by Corporation Counsel and the Director of the City’s Department of Housing and Community Development (the "Director").

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

Section 1. That Ordinance No. 2020-007 is hereby amended to authorize the Mayor to execute, on behalf of the City, that certain First Amendment to the Agreement (the "First Amendment"), a copy of which is attached hereto and incorporated herein by reference as Exhibit 1, such that closing of the transaction set forth in the Agreement may occur on or before September 30, 2021.
Section 2. The Mayor is hereby authorized to execute on behalf of the City all necessary documents, approved as to form and substance by Corporation Counsel and the Director, to facilitate the conveyance of the Property, as defined in Ordinance No. 2020-007, to Developer, in accordance with the Agreement, as amended by the First Amendment. Without limiting the foregoing, the Mayor is hereby authorized to execute the Development Agreement, a draft copy of which is attached hereto and incorporated herein by reference as Exhibit 2, upon approval of the final form and substance by Corporation Counsel and the Director.

Section 3. This Ordinance shall become effective upon ratification.

Ratified in City Council this _____day of in the
Year of Our Lord, 2020, in the 245th Year of the
Independence of the United States of America.

By: ________________________________
   John J. Tecklenburg, Mayor
   City of Charleston

ATTEST: By: ________________________________
          Jennifer Cook
          Clerk of Council
STATE OF SOUTH CAROLINA  )
       ) FIRST AMENDMENT TO TRANSFER
COUNTY OF CHARLESTON   ) AGREEMENT

THIS FIRST AMENDMENT TO TRANSFER AGREEMENT (the “First Amendment”) is made and entered into on ________________, 2021 (the “Effective Date”), by and between the City of Charleston (the “City”) and JJR Development, LLC (“Developer”).

RECITALS

WHEREAS, on January 14, 2020, the City Council of Charleston (“City Council”) adopted Ordinance No. 2020-007, authorizing the City to enter into a Transfer Agreement (the “Agreement”), under which the City would convey the property described therein (the “Property”) to Developer for development into affordable housing units;

WHEREAS, Section 4 of the Agreement provides that the closing of the conveyance of the Property from the City to the Developer would take place no later than one (1) year from the date of the Agreement; and

WHEREAS, the City and Developer (collectively, the “Parties”) desire to amend the Agreement to permit the closing to occur on or before September 30, 2021.

NOW, THEREFORE, for and in consideration of the mutual benefit to the Parties of extending the closing date, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

A. The recitals and attached exhibits, if any, are incorporated into the substance of this First Amendment by reference.

B. Section 4 of the Agreement is hereby amended to read as follows:

4. CLOSING. The closing of the conveyance of the Property from the City to the Developer (the “Closing”) shall take place no later than September 30, 2021. The Closing shall take place in Charleston County, South Carolina, at a time, date and place mutually agreed to by the City and the Developer.

C. All other terms, conditions, and provisions of the Agreement shall remain in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY BLANK;
SIGNATURE PAGES TO FOLLOW]
IN WITNESS WHEREOF, the City of Charleston has caused these presents to be executed on the Effective Date.

WITNESSES: 

Print Name: ______________________________

Print Name: ______________________________

CITY OF CHARLESTON

By: ______________________________
Print Name: John J. Tecklenburg
Its: Mayor

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE TO FOLLOW]
IN WITNESS WHEREOF, JJR DEVELOPMENT, LLC, has caused these presents to be executed on the Effective Date.

WITNESSES:

Print Name: ____________________________

JJR DEVELOPMENT, LLC,
a South Carolina limited liability company

By: ____________________________
Print Name: Jeffrey Roberts
Its: Managing Member

[END OF DOCUMENT]
REAL ESTATE COMMITTEE
GENERAL FORM

TO: John J. Tecklenburg, Mayor DATE: May 17, 2021
FROM: Geona Shaw Johnson DEPT: Housing and Community Development
ADDRESS: 3, 5, 7 & 9 Cunnington Avenue, Charleston, SC 29405
TMS: 464-14-00-139 and 464-14-00-119

To authorize the Mayor to execute the necessary documents for the purchase of 3, 5, 7 & 9 Cunnington Avenue, a 1.45 acre property located in the Neck Area of the City, for $1,425,000 subject to the conditions outlined in the attached Agreement of

ACTION REQUEST: Purchase & Sale.

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

Department Head

Legal Dept

Property Coordinator

Property Manager

Signature

Attachments

FUNDING: Was funding needed? Yes ☒ No ☐
If yes, was funding previously approved? Yes ☒ No ☐

Fee-in-lieu Acct: 473020-4220

*$If approved, provide the following:
Dept/Div. Acct: 00021017010
$2,816,837 Act Funding $425,000
Balance in Account 1,000,000 Amount needed for this item 1,000,000

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 10:00AM 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: May 17, 2021
FROM: Geona Shaw Johnson  DEPT: Housing and Community Development
ADDRESS: 3,5, 7 & 9 Cunnington Avenue, Charleston, SC 29405
TMS: 464-14-00-139 and 464-14-00-119

To authorize the Mayor to execute the necessary documents for the purchase of 3,5,7 & 9 Cunnington Avenue, a 1.45 acre property located in the Neck Area of the City, for $1,425,000 subject to the conditions outlined in the attached Agreement of Purchase & Sale.

ACTION REQUEST: Purchase & Sale.

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

☐ ACQUISITION BY
☐ DONATION/TRANSFER
  Donated By:
☐ FORECLOSURE
  Terms:
☐ PURCHASE
  Terms as outlined in the accompanying Agreement of Purchase & Sale
  Terms:
☐ CONDEMPTION
  Terms:
☐ OTHER
  Terms:

☐ SALE BY
☐ NON-PROFIT ORG, please name
  Terms:
☐ OTHER
  Terms:

☐ LEASE
☐ INITIAL
  Lessor:
  Lessee:
  Terms:
☐ RENEWAL
COMMERCIAL REAL ESTATE FORM

Lessor: ___________________________ Lessee: ___________________________
Terms: ___________________________

☐ AMENDMENT
Lessor: ___________________________ Lessee: ___________________________
Terms: ___________________________

☐ Improvement of Property
Owner: ___________________________
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: _________________________________________________________
Property Manager

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 (this "Agreement") is made as of the _____ day of ____________, 2021 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 BJD REALTY, LLC, a South Carolina limited liability company, having a notice address of P.O. Box 22223, Charleston, South Carolina 29413 (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 (as hereinafter defined), in and to the real property located in Charleston County, South Carolina, and known generally as 3, 5, 7 & 9 Cunnington Avenue, Charleston, South Carolina 29405, bearing Charleston County Tax Map Nos. 464-14-00-139 and 464-14-00-119, together with all improvements located thereon and appurtenances thereto, if any (collectively, the "Property").

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 Million Four Hundred Twenty-Five Thousand and No/100 Dollars ($1,425,000.00), payable on the Closing Date in immediately available funds.

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 by general warranty deed free and clear of all judgments, 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 as set forth in Paragraph 9, 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;

3.2 Buyer may terminate this Agreement, in which case this Agreement shall be null and void; or

3.3 Buyer shall be entitled to enforce the remedy of specific performance of this Agreement by Seller, and Seller shall be responsible for Buyer's costs
therefor, including reasonable attorney’s fees and court costs.

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 shall 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 shall pass from Seller to the Buyer.

5.2 **Closing Date and Location.** Unless otherwise agreed by the parties in writing, the date of the Closing (the “Closing Date”) shall be on or before the date that is forty-five (45) days after the expiration of the Inspection Period. **TIME IS OF THE ESSENCE.** Unless otherwise agreed in writing, Closing shall take place at the offices of Buyer’s attorney in Charleston, South Carolina.

5.3 **Seller’s Instruments.** At Closing, the Seller shall 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 **Nonresident Seller Withholding Affidavit.** Seller's affidavit confirming that Seller is not a "Nonresident" of South Carolina and is therefore exempt from the withholding requirements of Section 12-8-580 of the Code of Laws of South Carolina.

5.3.6 **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 shall deliver to the Seller the following items:

5.4.1 **Purchase Price.** The payment required by Paragraph 2 hereof.

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, any recording fees or stamps applicable to the Deed, if any. The Buyer shall pay the following costs: Buyer's attorney's fees, deed recording charges, and all other costs to include appraisal and survey costs, and title insurance costs.

6. **POSSESSION.** Possession of the Property shall 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 shall 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 shall be to terminate this Agreement and receive $10,000.00 from Buyer as liquidated damages (the "Liquidated Damages Amount"). Buyer and Seller agree that the Liquidated Damages Amount is a reasonable amount for liquidated damages sustained by Seller upon default by Buyer.
because of the uncertainty in ascertaining actual damages.

8. **ADJUSTMENTS AND PRORATIONS.** All receipts and disbursements of the Property, if any, shall be prorated on the Closing Date and the Purchase Price shall 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 2020 and prior years shall 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 shall 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 one hundred five (105) days from the Effective Date to inspect the Property to determine its suitability for purchase (the “Inspection Period”). 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 shall be the sole owner of the Property to be sold pursuant to this Agreement and Seller shall 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 shall be conveyed to Buyer at Closing by general warranty deed free and clear of any and all judgments, liens, encumbrances, leases, restrictions or easements except for those specifically consented to by Buyer, in Buyer’s sole discretion, 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, entity 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 no knowledge of, and has not received written notice of any violation of any covenant or restriction applicable to the Property, or any part thereof, from any governmental authority notice of any violation of any zoning, building, fire or health code or any other statute, ordinance rule or regulation applicable (or alleged to be applicable) to the Property, or any part thereof.

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.

