March 25, 2003

COUNCIL PROCEEDINGS

Regular meeting.

The seventy-fourth meeting of the City Council of Charleston was held this date convening at 5:00 p.m. in the Lowcountry Senior Center at 865 Riverland Drive.

A notice of this meeting and an agenda were mailed to the news media March 21, 2003 and appeared in The Post and Courier March 23, 2003 and is made available on the City's website.

PRESENT

The Honorable Joseph P. Riley, Jr., Mayor; Councilmembers Fishburne, Morinelli, Lewis, Campbell, Gallant, Gilliard, Waring, Evans, Tinkler, Shirley, Bleecker, and George --- 13.

Councilmember Campbell arrived following the Pledge of Allegiance and left at 6:30 p.m. prior to the second public hearing on the agenda.

Mayor Riley noted that Councilmember Campbell had been slated to do the opening prayer, but he was not present at this time. The Mayor stated that he knew Councilmember Campbell had invited Herb Silverman to open this meeting. In Councilmember Campbell's absence, the Mayor called on Dr. Silverman who said that he had been invited to give the invocation.

The Mayor then led City Council in the Pledge of Allegiance.

Mayor Riley welcomed everyone to this meeting and explained that it was a regularly scheduled meeting of City Council. He noted that some of Council's meetings are scheduled away from City Hall. He said when he recommended taking the opportunity to meet out in the community many years ago, Council had decided to do so. He commented that this provides the opportunity to meet in different parts of the City and to be closer to the residents of the various areas of the City.

He spoke with joy about being able to meet in this wonderful facility. He remarked that the Lowcountry Senior Center had been the result of a partnership by the City of Charleston, Charleston County and a wonderful group of citizens that formed the Senior Citizens Coalition.

Continuing, the Mayor introduced Dr. John Thomas as one of their great leaders and a former member of Charleston City Council. Mayor Riley stated that Dr. Thomas had represented James Island when he served on City Council. There was an extended round of applause for Dr. Thomas.

When the Mayor asked Dr. Thomas about the current number of members in Lowcountry Senior Center, he estimated the membership to be in the neighborhood of 750.

Mayor Riley also introduced Marty Mosely, the first chair and a fabulous guy. He also introduced the Director of the in Lowcountry Senior Center Jill Jackson. There was another extended round of applause.

The Mayor then spoke briefly about the history of the facility. He said there had been a grant of money available from the State of South Carolina that actually came from bingo tax. He said the money had been set aside for a senior citizen center and the legislation specified that it should be located on James Island. He noted that a substantial match was also required. Mayor Riley commented that there had been some concern about losing the grant so he had kept the match here. He said that the City then developed a relationship with Charleston County and both governments appropriated substantial capital dollars as well as appropriated operational resources to assist the coalition in getting started.

He went on to say that the City had been in charge of the construction. The City's Department of Parks had supervised the design and construction, which was designed by a very fine local architect. He noted that everyone had worked very carefully with Mr. Mosely, Dr. Thomas and their committee on all of the appointments. He commented that a task force had been sent to look at senior citizen centers around South Carolina when this project was in the early conceptual stages.

The Mayor said the task force had toured a facility in Richland County and in Myrtle Beach. He said that the best of both of the facilities, along with what the committee had learned was needed and what was popular as well as what would generate revenues for parties, functions and events had been put together. He remarked that all of this input had been used working along with the committee and the designers to come up with this facility.

Mayor Riley stated that the participation and the membership had greatly exceeded expectations. He expressed great pride both in the facility and that it is located in the City of Charleston on James Island. The Mayor then thanked everyone for their hospitality.

There were a number of Presentations and Recognitions on the agenda. Without objection and on motion of Councilmember Gilliard, Council voted to add a Resolution pertaining to Murray LaSaine Elementary School to the agenda and to make it the fourth presentation.

The first item on the agenda was a Proclamation declaring April 2003 Fair Housing Month in the City of Charleston.

Councilmember Bleecker moved to adopt the Proclamation. Councilmember Evans seconded the motion. The motion carried.

Mayor Riley then issued and signed the Proclamation.

Councilmember Lewis spoke about the good fortune of having a board, which deals with fair housing problems, in the City of Charleston. He said that the only fair housing hotline in the Charleston-Dorchester-Berkeley county area has been located in the City and is operated by Joe McFarland.

Continuing, Councilmember Lewis spoke of Mr. McFarland's hard work and dedication, but he said that this fair housing program was about to be lost because of funding. He expressed concern about CDBG funding cuts and said that hoped City Council would look at this to see if some funding could be found to help keep this office open. He also talked about the need to seek help from the City of North Charleston and Charleston County to keep this program going. He hoped that this City would not let this program die because it has surely been doing a great job.