Rodenticide Act, 7 U.S.C. § 136 et seq. ("FIFRA") and other comparable federal, state or local laws, each as amended, and all rules, regulations and guidance documents promulgated pursuant thereto or published thereunder. The phrase "Hazardous Materials" shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under Environmental Laws (as hereinafter defined) or the Release of which is regulated under Environmental Laws. Without limiting the generality of the foregoing, the term "Hazardous Materials" will include: crude oil, used oil, petroleum and petroleum products or any fraction thereof; radioactive materials including source, by-product or special nuclear materials; asbestos or asbestos-containing materials (whether or not friable); lead paint; polychlorinated biphenyls, ureaformaldehyde in any of its forms; radon; mold; and any substance defined as "hazardous substances," "extremely hazardous substances," "hazardous waste," "hazardous materials," "chemical substance or mixture," "solid waste," "hazardous chemicals," "toxic substances," "hazardous air pollutants," "pollutants," "contaminants," or "toxic chemicals" under any of the CAA, CWA, RCRA, CERCLA, EPCRA, SDWA, TSCA or OSHA. The term "Release" shall mean the discharge, disposal, deposit, injection, dumping, spilling, leaking, leaching, placing, presence, pumping, pouring, emitting, emptying, escaping, or other release of any Hazardous Material.

10.10 To the best of Seller’s knowledge, (1) the Property does not violate any Environmental Laws, (2) there are no under or above ground storage tanks on, in or under the Property (except for an above ground storage tank near the house on the Property), (3) there are no Hazardous Materials on, in or under the Property (except those customarily used in connection with like property, for example, small quantities of gasoline, paint, poison, weed killer, and like household items), and (4) there have been no Releases at the Property. To the best of Seller’s actual knowledge, the Property has never been used by Seller to generate, treat, store, dispose, transport or in any manner deal with Hazardous Materials (except for normal and customary uses for like property).

10.11 Seller is duly organized, validly existing and qualified and empowered to conduct its business and has full power and authority to enter into and fully perform and comply with the terms of this Agreement. Neither the execution and delivery of this Agreement nor its performance by Seller, will conflict with or result in the breach of any contract, agreement, law, rule or regulation to which Seller is a party or by which Seller is bound. This Agreement is valid and enforceable against Seller in accordance with its terms and each instrument to be executed by Seller pursuant to this Agreement or in connection herewith will, when executed and delivered, be valid and enforceable against Seller in accordance with its terms.
OTHER THAN THE REPRESENTATIONS SET FORTH IN THIS SECTION, ELSEWHERE IN THIS AGREEMENT, THE DEED OR ANY OTHER DOCUMENTS TO BE DELIVERED BY SELLER TO BUYER IN ACCORDANCE WITH THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS AND NEGATES ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, SUBJECT TO THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY IS MADE ON AN "AS-IS" "WHERE-IS" CONDITION AND BASIS AS OF THE CLOSING DATE.

11. **SELLER INFORMATION.** Seller will promptly furnish or make available to Buyer within five (5) days after the Effective Date (and at all times thereafter), the following items, if any, that Seller then has in its possession not already delivered by Seller to Buyer:

11.1 Copies of the most recent title commitment(s) and existing title policy(ies) for the Property, together with copies of any exceptions listed therein (to the extent such expectations are in Seller’s possession or control).

11.2 Copies of existing site plans and surveys depicting the Property.

11.3 Copies of all engineering, environmental and system reports (e.g., Phase I Environmental Site Assessments, etc.).

11.4 Copies of all other reports and information relevant to the Property.

12. **COASTAL TIDELANDS & WETLANDS ACT.** Buyer and Seller agree and acknowledge that the Property is not affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws).

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

13.1 **Notice.** All notices required hereunder shall 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.

13.2 **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.

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

13.4 **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.

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

13.6 **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.

13.7 **Counterparts / Electronic Transmittal.** This Agreement may be executed by all parties in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall 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.

13.8 **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.

13.9 **Business Days.** If any date herein set forth for the performance of any obligations by Seller or Buyer or for the delivery of any instrument or notice as herein provided should fall on a Saturday, Sunday or a day on which banking institutions in the State of South Carolina are required or authorized by law (including executive orders) to close, the compliance with such obligations or delivery shall be deemed acceptable on the next business day.

13.10 **Brokerage Fees/ Costs.** Buyer and Seller each represent that there is no broker or agent that has any claim to a commission with respect to the sale contemplated hereby except Renata Smalls Stinson with The Space Company, Inc., a South Carolina corporation (the “**Broker**”). Broker shall receive a commission from Seller as provided under a separate agreement.

13.11 **Effective Date.** This Agreement will not be binding on or effective until approved by Buyer’s City Council and until all parties have signed it, with the
"Effective Date" being the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

***Remainder of Page Intentionally Left Blank***

[Signatures on Following Page]
IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the Effective Date.

WITNESSES:

SELLER:

BJD Realty, LLC,
a South Carolina limited liability company

By: ________________________________
Name: ______________________________
Its: ________________________________
Date: _____________________________, 2021

WITNESSES:

BUYER:

City of Charleston

By: ________________________________
   John J. Tecklenburg
Its: Mayor
Date: _____________________________, 2021
COMMITTEE / COUNCIL AGENDA

TO:  John J. Tecklenburg, Mayor
FROM: Matt Frohlich
DEPT. BFRG
SUBJECT: SECOND AMENDMENT TO THE MANAGEMENT AGREEMENT
REQUEST: Approval of a Second Amendment to the Management Agreement Between the City of Charleston and Charleston Digital Corridor Foundation for the lease space at 22 West Edge.

COMMITTEE OF COUNCIL: Real Estate DATE: May 24, 2021

COORDINATION: This request has been coordinated with: (attach all recommendations/reviews)

<table>
<thead>
<tr>
<th>Corporate Counsel</th>
<th>Yes</th>
<th>N/A</th>
<th>Signature of Individual Contacted</th>
<th>Attachment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department Head</td>
<td>X</td>
<td></td>
<td></td>
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</tbody>
</table>

FUNDING: Was funding previously approved? Yes X No N/A

If yes, provide the following: Dept./Div.: Non-Departmental Account #: 900000-53056

Balance in Account __________ Amount needed for this item __________

Does this document need to be recorded at the RMC's Office? Yes No

NEED: Identify any critical time constraint(s).

CFO's Signature: [Signature] Deputy CFO for Amy Wharton, CFO

FISCAL IMPACT: Funds are budgeted in 2021 to continue the Management Agreement through the remainder of the year. Will need to be budgeted for in 2022 if continued.

Mayor's Signature: ____________________________ John J. Tecklenburg, Mayor

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00AM THE DAY OF THE CLERK'S AGENDA MEETING.
SECOND AMENDMENT
TO MANAGEMENT AGREEMENT

THIS SECOND AMENDMENT TO MANAGEMENT AGREEMENT is made and entered into as of the ___ day of May 2021, by and between the City of Charleston (the "City") and the Charleston Digital Corridor Foundation, a 501(c)(3) corporation organized and existing pursuant to the laws of the State of South Carolina ("the CDC").

WHEREAS, the parties on June 18, 2019 entered into a Management Agreement which sets forth the parties’ respective rights and obligations regarding the CDC overseeing the renovations and management of the City’s leased premises at 22 West Edge ("Premises"), a copy of the Agreement is attached hereto; and,

WHEREAS, the parties on April 11, 2020 entered into a First Amendment to the Management Agreement relating to reimbursing CDC for certain tenant upfits at the Premises, a copy of the First Amendment is attached hereto; and,

WHEREAS, the parties desire to amend the Agreement in order to change the term of the Agreement to a month to month basis, not to exceed twelve (12) months; increase the amount to be paid by the City to reimburse the CDC for certain tenant upfits at the Premises.

NOW, THEREFORE, for and consideration of the sum of One and 00/100 ($1.00) Dollar and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Agreement is hereby amended by deleting in its entirety Paragraph 3, "Term" and replacing it with the following language:

   "3. Term. The term of this Agreement is two years and shall commence on the Effective Date of June 18, 2019. Effective June 18, 2021, the term of this Agreement shall be month to month and shall expire in twelve months, if not terminated sooner. Not less than thirty (30) days’ written notice shall be provided to the other party before the termination of this Agreement. In the event that CDC elects to terminate the Agreement before the expiration of the twelve months, CDC agrees to use its best efforts to locate new Occupants for the vacant space, should the City request such assistance."

2. In all other respects, the Agreement heretofore entered into by and between the parties remains unmodified and in full force and effect.
IN WITNESS WHEREOF, the parties caused their authorized representatives to execute this Second Amendment to Management Agreement as of the date first above written.

WITNESS

________________________

CITY OF CHARLESTON

By: ______________________

Date: _____________________

WITNESS

________________________

CHARLESTON DIGITAL CORRIDOR FOUNDATION

By: ______________________

Date: _____________________
STATE OF SOUTH CAROLINA )
COUNTY OF CHARLESTON )

FIRST AMENDMENT
TO MANAGEMENT AGREEMENT

THIS FIRST AMENDMENT TO MANAGEMENT AGREEMENT is made and entered into as of the ___ day of April 2020, by and between the City of Charleston (the "City") and the Charleston Digital Corridor Foundation, a 501(c)(3) corporation organized and existing pursuant to the laws of the State of South Carolina ("the CDC").

WHEREAS, the parties on June 18, 2019 entered into a Management Agreement which sets forth the parties’ respective rights and obligations regarding the CDC overseeing the renovations and management of the City’s leased premises at 22 West Edge ("Premises"), a copy of the Agreement is attached hereto; and,

WHEREAS, the parties desire to amend the Agreement in order to increase the amount to be paid by the City to reimburse the CDC for certain tenant upfits at the Premises.

NOW, THEREFORE, for and consideration of the sum of One and 00/100 ($1.00) Dollar and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Agreement is hereby amended by amending Paragraph 4 (d) by adding the underlined language:

   "(d) CDC shall not approve any increases in the Tenant Improvement Allowance without the advance written approval of the City. The City will reimburse CDC for all reasonable costs expended on tenant upfits not included in the Tenant Improvement Allowance in an amount not to exceed $105,000.00."

2. In all other respects, the Agreement heretofore entered into by and between the parties remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties caused their authorized representatives to execute this First Amendment to Management Agreement as of the date first above written.

WITNESS

[Signature]

CITY OF CHARLESTON

By:

[Signature]
WITNESS

\[ Signature \]

Date: \[ 5/11/2020 \]

CHARLESTON DIGITAL CORRIDOR FOUNDATION

By: \[ Signature \]

Date: \[ 4/30/20 \]
STATE OF SOUTH CAROLINA  )
COUNTY OF CHARLESTON     )

MANAGEMENT AGREEMENT

This Management Agreement (hereinafter “Agreement”) is made and entered into as of this 24th day of June, 2019 (“Effective Date”), by and between the City of Charleston, a South Carolina municipal corporation (the “City”), and Charleston Digital Corridor Foundation, a 501(c)(3) corporation organized and existing pursuant to the laws of the State of South Carolina (“CDC”).

RECITALS

WHEREAS, the City, to encourage the growth of tech-focused businesses, has collaborated with the Medical University of South Carolina (“MUSC”) and the South Carolina Research Authority (“SCRA”) to develop WestEdge, a community designed to be a hub for research, collaboration and innovation to spur business, research, talent recruitment, investment, and jobs;

WHEREAS, among other commitments made to develop WestEdge, the City of Charleston and MUSC and SCRA agreed to facilitate the construction of 22WestEdge, by leasing space in the privately-developed office building, a class “A” office space;

WHEREAS, pursuant to this commitment, City Council approved a Governmental Real Estate Lease between 22 WestEdge Owner, LLC (“the Landlord”) and the City for a five (5) year term (“Lease” or “related Lease”), attached hereto as Exhibit 1, whereby the City will pay a certain annual base rental rate per square foot for 8,000 square feet on the 4th floor of the building (“the Premises”) as set forth in Exhibit 1, #A (Perkins + Will), during which time the City has the right to use the Premises for office space;

WHEREAS, the Lease further provides that the Landlord shall prepare the Premises for occupancy by the Tenant in accordance with plans and specifications approved by the City and the Tenant Improvement Allowance for the cost of the renovations;

WHEREAS, the City has previously leased The Flagship and Flagship2 (“FS1&2”), incubator space dedicated to the development of the tech industry;

WHEREAS, FS1&2 over the years have been cooperatively managed by the City and the CDC;

WHEREAS, CDC is experienced in recruiting start-up tech-based companies and in creating and fostering a work environment that encourages their stability and growth; and
WHEREAS, the City now seeks to have CDC oversee the renovations and manage the Premises at 22 WestEdge, and the CDC has agreed to provide these services, all in accordance with the terms and conditions as hereafter set forth.

NOW, THEREFORE, the CITY and CDC, intending to be legally bound, and in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby agree as follows:

1. Recitals. The foregoing Recitals are true and correct and incorporated herein.

2. Management Relationship. The City hereby designates and employs CDC to oversee the renovations of the Premises and manage its operations, with all rights, duties and obligations appertaining thereto and as hereinafter set forth.

3. Term. The term of this Agreement shall commence on the Effective Date. The term for shall expire on the termination date of the City’s Lease with the Landlord (Sec. 24.1.17 of the Lease) or in not less than two (2) years from the Effective Date. In the event the CDC elects to terminate this Agreement after two (2) years and before the termination of the City’s Lease with the Landlord, CDC shall provide not less than 30 days’ written notice to the City and CDC agrees to use its best efforts to locate new Occupants for the vacant space, should the City request such assistance.

4. Management of Renovations and Office Up fit. CDC shall be responsible for (1) managing and overseeing the renovations of the Premises, including assisting the City in the development of the plans and specifications, approval of change orders, and other rights as set forth in Section 11.1 of the related Lease with the Landlord, and (2) preparing the office space for occupancy. This responsibility includes:

(a) Be responsible for selection and payment of the architect for the design of the Premise renovations ("design work") and for the contractors and subcontractors to execute the renovations according to the design approved by the City which includes design of layout, architect, MEP, permitting, installation of IT hardware and wiring and access controls.

(b) Prior to the commencement of construction activities, CDC will present the design and construction drawings to the City for approval, and will obtain City approval for any changes to the Project.

(c) Be responsible for funding the renovations. The City will reimburse CDC for all reasonable costs expended by the CDC to complete the renovations in an amount not to exceed $50,000.
CDC will be responsible for all amounts that exceed $50,000 unless approved in writing by the City.

(d) CDC shall not approve any increases in the Tenant Improvement Allowance without the advance written approval of the City.

(e) CDC will purchase all necessary furniture, fixtures and equipment ("FFE"). The City will reimburse CDC for all reasonable costs expended on FFE, not to exceed $75,000.

(f) All reimbursement requests shall be supported by invoices and other documentation as requested by the City and will be paid within 30 days of an approved invoice. The City reserves the right to audit CDC’s expenditures related to the renovations.

5. **Management Fee.** During the term of this Agreement, the City shall pay the CDC an annual Management Fee and operating budget in the amount of one hundred thousand ($100,000.00) dollars, payable in monthly installments of eight thousand, three hundred and thirty-three ($8,333.33) dollars, subject to Paragraph 12(f). If the Effective Date falls on a date other than the first of the month, the Management Fee shall be prorated for that month, with the full monthly installment thereafter being payable on the first day of each month of the Term.

6. **Maintenance Obligations of the City.** The City shall be responsible for the maintenance, repairs, security of the Premise in accordance with its related Lease (Exhibit 1).

7. **Utility Services.** City shall pay the cost of electricity, gas, water, sewer, trash collection and all other utilities or services required for the use and occupancy of the Premises that are not otherwise the obligation of the City’s related Lease with the Landlord.

8. **Management Program.** CDC shall manage the Premises solely for operation of the incubator spaces and associated activities and programs that are responsive to technology start-ups in Charleston.

9. **Casualty.** In the event a casualty (not caused by CDC) damages or destroys the Premises, the City shall work with the Landlord under the terms of the related Lease to restore the Premises, as applicable, to substantially the same condition as prior to damage as speedily as practicable, unless within sixty (60) days of such damage or destruction the City or its Landlord gives CDC notice that it does not intend to repair or restore the Premises, in which case this Agreement shall terminate as to the CDC, as applicable.

10. **Inspection.** The City, or its Landlord, shall have the right to enter the Premises during normal hours of operation as reasonably necessary to examine the same or to make such repairs, additions, or alterations as the City may deem necessary or desirable for the safety, comfort or preservation thereof.
11. **Removal of Personal Property.** Any financial, accounting, marketing and other informational systems, computers, software programs and any other items or other equipment provided by and paid for by CDC for use in the management or operation of the Premises or for the provision of any programs or services at the Premises shall remain at all times the property of CDC and CDC shall have the right to remove the same upon expiration or termination of this Agreement. CDC shall repair any damage to the Premises caused by such removal. Furniture, fixtures and equipment (FFE) purchased by CDC pursuant to Section 4(e) is the property of the City and CDC shall not have the right to remove upon expiration or termination of this Agreement unless the City agrees in writing to sell or otherwise make available to CDC such FFEs.

12. **Management Services.** Management services to be provided by the CDC include the following:

(a) Leasing and Licensing

(i) The City authorizes CDC to execute, on behalf of and as agent for the City, any lease or license of office space within the Premise upon a form agreement approved by CDC and City's corporation counsel. CDC may from time to time propose modifications to such form agreements, and the City shall not unreasonably withhold its consent to any proposed modifications.

(ii) CDC shall offer, make and keep the Premises available for lease or license by any interested startup technology-based person or company, subject to availability and at then current rates. CDC shall charge and collect rents for use of space in the Premises in accordance with initial rates that are attached hereto and incorporated herein as Exhibit 2. City reserves the right to adjust rental rates, as it deems necessary and in its sole discretion. Rent payments shall be made payable to the City and submitted to the City's Real Estate Management Division by the tenth day of each month.

(iii) In the event any of the office space remains vacant for a period longer than 60 days, the City, in its sole discretion, may lease or license the vacant space to a non-technology based entity.

(iv) This Agreement does not include any obligation on the part of the City to provide parking spaces for CDC or the Occupants. This Agreement does not include any obligation on the part of the City to provide parking spaces for CDC or the Occupants; however, the City will use best efforts to accommodate parking needs.

(b) **Policies and Procedures.** CDC shall monitor and develop written policies and procedures appropriate for the operation of the Premises per the terms of this Agreement and for maintaining compliance with applicable legal and regulatory requirements. Policies and Procedures will be mutually developed by the parties prior to the Premises being occupied. Any
updated or new policies and procedures shall be submitted to the City for review and approval prior to implementation, which approval shall not be unreasonably withheld or delayed.

(c) **Regulatory Compliance.** CDC shall obtain, maintain and pay for all licenses, permits and approvals necessary or desirable for the operation of the Premises and the provision of the various programs and services to be provided at or through the Premises.

(d) **Operation of Premises.** CDC shall use best management practices in operating the Premises as high-quality office facilities for technology related business startups and to conduct such operations as efficiently and economically as practicable.

(e) **Marketing.** CDC agrees to develop and implement a marketing plan for the Premises as may be necessary in consultation with the City to attract technology-based startup companies to the Premises. CDC shall be responsible for implementing the marketing plan and shall provide marketing for the Premises in existing publications and through various community activities as deemed appropriate and desirable by CDC.

(f) **Operating Expenses.** Included in the annual Management Fee set forth in Paragraph 5, are all of CDC’s operating expenses to include but not be limited to one (1) administrative staff member, parking for staff, accounting fees, office supplies, kitchen supplies, access control, building insurance and internet charges.

(g) **Funding and Payment of Operating Expenses.** All rent payments and/or license fees for office space will be made payable and sent directly to the City, including any revenues derived from operations such as conference room rentals and concession expenses for utilization of the Premises.

(h) **Accounting.** CDC shall provide general accounting services, including bookkeeping, payroll and accounts receivable/accounts payable management. CDC shall prepare and furnish to the City a quarterly Summary of Gross Revenue and Expenses (SRE) for the Premises within thirty (30) days following the end of each quarter of operation of the Premises and an annual report of gross revenues and expenses of the Premises within sixty (60) days following the end of each fiscal year. Such reports shall be in form and content reasonably acceptable to the City. The City's auditor or designee shall have the right during normal business hours and upon three (3) business days' prior written notice, to audit, inspect, examine and copy all financial records, books, ledgers, statements, invoices, receipts, reports, tax returns, and documents pertaining to the operation and management of the Premises maintained by or on behalf of the CDC. CDC agrees to make any such records available for inspection by the City for a period of three (3) years following expiration or cancellation of this Agreement. The City shall bear all expenses incurred in connection with any examination it makes pursuant hereto.