Councilmember Lewis stated his understanding that the City had funded the program in the amount of $10,000 this year. He hoped that some additional funding could be found mid-year to keep this program going.

The Consulting Engineers of South Carolina of the 2003 Engineering Excellence Award was next on the agenda. Mayor Riley invited M. L. Love and Jeffrey Rowe, Collins Engineering, Inc. and Director of Public Service Laura Cabiness and Frank Newham to join him at the podium. The award was given for the Meeting Street Stormdrain Rehabilitation in the City of Charleston.

Mayor Riley said this had been a really interesting and innovative project. He also described it as creative and cost-effective. The Mayor stated that the City was very honored to receive the award.

Mr. Love stated that Collins Engineering had been selected approximately three years ago to do a structural evaluation of the brick arch on Meeting Street, which was some 200 years old. As a result of the structural evaluation, he said it was possible to rehabilitate and restore the usefulness of that brick arch. He described the arch as a marvelous indication of what our forebears did and of some of the engineering work in the City of Charleston.

Continuing, Mr. Love remarked that this project was nominated and Collins Engineering submitted it to the Consulting Engineers of South Carolina for consideration with projects all over the state. He commented that the project had won an honor award in having the rehabilitation-type service of maintenance-type projects across the state.

He then presented a copy of the plaque for this project to Ms. Cabiness. A round of applause followed this presentation.

Mr. Love commented further that the old brick arch storm drain had been completely silted off in most places although some places closest to The Battery were open. He explained briefly how the inspection had been done and said that his company made recommendations based on the inspection. He said that his company determined that it could be restored and had hired a local contractor to clean the entire 2,100 feet of storm sewer restoring the gunite lining in the side. He noted there had been some very unusual findings. He cited the example of the wooden sill foundation that was about 200 years old and said that he did not believe that more than one or two pieces of timber had deteriorated. He commented that it was in very good shape and had been restored. Mr. Love said that it had indeed been a pleasure to do this project for the City of Charleston. He expressed the hope that it would serve as an improvement to the storm drainage and reduces the cave ins that have happened around the brick arches for years to come. Mr. Love pointed out that Jeffrey Rowe had the project book and the plaque that was displayed at the competition. He said those would be left with the City to use as it saw fit. There was another round of applause.

Ms. Cabiness added that this project became a priority when a major collapse occurred one night. She said that a hole 12 feet deep and about 20 feet long was left. She commented that it had been known that the brick arch needed replacement. She remarked that the original estimate for putting pipe in the street would have been over $2 million. She said the cost had been about $1.2 million on replacement and rehabilitation of the arch in Meeting Street and then a section had been added in Tradd Street. Ms. Cabiness stated that the total project had cost $1.5 million, which saved $500,000. There was an extended round of applause following her remarks.

Mayor Riley reminded everyone to turn off pagers and cell phones during the meeting.

Council then considered the National League of Cities Achievement in Leadership Certificate. Mayor Riley asked Councilmember George to join him on the dais. The Mayor then read the Proclamation from Nettie H. Washington, Chair, Leadership Training Council, recognizing Councilmember G. Robert George as a recipient of the Gold Certificate Leadership Ambassador level in the Certificate of Achievement in Leadership Program. Councilmember George was one of six people in the country to have earned this certificate.

Mayor Riley also read the Certificate of Achievement. He then presented both the Proclamation and the Certificate to Councilmember George. There was an extended round of applause following the presentation.

Council then considered a Resolution regarding Murray LaSaine School. Councilmember Gilliard had requested this addition to the agenda earlier in the meeting.

On motion of Councilmember Gilliard, seconded by Councilmember Evans, Council voted to adopt the subject Resolution.

Mayor Riley read and signed the following Resolution, which had been requested by Councilmember Gilliard:

A RESOLUTION

Murray LaSaine is a neighborhood school with a population of 305. It is classified as Title One school because of our 87.4% free and reduced lunch status. 78% of its children are African American, 19% are White and 3% are Hispanic or Asian American. Upon careful evaluation of its PACT scores, benchmark tests and teacher observations, it is clear it needs to improve as a school. Going year round is one of many strategies the school wants to use to assist its children. There are many reasons why year-round education will work for children.