(i) **Purchasing.** CDC shall be responsible for purchasing and maintaining equipment and supplies reasonably required in the day-to-day operation of the Premises.
(j) **Staffing.** CDC shall be responsible for the staffing, hiring, training, supervision and discharge of all personnel providing services at the Premises. CDC shall have the sole authority to enter into contracts with independent contractors and to hire employees, including determination of the terms and conditions for any such contract or employment. All personnel shall have credentials and skills appropriate for services to be provided by such personnel. CDC shall arrange for continued training for staff members, as appropriate to adhere to current standards and monitor trends in the operation of similar centers.

(k) **Appearance, Maintenance and Repairs.** CDC shall not cause or permit any waste, damage, or injury to the Premises. Except as otherwise stated in this Agreement, CDC shall keep the Premises suitable for the comfort and safety of patrons and staff and free from hazardous conditions and deterioration, other than ordinary wear and tear; maintain the Premises in a clean and neat fashion, free of litter and debris; and promptly inform the City of the need for preventative maintenance and repairs and any major repairs. On default of CDC in providing proper maintenance, or in making any repairs or replacements as provided herein, the City may, but shall not be required to, provide maintenance, and make the repairs and replacements for CDC's account, and the expense thereof shall constitute and be deducted from the next month's Management Fee.

(l) **City Approvals.** The Mayor's designee, the Deputy Chief Financial Officer, shall be the City's representative for purposes of consulting with CDC and providing approvals requested by CDC pursuant to this Agreement. The City shall not unreasonably withhold or delay any such approvals.

(m) **CDC Evaluation.** The City shall have the right to perform annual evaluations of the CDC's performance pursuant to this Agreement. In the event that the City determines that CDC has failed to fulfill any of its duties hereunder, the City shall notify CDC in writing describing the nature of such failure and specifying the corrective action desired by the City. CDC shall use reasonable efforts to promptly correct the failure. If CDC reasonably determines the corrective action desired by the City is not reasonably obtainable, CDC shall promptly notify the City and shall provide the City with such information as the City reasonably requests.

(n) **CDC Permits and Approvals.** CDC shall be responsible for procuring licenses, permits and other approvals, the payment and collection of accounts and in all other activities necessary or appropriate or useful to the CDC in the carrying out of its duties pursuant to this Agreement.

13. **Insurance.** CDC shall obtain and maintain throughout the term of this Agreement: (a) professional liability insurance covering the acts of the CDC, its agents and employees and shall require licensees and lessees, and any independent contractors who provide professional services at the Premises to maintain such coverage, in amounts and with insurers reasonably acceptable to the City (professional liability coverage purchased through Joint
Underwriters Association and the Patient’s Compensation Fund shall be deemed acceptable by
the City); and (b) if the nature of CDC’s operation is such as to place any or all of its employees
under the coverage of local workmen’s compensation or similar statutes, workmen’s
compensation or similar insurance affording statutory coverage and containing statutory limits.
Each policy shall be issued by companies and in form and amounts reasonably acceptable to the
City, shall name the City as an additional insured and shall not be subject to cancellation nor be
nonrenewable unless the City is provided written notice thereof no less than thirty (30) days prior
to such cancellation or the date on which a policy is not renewed. CDC shall deliver certificates
evidencing the renewal of coverage with evidence of payment of the applicable premiums to the
City at least thirty (30) days prior to the expiration of each policy period. If CDC shall fail to
provide such coverage, the City shall have the option (but not the obligation), following ten (10)
days prior written notice to the CDC, to cause such insurance to be issued, and in such event the
premium for such insurance shall be repaid by the CDC to the City within ten (10) days after
receipt of a statement therefore. Insurance required pursuant to this Agreement may be provided
under CDC’s master policy. Any insurance needed specifically for WestEdge will be billed to the
city as an operational expense.

14. **Building Insurance.** The City or the Landlord shall provide and keep in full force
and effect hazard insurance with extended coverage covering the building and improvements.
The City shall not be liable for any damage or injury that may be sustained by any party or
persons on the Premises, other than damage or injury caused solely by the negligence of the City,
its agents or employees.

15. **Indemnification by CDC.** CDC hereby agrees to indemnify, defend and hold the
City harmless from and against any and all claims, actions, liabilities, losses, costs and expenses
of any nature whatsoever, including reasonable attorneys’ fees and other costs of investigating
and defending any such claim or action, asserted against the City but arising out of the
negligence, misconduct, default, error or omission of the CDC, its agents, contractors or
employees and arising out of CDC’s use of the Premises up to the limits of its coverage.

16. **City Liability.** The City does not assume any of the obligations, liabilities or debts
of the CDC in carrying out its responsibilities under this Agreement and shall not by virtue of
this Agreement assume or become liable for any of such obligations, debts or liabilities of the
CDC. CDC shall not hold itself out as an agent or affiliate of the City in its performance under
this Agreement.

17. **Use of Name, Logos, etc.** CDC agrees to develop a marketing plan for the
Premises in consultation with the City in order to attract users to the office space. As part of its
management duties, CDC shall be responsible for implementing the marketing plan and shall
provide advertising for the Premises in existing publications and through various community
activities as deemed appropriate and desirable by CDC. Neither party shall make any use of the
name of the other, or any of their trademarks, logos or symbols, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

18. Proprietary Rights. Any marketing, management and other systems, business ideas, methodologies, programs, computers, computer programs and other information or equipment provided by the CDC for use in the management or operation of the Premises or for the provision of any programs or services at the Premises shall remain at all times the property of the CDC and shall not be disclosed or used in any manner by the City without the prior written consent of the CDC. CDC shall have the right to remove all property of CDC upon expiration or earlier termination of this Agreement; provided, however, that financial and accounting books and records, and the policy and procedure manuals shall be the property of the City and shall be turned over the City at the expiration or earlier termination of this Agreement.

19. Default. The CDC shall have the right to terminate this Agreement if the City has failed to fulfill any of its duties herein, and after the CDC has notified City in writing describing the nature of such failure and specifying the corrective action desired by the CDC and City has failed to promptly correct the failure within sixty (60) days. The City shall have the right to terminate this Agreement if CDC has failed to fulfill any of its duties herein, and after the City has notified CDC in writing describing the nature of such failure and specifying the corrective action desired by the City and CDC has failed to promptly correct the failure within sixty (60) days.

20. Equal Employment Opportunity. CDC expressly agrees to abide by all applicable Federal or state equal employment opportunity statutes, rules and regulations including, without limitation, Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, the National Labor Relations Act, the Fair Labor Standards Act, the Rehabilitation Act of 1973, the Occupational Safety and Health Act of 1970, and the Americans with Disabilities Act of 1990, all as may be amended from time to time in its management of the Premises.

21. Competitive Services. Nothing in this Agreement shall prohibit CDC or any of its affiliates from owning or operating other technology business incubator facilities or providing other technology related services.

22. Authority. Each party represents and warrants to the other that it has the authority to enter into and perform its obligations under this Agreement, and that the execution, delivery and performance of this Agreement by such party has been duly authorized by all requisite corporate or municipal action, as the case may be, and that this Agreement constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with its terms.
23. **Dispute Resolution.** The parties agree to meet and confer in good faith to resolve any disputes regarding the terms of this Agreement that may arise between them. It is understood and agreed that any dispute that cannot be amicably resolved by the parties shall be submitted to voluntary mediation. All expenses incurred for the services of a mediator shall be shared equally by the parties. In the event the parties are unable to resolve any problem or dispute through voluntary mediation, either party may pursue any and all remedies available to it in a court of competent jurisdiction in Charleston, South Carolina.

24. **Assignment.** Neither party shall have the right to assign this Agreement without the prior written consent of the other party.

25. **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing directed to a party at its address as set forth below. A party may designate a new address by written notice. All notices shall be effective and deemed delivered upon receipt when sent via facsimile or express mail service, and three days after mailing when mailed postage prepaid by United States registered or certified mail, return receipt requested.

To the City:

Real Estate Management  
City of Charleston  
P.O. Box 304  
Charleston, SC 29402-0304

With a Copy to:

Corporation Counsel  
City of Charleston  
P.O. Box 304  
Charleston, SC 29402-0304

To CDC:

Charleston Digital Corridor  
Attn: Ernest Andrade  
385 Meeting Street, Suite 100  
Charleston, SC 29403  
843-724-3773

26. **Attorneys’ Fees.** In the event that any party hereto shall bring an action to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action, shall be entitled to court costs and reasonable attorneys’ fees to be paid by the non-prevailing party as fixed by the court of appropriate jurisdiction, including, but not limited to, attorney’s fees and court costs incurred in courts of original jurisdiction, bankruptcy courts, or appellate courts.

27. **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 or otherwise required to police or regulate any activities or conduct of the other or any of their employees, officers, agents or contractors.

28. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection herewith. No interpretation, modification, termination or waiver of any provision of, or default pursuant to, this Agreement shall be binding upon a party unless in writing and signed by the party against whom enforcement is sought.

29. **Waiver Limitation.** No failure or delay in exercising any right, power or remedy hereunder shall constitute a waiver, forfeiture or other impairment of such right, power or remedy.

30. **Severability.** The invalidity, illegality or unenforceability of any provision hereof shall not render invalid, illegal or unenforceable any other provision hereof.

31. **Successor and Assigns.** This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their heirs, successors and permitted assigns.

32. **Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.

33. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

34. **Corporate Authority.** Each individual executing this Agreement on behalf of a corporation represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the corporation in accordance with a duly adopted resolution of the board of directors of the corporation or City Council, as the case may be, or in accordance with the Bylaws of the corporation, and that this Agreement is binding upon the corporation in accordance with its terms.

35. **Taxes.** CDC shall pay any Federal, State, County and City sales and/or use taxes and fees arising as a result of this Agreement from the Management Fee.

36. **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of South Carolina, and the parties hereto specifically agree to submit to and be bound by the jurisdiction of the courts, either federal or state, of the State of South Carolina. Venue for any action brought to enforce this Agreement shall lie in Charleston County, South Carolina.
IN WITNESS WHEREOF, the parties caused their authorized representatives to execute, this Agreement as of the date first above written.

WITNESSES:

[Signatures]

The City of Charleston

By: [Signature]
John J. Tecklenburg, Mayor

Dated: 6/18/19

Charleston Digital Corridor Foundation

By: [Signature]

Name: Kirk King

Its: Chairman

Dated: 6/18/19
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Mayor John Tecklenburg DATE: May 18, 2021

FROM: Legal Department DEPT: ____________________________

ADDRESS: Portion of Murray Blvd. and intersection of Murray Blvd. and Limehouse St. (Approximately)

TMS: ____________________________

ACTION REQUEST: AUTHORIZATION FOR MAYOR TO EXECUTE ATTACHED PERMANENT EASEMENT BETWEEN CITY AND COMMISSIONERS OF PUBLIC WORKS GRANTING TO CWS UTILITY/ACCESS EASEMENT FOR ACCESS TO WASTEWATER TUNNELS AND WASTEWATER TUNNEL SHAFTS.

ORDINANCE REQUIRED:

Yes

COORDINATION: The request has been coordinated with:

All supporting documentation must be included

Department Head ____________________________ Signature ____________________________ Attachments [ ]

Legal Department [ ]

Chief Financial Officer Deputy CFO for Amy Wharton, CFO [ ]

Director Real Estate Management [ ]

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 ____________

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

TO: Real Estate Committee DATE: 5/18/2021
FROM: Susan Herdina DEPT: Legal

ADDRESS: Portion of Murray Blvd. and Intersection of Murray Blvd. and Limehouse St. (Approximately; see attached Exhibit A)

TMS: AUTHORIZATION FOR MAYOR TO EXECUTE ATTACHED PERMANENT EASEMENT BETWEEN CITY AND COMMISSIONERS OF PUBLIC WORKS GRANTING TO CWS UTILITY/ACCESS EASEMENT FOR ACCESS TO WASTEWATER TUNNELS AND WASTEWATER TUNNEL SHAFTS.

ACTION REQUEST: ________________________________

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

☐ ACQUISITION Seller (Property Owner) ________________ Purchaser ________________

☐ 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: ________________________________________________

☐ EASEMENT Grantor (Property Owner) _________________________
  City __________________ Grantee __________________ CWS __________________

☐ PERMANENT

_____________________________
COMMERCIAL REAL ESTATE FORM

Terms:

☐ TEMPORARY
Terms:

☐ LEASE
Lessor: ___________________ Lessee: ___________________

☐ INITIAL
Terms:

☐ RENEWAL
Terms:

☐ AMENDMENT
Terms:

☐ Improvement of Property
Owner: ___________________
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).
AN ORDINANCE

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF CHARLESTON A PERMANENT EASEMENT BETWEEN THE CITY OF CHARLESTON AND THE COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON WHEREBY THE CITY GRANTS TO THE CHARLESTON WATER SYSTEM (CWS) A PERMANENT UTILITY/ACCESS EASEMENT ATTACHED TO THIS ORDINANCE AND INCORPORATED HEREIN FOR PROPERTY OWNED BY THE CITY ON MURRAY BOULEVARD IN THE CITY OF CHARLESTON, AS SHOWN ON ATTACHED EXHIBIT A, AND SUBJECT TO THE PERMITTED EXCEPTIONS SET FOR IN ATTACHED EXHIBIT B, FOR CONSIDERATION OF THE SUM OF ONE MILLION AND NO/100 DOLLARS.

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 easement, approved as to form by the Office of the Corporation Counsel, to the Charleston Water System, encumbering a portion of the City's property on which Murray Boulevard is located, consisting of approximately 8,535 sq. ft., .020 acres, as shown on Exhibit A of the Grant of Permanent Easement, to permit access to wastewater tunnels and wastewater tunnel shafts near the intersection of Murray Boulevard and Limehouse Street.

Section 2. That this Ordinance shall become effective upon ratification.
Ratified in City Council this _____ day of __________, in the Year of Our Lord, 2021, and in the 245th Year of the Independence of the United States of America.

By: __________________________
    John J. Tecklenburg
    Mayor

ATTEST:

By: __________________________
    Jennifer Cook
    Clerk of Council
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

GRANT OF PERMANENT EASEMENT

WHEREAS, the Commissioners of Public Works of the City of Charleston, South Carolina (referred to herein as the "Commission") owns and operates wastewater tunnels and wastewater tunnel shafts near the intersection of Murray Boulevard and Limehouse Street in the City of Charleston, South Carolina (the "Murray Boulevard Shaft" and the "Limehouse Street Shaft"), as part of its sewer tunnel system; and

WHEREAS, the undersigned grantor, the City of Charleston, South Carolina (referred to herein as the "Grantor"), owns Murray Boulevard and that portion of land on which Murray Boulevard is located, as more particularly shown on Exhibit A attached hereto; and

WHEREAS, the Commission has requested a permanent easement across such property of the Grantor, which the Grantor has agreed to grant, as more particularly described herein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Grantor, the CITY OF CHARLESTON, SOUTH CAROLINA, in consideration of the sum of ONE MILLION AND NO/100 DOLLARS ($1,000,000.00) to the Grantor in hand paid for the easement and rights 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, subject to the Permitted Exceptions set forth on Exhibit B attached hereto and incorporated herein (collectively, the "Permitted Exceptions"), granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON, SOUTH CAROLINA, its successors and assigns, the following:
A permanent transferable right-of-way and utility easement for a commercial purpose over, under and across a strip of land designated “NEW PERMANENT CWS UTILITY/ACCESS EASEMENT” containing approximately 8,535 sq. ft., 0.20 acres, and shown as being contained between the lines running between the points designated A, B, C, D, E, F, G, H, I and A on a plat dated December 9, 2020, and entitled “PLAT SHOWING A NEW PERMANENT CWS UTILITY/ACCESS EASEMENT OWNED BY THE CITY OF CHARLESTON AND BEING CONVEYED TO CHARLESTON WATER SYSTEM LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA,” with such strip of land having such size, shape, dimensions, butting and boundings, courses and distances as will by reference to said plat more fully appear, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (hereinafter referred to as “Permanent Easement”);

TOGETHER with the right to construct, locate, install, operate, maintain, inspect, repair and replace pipes, tunnels, valves, fittings, manholes, shafts, service lines, controls, devices, hydrants, equipment, vents and other usual associated appurtenances that may be located aboveground or underground within the Permanent Easement, subject to the Permitted Exceptions; and

TOGETHER with the right by the Commission and its contractors to use the Permanent Easement for ingress and egress, and ingress and egress to other easements owned by the Commission and/or permitted encroachment areas on properties adjacent to the property of the Grantor; and

It is further agreed that, subject to the Permitted Exceptions:
1) The Commission will have the right of ingress, egress, and access to and from the Permanent Easement across and upon such lands of the Grantor as may be necessary or convenient for purposes connected with the Permanent Easement.

2) In addition, the Commission shall have the right to block traffic to, from and within the Permanent Easement for such periods of time as may be necessary or desirable to perform the utility work at the Murray Boulevard Shaft and Limehouse Street Shaft, as permitted herein, subject to the following conditions:

(a) Scheduled Activities - For recurring schedulable events, such as, but not limited to, regular maintenance activities, the Commission shall provide 30 calendar days prior written notice of the need to block the street. Notice shall include the full requirements at the time of notice for a City street blocking and sidewalk blocking permit as appropriate. The Commission shall coordinate the timing of these closures in good faith with the Grantor to minimize the disruption to both parties.

(b) Unscheduled Non-Emergency Closures with an Expected Duration Less than 72 Hours - The Commission shall provide 3 business days of prior written notice of the need to block the street. Notice shall include full requirements at the time of notice for a City street blocking and sidewalk blocking permit as appropriate. The Commission shall coordinate the timing of these closures in good faith with the Grantor to minimize the disruption to both parties.

(c) Unscheduled Non-Emergency Closures with an Expected Duration of More than 72 Hours - The Commission shall provide 30 calendar days prior
written notice of the need to block the street. Notice shall include the full requirements at the time of notice for a City street blocking and sidewalk blocking permit as appropriate. The Commission shall coordinate the timing of these closures in good faith with the Grantor to minimize the disruption to both parties.

(d) Emergency Closures. In the event a closure is necessary for work required to maintain or restore effective operation or to protect persons, property or the environment from an imminent exposure to danger or harm, as determined by the Commission in its sole discretion, the Commission shall notify the Grantor of the need for the closure as soon as is reasonably practicable by electronic and telephonic methods. Formal written notice with the full requirements of a City road blocking and sidewalk blocking application shall follow as soon as reasonably practicable. Prompt notification shall also be provided to emergency services regarding the closure.

(e) Non-Emergency Closures from 2021 to 2023 – In addition to the provisions above, the Commission shall take reasonable efforts to avoid closures and/or other activities that would negatively impact the Grantor’s Seawall Repair Project progress on the Low Battery. Construction of that project is expected to proceed through 2023.

(f) For the avoidance of doubt, no street blocking and sidewalk blocking or other permit from Grantor is required for the Commission’s use of the Permanent Easement in accordance with the terms hereof.
(f) The Commission shall duly and appropriately mark traffic obstruction pursuant to the directives of the City of Charleston Department of Traffic and Transportation, Sections 56-5-930 and -940 of the South Carolina Code of Laws, and South Carolina Manual on Uniform Traffic Control Devices for Street and Highways, Part 5;

(g) The Commission shall maintain proper traffic control including advance warning signs and flagger(s);

(h) The Commission shall maintain flow of traffic at all times, including re-routing of traffic, as necessary;

(i) The Commission shall provide proper bicycle and pedestrian traffic control, including re-routing of traffic, as necessary;

(j) The Commission shall comply with regulations concerning traffic safety;

and

(k) The Commission shall notify the Grantor upon completion of the work.

3) Subject to issuance of a SCDOT encroachment permit in the Limehouse Street right-of-way adjacent to the Permanent Easement area and approximately represented in Exhibit A attached hereto, which the Grantor will not oppose, the Grantor will also issue a street blocking permit for the Limehouse Street encroachment promptly upon receipt of the Commission’s application for such permit. The Commission will not be required to obtain a street blocking permit or any other permit or approval from the Grantor in connection with the Commission’s use of the Permanent Easement for the purposes set forth herein.
4) The Commission 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.

5) The Grantor, and Grantor’s successors and assigns, will have full use of the surface area of the Permanent Easement, provided, however, that neither the Grantor nor Grantor’s successors or assigns shall construct, build or place any permanent structure over the surface, or below the surface, of the Permanent Easement, and subject to the Commission’s rights granted in paragraph 2 above, it being the purpose of the Commission to (1) protect the integrity of the utility infrastructure which is located at and below the surface, and (2) to allow quick and ready access to the utility infrastructure to facilitate any repairs, maintenance and replacement. Additionally, the Commission shall coordinate any work on, under or through the Permanent Easement with appropriate officials from the City (Grantor) to ensure that the work and other activities of the Commission do not materially interfere with other utilities, infrastructure and facilities located or to be located within or under the Permanent Easement.

6) 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 Commission should determine to abandon the Permanent Easement, written notice will be given to the then owners of the property subject to the Permanent Easement stating that the Commission has given up all rights in the Permanent Easement.

7) The Commission agrees that the surface of any unpaved portions of the Permanent Easement which are highland that are disturbed by the Commission will be regraded
and replanted with grass, and any existing pavement or hardscape damage within the
right-of-way caused by the Commission as a result of its use of the Permanent
Easement will be restored by the Commission with like materials.

8) The Permanent Easement granted herein may not be transferred or assigned by the
Commission without the prior written consent of the Grantor, which consent shall not
be unreasonably withheld, conditioned or delayed.

9) The agreements contained herein shall be binding upon the Commission and the
Grantor and their respective successors and assigns.

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

[Signature pages to follow]
IN WITNESS WHEREOF, the undersigned have set their hands and seals this ___ day of

___, 2021.

WITNESS: GRANTOR:

CITY OF CHARLESTON, SOUTH CAROLINA

__________________________________________  By: __________________________ (SEAL)

Mayor John J. Tecklenburg

STATE OF SOUTH CAROLINA  )  ACKNOWLEDGMENT
COUNTY OF CHARLESTON  )

I, __________________________, Notary Public for the State of South Carolina, do hereby certify that the CITY OF CHARLESTON, SOUTH CAROLINA, by Mayor John J. Tecklenburg, personally appeared before me this day and acknowledged the due execution of the foregoing instrument, on behalf of the City of Charleston.

Subscribed to and sworn before me this ___ day of ___ , 2021.

__________________________________________
Print Name: __________________________
Notary Public, State of South Carolina
My commission expires: __________________________
IN WITNESS WHEREOF, the undersigned have set their hands and seals this ___ day of ___ , 2021.

WITNESS:

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

______________________________
(SEAL)
F. Kin Hill, Jr., PE, Chief Executive Officer

STATE OF SOUTH CAROLINA )
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, ____________________________, Notary Public for the State of South Carolina, do hereby certify that the COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON, SOUTH CAROLINA, by F. Kin Hill, Jr., PE, its Chief Executive Officer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument, on behalf of the Commissioners.

Subscribed to and sworn before me this _______ day of ____________ , 2021.

______________________________
Print Name:
Notary Public, State of South Carolina
My commission expires: ____________________________
EXHIBIT B

1. All applicable laws, rules and regulations to which the Permanent Easement is subject.

2. All matters of record in the ROD Office for Charleston County as of the date this Grant of Permanent Easement is recorded in said ROD Office.

3. All matters that a true and correct survey of the Permanent Easement would reflect.
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Mayor John Tecklenburg DATE: May 18, 2021
FROM: Susan Herdina DEPT: Legal
ADDRESS: 0 Canal Street

TMS: 457-07-001-007

Authorization for Mayor to Execute a Purchase and Sale Agreement between City of Charleston and Michael Milhous Hollings, Helen Hollings Reardon, and Ernest Frederick Hollings, III for the City's purchase at 0 Canal Street, TMS# 457-07-01-007, for a price of $43,500.00 for long term drainage protection.

ACTION REQUEST: Lockwood Blvd.

ORDINANCE REQUIRED:
No.

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

<table>
<thead>
<tr>
<th>Department Head</th>
<th>Signature</th>
<th>Attachments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Department</td>
<td>[Signature]</td>
<td>[X]</td>
</tr>
<tr>
<td>Chief Financial Officer</td>
<td>[Signature], Deputy CFO for Amy Wharton, C/O</td>
<td>[X]</td>
</tr>
<tr>
<td>Director Real Estate Management</td>
<td>[Signature]</td>
<td>[X]</td>
</tr>
</tbody>
</table>

FUNDING: Was funding needed? Yes [X] No [ ]
If yes, was funding previously approved? Yes [ ] No [X]
If approved, provide the following: Dept/Div. [ ] Acct: [ ]
Balance in Account [ ] Amount needed for this item $43,500.00

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

TO: Real Estate Committee       DATE: 5/18/2021
FROM: Susan Herdina         DEPT: Legal
ADDRESS: 0 Canal Street, Charleston, South Carolina
TMS: #457-07-01-007

AUTHORIZATION FOR MAYOR TO EXECUTE A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF CHARLESTON AND MICHAEL MILHOUS HOLLINGS, HELEN HOLLINGS REARDON, AND ERNEST FREDERICK HOLLINGS, III FOR THE CITY’S PURCHASE AT 0 CANAL STREET, TMS# 457-07-01-007, FOR A PRICE OF $43,500.00 FOR LONG TERM DRAINAGE PROTECTION OF LOCKWOOD BLVD.

ACTION REQUEST:

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

☐ ACQUISITION Seller (Property Owner) ___________________________ Purchaser ___________________________

☐ DONATION/TRANSFER
Donated By: __________________________________________

☐ FORECLOSURE
Terms: ________________________________________

☐ PURCHASE
Terms: The purchase of 0 Canal Street for $43,500.00.

☐ CONDEMNATION
Terms: ______________________________________

☐ OTHER
Terms: ______________________________________

☐ SALE Seller (Property Owner) ___________________________ Purchaser ___________________________

☐ NON-PROFIT ORG, please name
Terms: ______________________________________

☐ OTHER
Terms: ______________________________________

☐ EASEMENT | Grantor (Property Owner) City ________________________ Grantee ________________________

☐ PERMANENT

CWS
COMMERCIAL REAL ESTATE FORM

Terms:

☐ TEMPORARY
Terms:

☐ LEASE
Lessor: ___________________ Lessee: ___________________

☐ INITIAL
Terms:

☐ RENEWAL
Terms:

☐ AMENDMENT
Terms:

☐ Improvement of Property
Owner: ___________________
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).
PURCHASE AND SALE AGREEMENT

THIS Purchase and Sale Agreement (this "Agreement"), dated as of May __________, 2021, is made between MICHAEL MILHOUS HOLLINGS, HELEN HOLLINGS REARDON, and ERNEST FREDERICK HOLLINGS, III (collectively the "Seller") and CITY OF CHARLESTON (the "Buyer").

NOW THEREFORE in consideration of the mutual covenants, terms and conditions herein contained, Buyer and Seller agree as follows:

1. PURCHASE AND SALE

1.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Buyer hereby agrees to purchase from Seller, and Seller hereby agrees to sell to Buyer, the Seller’s interest in the real property located on Canal Street, Charleston, South Carolina, having Charleston County TMS# 457-07-01-007 (herein collectively called the “Property”). Unless expressly stated otherwise to the contrary herein, the Property includes all fixtures, equipment and improvements of any kind which are now attached to or appurtenant to the premises.

2. PURCHASE PRICE

2.1 Purchase Price. The purchase price (the “Purchase Price”) for the Property shall be Forty-Three Thousand Five Hundred and No/100 Dollars ($43,500.00) and shall be paid by Buyer to Seller at the Closing (as defined in Section 6.1) in United States currency by Federal Reserve System wire transfer, subject to all deposits, adjustments, prorations and credits contemplated by this Agreement.

3. INTENTIONALLY OMITTED

4. INSPECTION PERIOD

4.1 Inspection Period.

(a) Buyer’s Inspection Period. The Buyer’s Inspection Period shall commence upon ratification of this Agreement and shall expire at 11:59 p.m. (eastern time) on the date which is sixty (60) days from ratification of this Agreement. During the Inspection Period, the Buyer may undertake inspections of the Property, including but not limited to, appraisals, structural, termite/CI.100, non-invasive environmental (i.e., Phase I), and visual inspections. If, during the Inspection Period, Buyer determines, in Buyer’s sole and absolute discretion, that the Property is not suitable for its purposes or for any or no reason whatsoever, Buyer shall have the right to terminate this Agreement by written notice to Seller given on or prior to the applicable expiration of the Inspection Period. In the event of such termination, all rights and obligations of the parties under this Agreement shall terminate, and except as expressly set forth herein to the contrary, this Agreement shall be of no further force or effect. If Buyer fails to terminate this Agreement by written notice to Seller on or prior to the expiration of the Inspection Period, Buyer shall be deemed to have approved the Property condition, and Buyer shall be deemed to have waived its termination rights under this Section 4.1.
(b) **Title and Survey Objections.** With respect to title and survey matters, if Buyer disapproves any particular item by written notice to Seller during the Inspection Period, Seller shall have the right (without any obligation to do so) to cure or attempt to cure Buyer’s objections to such item. In the event Seller is unable to or elects not to cure any one or more of Buyer’s objections pursuant to this Section 4.1, Seller may notify Buyer in writing of such election within ten (10) days of receipt of any objections to title from Buyer; provided, however, that if Seller fails to notify Buyer of Seller’s election within such ten (10) day period, Seller shall be deemed to have elected to cure such objection. Buyer shall have ten (10) days after receiving Seller’s notice of its election not to cure to notify Seller as to whether Buyer intends to: (i) waive the particular objection and continue under the terms of this Agreement; or (ii) terminate this Agreement, in which event all rights and obligations of the parties under this Agreement shall terminate, and except as expressly set forth herein to the contrary, this Agreement shall be of no further force or effect. In the event Buyer fails to notify Seller of its election within the foregoing ten (10) day period, Buyer shall be deemed to have waived the particular objection and approved the matter to which it had previously objected. The term “Permitted Exceptions”, as used herein, shall mean (1) those easements, covenants, conditions and restrictions and other exceptions to title of record as of the Effective Date which Buyer approves or is deemed to approve pursuant to this Section 4.1; (2) state, county and city taxes on the Property for the year of Closing and subsequent years not yet due and payable; (3) intentionally omitted; (4) intentionally omitted; (5) any documents specifically contemplated by this Agreement to be recorded at or prior to Closing (as hereinafter defined); and (6) such other matters Buyer expressly agreed to accept pursuant to the terms of this Agreement. Buyer shall have until the Closing Date (as hereinafter defined) in which to re-examine title to the Property and in which to give Seller written notice of any additional objections to title created after the date of the Title Commitment. Seller shall have until the Closing Date in which to satisfy all valid objections specified in a notice by Buyer of title objections. If Seller fails so to satisfy any such objection, then, at the option of Buyer, Buyer may: (A) terminate this Agreement, in which event all rights and obligations of the parties under this Agreement shall terminate, and except as expressly set forth herein to the contrary, this Agreement shall be of no further force or effect; or (B) waive such satisfaction and performance and consummate the purchase and sale of the Property. Notwithstanding anything herein to the contrary, Seller shall remove any monetary encumbrances affecting the Property prior to or at Closing, including any mortgages, liens, and previously billed real property taxes.

(c) **Entry on Property; Inspections; Environmental Review.** Buyer shall be entitled to enter upon the Property prior to Closing in order to perform such non-invasive studies, tests, inspections and surveys as the Buyer may deem advisable. Seller agrees to provide reasonable cooperation and assistance to Buyer to the extent requested by Buyer.

(d) **Buyer’s Entry.** Buyer’s entry upon and inspection of the Property shall be subject to the following conditions: (x) the Buyer shall conduct its surveys and inspections in a safe and professional manner, without damage, loss or expense to Seller, and in compliance with all applicable laws, (y) Buyer shall promptly repair any damage to the Property resulting from any surveys or inspections conducted by or on behalf of the Buyer, and (z) the Buyer agrees to and does assume responsibility for its respective acts or omissions which may give rise to any claim arising out of the exercise of its rights under this Section, subject to the limitations set forth in Section 15-78-120 of the South Carolina Code.

5.

**REPRESENTATIONS AND WARRANTIES**
5.1 **Seller’s Representations and Warranties.** To induce Buyer to purchase the Property from Seller, Seller represents and warrants to Buyer as follows:

(a) Seller has fee simple title to the Property, subject only to the Permitted Exceptions, and Seller will possess all requisite right, authority and power to execute and perform this Agreement in accordance with its terms.

(b) There are no other actions, suits or proceedings pending or, to the best of the Seller’s knowledge, threatened or contemplated against Seller, or affecting the Property.

(c) To best of Seller’s knowledge, Seller has not received any written 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.

(d) To best of Seller’s knowledge, Seller has not received any written notice of any civil, criminal or administrative suit, claim, hearing, violation, investigation, proceeding or demand against Seller or the Property relating in any way to a Release (as defined below), the use of Hazardous Materials, or compliance with Environmental Laws, which have not been resolved or corrected. Seller agrees to disclose to Buyer issues that have been resolved or corrected. For purposes of this Agreement, the phrase “Environmental Laws” shall mean any federal, state or local law, statute, ordinance, order, decree, rule or regulation and any common laws regarding health, safety, radioactive materials, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq. ("TSCA"); the Occupational, Safety and Health Act, 29 U.S.C. § 651, et seq. ("OSHA"); the Clean Air Act, 42 U.S.C. § 7401, et seq. ("CAA"); the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq. ("FWPCA"); the Safe Drinking Water Act, 42 U.S.C. § 3001, et seq. ("SDWA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, et seq. ("HMTA") and the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq. ("EPCRA"); the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq. ("ESA"); the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq. ("FIFRA") and other comparable federal, state or local laws, each as amended, and all rules, regulations and guidance documents promulgated pursuant thereto or published thereunder. The phrase “Hazardous Materials” shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under Environmental Laws (as hereinafter defined) or the Release of which is regulated under Environmental Laws. Without limiting the generality of the foregoing, the term “Hazardous Materials” will include: crude oil, used oil, petroleum and petroleum products or any fraction thereof; radioactive materials including source, by-product or special nuclear materials; asbestos or asbestos-containing materials (whether or not friable); lead paint; polychlorinated biphenyls, ureaformaldehyde in any of its forms; radon; mold; and any substance defined as “hazardous substances,” “extremely hazardous substances,” “hazardous waste,” “hazardous materials,” “chemical substance or mixture,” “solid waste,” “hazardous chemicals,” “toxic substances,” “hazardous air pollutants,” “pollutants,” contaminants,” or “toxic chemicals” under any of the CAA, CWA, RCRA, CERCLA, EPCRA, SDWA, TSCA or OSHA. The term “Release” shall mean the discharge, disposal, deposit, injection, dumping, spilling, leaking, leaching, placing, presence, pumping, pouring, emitting, emptying, escaping, or other release of any Hazardous Material.

(e) Seller is not a foreign person within Section 1445 of the Internal Revenue Code.
(f) There are no mechanics' or materialmens' liens encumbering the Property and there are no commitments made by or with the consent of Seller for work or services and no unpaid changes for labor or materials provided to or at the request of Seller which, if not paid, could form the basis of any mechanics' or materialmens' liens encumbering the Property.

(g) Seller is not party to any management, employment, service, equipment, supply, maintenance, water, sewer, or other utility or concession agreements with municipalities (including improvement or development escrows or bonds) with respect to or affecting the Property which will burden the Property or Buyer after Closing in any manner whatsoever, except for Permitted Exceptions and/or other instruments of record.

(h) None of the representations or warranties of Seller contained in this Agreement and no documents furnished in connection herewith or in connection with the transactions contemplated hereby, contain, or at the Closing will contain, any untrue statement of a material fact necessary to make the statements of fact herein and therein not misleading. Seller hereby agrees to indemnify, defend (by counsel reasonably acceptable to Buyer) and hold Buyer harmless from and against any and all claims, causes of action, losses, damages, liabilities, demands, judgments, settlements, penalties, and expenses (including, without limitation, reasonable attorney's fees, court costs and litigation expenses) which Buyer may suffer or incur as a result of any material misrepresentation or breach of warranty of these Seller's representations and warranties by Seller under this Section.

The foregoing representations and warranties of Seller shall survive Closing and delivery of the deed. Seller hereby agrees that the truthfulness of each of the foregoing Seller's representations and warranties as of the Effective Date and as of the Closing Date, is a condition precedent to the performance by Buyer of its obligations under this Agreement. If any of the foregoing Seller's representations and warranties is of a material nature and is not true in any material respect when made, or when re-certified at Closing, Buyer may consider such material misrepresentation to be a default under this Agreement.

5.2 Buyer's Representations and Warranties. To induce Seller to sell the Property to Buyer, Buyer represents and warrants to Seller as follows:

(a) Buyer has the capacity and authority to execute this Agreement and perform the obligations of Buyer under this Agreement. Upon the execution of this Agreement, this Agreement will be legally binding upon Buyer and enforceable against Buyer in accordance with all of its provisions.

6. CLOSING

6.1 Closing. The parties hereto intend that closing (the "Closing" or the "Closing Date") shall be held at the office of Buyer's attorney on or before the date which is fifteen (15) days after the expiration of the Inspection Period. The Closing shall be held at the office of Buyer's attorney, which shall serve as settlement agent.

6.2 Proration; Taxes. At Closing, pro-rations of income and expense and the apportionment of taxes shall be as follows:

(a) Income and Expenses. All rents, income, utilities, insurance premiums, and all other operating expenses and income assumed by Buyer (the "Income and Expenses") with respect to the Property, if any, for the month in which the Closing occurs, shall be prorated as of
the Closing Date (with Buyer entitled to any income, and responsible for any expenses, pertaining to the Property on the Closing Date). Subsequent to the Closing, if any such Income and Expenses are actually paid or received, Buyer and Seller agree to make appropriate adjustments of Income and Expenses promptly after the Closing.

(b) **Taxes.** Except as expressly set forth herein, real estate and personal property taxes and other assessments with respect to the Property for the year in which the Closing occurs shall be prorated as of the Closing Date (with Buyer entitled to any income, and responsible for any property taxes or assessments pertaining to the Property on the Closing Date). The parties acknowledge that real property taxes and personal property taxes for that period of the applicable then current tax year occurring prior to the Closing are the responsibility of Seller. If the Closing shall occur before the tax rate or the assessed valuation of the Property is fixed for the then current tax year, then the apportionment of taxes shall be upon the basis of the most current, available tax rate, which may be the tax rate for the preceding year, applied to the latest assessed valuation. Subsequent to the Closing, when the tax rate and the assessed valuation of the Property are fixed for the year in which the Closing occurs, the parties agree to adjust the proration of taxes and, if necessary, promptly to refund or repay such sums as shall be necessary to effect such adjustment.

The agreements of Seller and Buyer set forth in this Section 6.2 shall survive the Closing.

6.3 **Closing Costs.** Except as otherwise expressly provided herein, Seller shall pay, on the Closing Date, the cost of the deed stamps, transfer taxes based upon value of the property, Deed recording fees, the costs to record any satisfactions or releases of monetary encumbrances and Seller's attorney's fees for the preparation of Seller's Closing Documents. Buyer shall pay, on the Closing Date, the Buyer's Closing costs, including but not necessarily limited to, the cost of any title insurance policies or commitments, insurance premiums, the cost of a title search of the Property, all other recording costs, the cost of any inspections, all of the fees and expenses charged by Buyer's attorney and any other customary charges incurred by Buyer. Except as otherwise provided herein, each party shall pay its own attorneys' fees and expenses, and each party shall share equally in any costs to obtain information from or pertaining to any homeowners association or regime (including certificate of assessment, transfer fees, capital contributions, estoppel fees, etc). Notwithstanding the foregoing or anything herein to the contrary, special assessments approved prior to Closing shall be the responsibility of Seller, and special assessments approved after Closing shall be the responsibility of Buyer.

6.4 **Seller’s Obligations at the Closing.** At the Closing, Seller shall deliver to Buyer the Seller Closing Documents (as defined herein). Prior to the Closing, Seller shall remit the Seller Closing Documents, executed by Seller, as applicable, to Buyer’s Attorney to be held in trust until the delivery to Seller of all of the proceeds of purchase and sale of the Property by wire transfer of immediately available U.S. funds. For purposes of this Agreement, the term “Seller Closing Documents” shall mean the following:

(a) **Limited Warranty Deed.** A limited warranty deed, properly executed and acknowledged, conveying to Buyer fee simple and record title to the Property, free and clear of all monetary liens or encumbrances, but subject to (i) any and all easements, covenants, or restrictions of record and (ii) the current year's real property taxes not yet due and payable and all subsequent years.

(b) **Closing Statement.** A closing statement, to be prepared by Buyer's attorney, as settlement agent, setting forth the allocation of closing costs, purchase proceeds, prorations, etc.
(c) Title Insurance Affidavit. A customary title insurance affidavit, in form and substance reasonably acceptable to Buyer's title insurer, with respect to the Property, without exception for construction, material or mechanic's liens.

(d) Certificate of Non-Foreign Status. A certificate of Seller stating that Seller is not a "foreign person" under §1445 of the Internal Revenue Code, as amended, and applicable regulations.

(e) Form 1099. An IRS 1099 Information Reporting Form and a Substitute IRS 1099 Form.

(f) South Carolina Withholding Affidavit. A South Carolina withholding affidavit setting forth Seller's exemption from withholding or providing sufficient information for the settlement agent to withhold the proper amount as provided by law.

(g) Other Documentation. Such other documents as may be reasonable and necessary to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Agreement.

6.5 Buyer's Obligations at the Closing. At the Closing, Buyer shall deliver to Seller the following:

(a) Purchase Price. The balance of the Purchase Price by wire transfer of immediately available U.S. funds.

(b) Closing Statement. A closing statement setting forth the allocation of closing costs, purchase proceeds, prorations, etc.

(c) Other Documentation. Such other documents as may be reasonable and necessary to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Agreement.

7.

CONDEMNATION: RISK OF LOSS

7.1 Condemnation. Notwithstanding anything herein to the contrary, if, prior to the Closing, action is initiated to take any of the Property by eminent domain proceedings or by deed in lieu thereof, Buyer may either (a) terminate this Agreement, or (b) consummate the Closing, in which latter event the award of the condemning authority shall be assigned to Buyer at the Closing.

7.2 Risk of Loss or Casualty. Risk of loss shall remain with Seller until Closing. Notwithstanding anything herein to the contrary, if the Property, or any part thereof, suffers any damage prior to the Closing from fire, unforeseen natural disaster or Act of God which diminishes the value of the Property, Buyer has the sole option to terminate this Agreement by written notification to Seller at any time prior to Closing. Alternatively, in lieu of terminating this Agreement, Buyer and Seller may mutually agree to amend the Purchase Price at such necessary time to properly consider any diminution in value for its intended purposes resulting from fire, natural disaster or Act of God.

8.

DEFAULT
8.1 **Breach by Seller.** If Seller breaches this Agreement, Buyer may elect, as its sole remedy and relief hereunder, either (i) to terminate this Agreement and thereupon be entitled to receive reimbursement for reasonable costs incurred, including reasonable attorney fees, but not to exceed One Thousand ($1,000.00) Dollars or (ii) to seek specific performance of this Agreement against Seller. Should a court of competent jurisdiction order Seller performance in an action against Seller for specific performance, the costs of Buyer's litigation, including a reasonable attorney's fee, shall be borne by Seller.

8.2 **Breach by Buyer.** If Buyer breaches this Agreement, Buyer shall pay to Seller as liquidated damages (and not as a penalty) the sum of $1,000 as Seller's sole and exclusive remedy and this Contract shall be immediately terminated with Buyer and Seller having no further obligations among or between them. Seller and Buyer have made the above provision for liquidated damages because it would be difficult to calculate, on the date hereof, the amount of actual damages for such breach, and that these sums represent reasonable compensation to Seller for such breach.

9. **MISCELLANEOUS AND SPECIAL STIPULATIONS**

9.1 **Notices.** All notices, demands and requests which may be given or which are required to be given by either party to the other under this Agreement, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective: (i) immediately, when personally delivered to the intended recipient; (ii) three (3) business days after having been sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (iii) immediately, when delivered in person to the address set forth below for the party to whom the notice was given; (iv) at noon of the business day next following after having been deposited into the custody of a nationally recognized overnight delivery service, addressed to such party at the address specified below; or (v) immediately if sent during regular business hours or at 8:30 a.m. local time on the next business day next following an after-hours, weekend or holiday notice sent by facsimile or electronic mail, provided that receipt for such facsimile or electronic mail is verified by Sender. Any notice sent as required by this Section 9.1 refused by recipient shall be deemed delivered as of the date of such refusal. For purposes of this Section 9.1, the addresses and facsimile numbers of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

**If to Seller:**

**MICHAEL MILHOUS HOLLINGS**  
29 Lakeview Circle  
Columbia, SC 29206  
Email: Mmhollings@gmail.com

**HELEN HOLLINGS REARDON**  
1101 Palmer Avenue  
Glenwood Springs, CO 81601  
Email: Helen.h.reardon@gmail.com

**ERNEST FREDERICK HOLLINGS, III**  
Rapallo Apartments  
3009 Marta Circle  
Kissimmee, FL 34741  
Email: fritzhollings@hotmail.com
If to Buyer: City of Charleston
Attention: Real Estate Management Division
PO BOX 304
Charleston, SC 29402

With a copy to:

City of Charleston
Attention: Legal Department
PO BOX 304
Charleston, SC 29402

9.2 Real Estate Commissions. Buyer and Seller represent and warrant to the other that no commission shall be owed by either Buyer or Seller in connection with this Agreement.

9.3 Intentionally Omitted.

9.4 Special Stipulations. Notwithstanding anything herein to the contrary, the following provisions shall control:

a. NONE

9.5 Confidentiality. Except as required by law, Buyer and Seller shall keep all information revealed by the other party in connection with this Agreement confidential and shall not deliver, or cause to be delivered, any reports, studies, records, correspondence, files, computer files or documents, or any other information, to any third party (except such legal counsel, accountants, lenders, investors, brokers and other advisers as are assisting with this transaction) without the prior written consent of the other party.

9.6 Section 1031 Tax-Deferred Exchange. Buyer and Seller recognize that the other (or its assigns) reserves the right to structure this transaction as a like-kind exchange intended to qualify under § 1031 of the Internal Revenue Code. Accordingly, each party agrees to cooperate with the other to facilitate the qualification of the exchange, provided the other party incurs no additional risk, delay, or expense.

9.7 Entire Agreement. This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth or referenced herein.

9.8 Amendment. This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

9.9 Headings. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

9.10 Time of Essence and Performance Deadlines. Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a
Saturday, Sunday or legal holiday under the laws of the United States or the State of South Carolina, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday. As used herein, the term “business day” shall mean any day which is not a Saturday, Sunday or legal holiday.

9.11 **Governing Law; Construction.** This Agreement shall be governed by the laws of the State of South Carolina and the laws of the United States pertaining to transactions in such State. All of the parties to this Agreement have participated freely in the negotiation and preparation hereof; accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. The term “Buyer” as used herein shall refer to all such persons jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions herein are made by and shall be binding upon each and every such undersigned person, and their respective heirs, executors, administrators, personal and legal representatives, successors and permitted assigns, jointly and severally. As used in this Agreement, the masculine, feminine or neuter gender and the singular or plural number shall each include the others whenever the context so indicates.

9.12 **Successors and Assigns; Assignment.** Buyer’s rights and duties under this Agreement are freely assignable, provided Buyer shall provide Seller with a copy of the fully executed written agreement of assignment in form and substance reasonably acceptable to Seller and upon which Seller can rely. Subject to the foregoing, this Agreement shall bind and inure to the benefit of Seller and Buyer and their respective heirs, executors, administrators, personal and legal representatives, successors and permitted assignees. In the event of any such assignment, all of the documents, instruments and agreements to be executed and delivered pursuant to this Agreement shall be executed and delivered in the name of such assignee.

9.13 **Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

9.14 **Attorneys’ Fees.** In the event it becomes necessary for either party hereto to file suit to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages, as provided herein, reasonable attorneys’ fees, paralegal fees and costs incurred in such suit at trial, appellate, bankruptcy and/or administrative proceedings.

9.15 **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Signatures to this Agreement may be delivered in electronic form, which shall be binding on the party on whose behalf such signature is tendered.

9.16 **Date of this Agreement.** This Agreement shall not be effective unless signed by both Buyer and Seller and the later date signed by both parties shall be the “Effective Date”. As used in this Agreement, the terms “date of this Agreement” or “date hereof” shall mean the date first above written.

9.17 **Exhibits.** All exhibits referenced in this Agreement are incorporated into this Agreement and made a part hereof.
9.18 Authority. Each party hereto represents and warrants to the other that the execution of this Agreement and any other documents required or necessary to be executed pursuant to the provisions hereof are valid, binding obligations and are enforceable in accordance with their terms.

9.19 Force Majeure. Notwithstanding any performance deadlines herein to the contrary, if either party shall be delayed, hindered or prevented from the performance of any act by reason of any governmental restriction, civil commotion, war, terrorism, insurrection, sabotage, military or usurped power, pandemic, fire, earthquake, hurricane or other natural disaster, or any other event beyond its control, the period for the performance of any such act or the giving of any such notice shall be extended for the period necessary to complete performance or delivery in a diligent manner following the end of the period of such delay.

9.20 Ambiguities. Buyer and Seller both acknowledge and agree each party has participated in the drafting of this Agreement, and thus the presumption of interpreting any ambiguities against the drafting party shall not apply.

[signature pages attached]
For good and valuable consideration, the parties hereto have caused this Agreement to be executed under seal by persons duly empowered to bind the parties to perform their respective obligations hereunder the day and year set forth beside their respective signatures.

SELLER:

MICHAEL MILHOUS HOLLINGS
Date: __________________

HELEN HOLLINGS REARDON
Date: __________________

ERNEST FREDERICK HOLLINGS, III
Date: __________________

BUYER:

CITY OF CHARLESTON

By: John J. Tecklenburg
Its: Mayor
Date: __________________