1. Research supports the idea that children who are exposed to a more continuous mode of learning do better in school and on standardized tests.
2. Year round education has proven to work for districts with similar populations as Murray LaSaine's. Representatives of the school have visited and gained first hand information supporting year-round education from Beaufort and Spartanburg County Schools.
3. Teachers, administrators, parents and support staff at Murray LaSaine are excited and committed to the challenge of implementing a year-round school.
4. Because of year-round education, Murray LaSaine will have the opportunity to provide students with additional weeks of instruction prior to PACT (Palmetto Achievement Challenge Test).
5. The breaks after each 45 day session will allow its students to digest what has been taught during the quarter prior to starting another 45 day session. They will receive remediation/enrichment and hands on activities.

As a year-round school, Murray LaSaine plans to use specialty teachers to assist with enrichment and remediation activities that will accommodate its students' needs and stimulate their interest and growth as learners, and a full time art and music program will foster its students' academic growth.

NOW THEREFORE, City Council of the City of Charleston resolves that it supports the plans of Murray LaSaine School to go to a year-round program.

Council next considered public hearings called for by the following advertisement, which appeared in The Post and Courier on March 9, 2003 and in The Chronicle on March 12, 2003:

PUBLIC HEARING

The public is hereby advised that the City Council of Charleston will hold a public hearing Tuesday, March 25, 2003, beginning at 5:00 p.m. at the Lowcountry Senior Center, 865 Riverland Drive, James Island, on the request that the Zoning Ordinance of the City of Charleston be changed in the following respects:

REZONING

1. To rezone Henry Tecklenburg Drive and 2095 Savage Road (Essex Farms Village Center) (104.12 acres) (Part of TMS# 309-00-00-003) from Diverse Residential (DR-6) PUD and General Office (GO) classifications to Limited Business (LB) PUD classification.

2. To rezone 3080 and 3092 Ashley River Road (1.06 acres) (TMS# 358-00-00-010 & 011) from Single-Family Residential (SR-1) classification to Diverse Residential (DR-9) classification.

3. To rezone property located on Bees Ferry Road (Middleborough at Shadowmoss) (1.821 acres) (TMS# 358-00-00-098) from Single-Family Residential (SR-1) and Commercial Transitional (CT) classifications to Commercial Transitional (CT) (.95 acre) and Single-Family Residential (SR-1) (.871 acre) classifications.

4. To rezone 1847 Ashley River Road and Ancrum Hill Road (4.32 acres) (TMS# 351-07-00-026) from General Office (GO) and Diverse Residential (DR-4) classifications to Diverse Residential (DR-2F) classification.

ZONINGS

To zone the following property annexed into the City of Charleston February 11, 2003:

5. 3080 and 3092 Ashley River Road (.94 acre) (TMS# 358-00-00-010 and 011) Diverse Residential (DR-9).

To zone the following property annexed into the City of Charleston January 28, 2003:

6. 2315 Vanderbilt Drive (.29 acre) (TMS# 358-08-00-059) Single-Family Residential (SR-1).

ORDINANCE AMENDMENT

7. Request approval to amend Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) by amending the regulations for permitted uses within the General Office (GO) Zoning District to allow as a principal use civic, social, and fraternal associations. Interested persons are invited to attend the hearing and express their views. Extended presentations should be made in writing.

VANESSA TURNER-MAYBANK
Clerk of Council

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The following is the report of the City Planning Commission regarding the public hearing matters:

TO THE MAYOR AND COUNCILMEMBERS OF THE CITY COUNCIL OF CHARLESTON:

The Planning Commission met on February 19, 2003 and presents the Mayor and Council with the following recommendations:

Rezonings

1. Henry Tecklenburg Drive and 2095 Savage Road (Essex Farms Village Center) (Part of TMS# 309-00-00-003) 104.12 acres – Request rezoning from DR-6 (Diverse Residential) PUD and GO (General Office) to LB (Limited Business) PUD.

Recommendation: APPROVAL, WITH CONDITIONS (SEE SEPARATE ATTACHMENT)

2. 3080 and 3092 Ashley River Road (TMS# 358-00-00-010 & 011) 1.06 acres – Request rezoning from SR-1 (Single-Family Residential) to DR-9 (Diverse Residential).

Recommendation: APPROVAL

3. Bees Ferry Road (Middleborough at Shadowmoss) (TMS# 358-00-00-098) 1.821 acres – Request rezoning from SR-1 (Single-Family Residential) and CT (Commercial Transitional) to CT (.95 acre) and SR-1 (.871 acre)

Recommendation: APPROVAL

4. 1847 Ashley River Road and Ancrum Hill Road (TMS# 351-07-00-026) 4.32 acres – Request rezoning from GO (General Office) and DR-4 (Diverse Residential) to DR-2F (Diverse Residential).

Recommendation: APPROVAL

Subdivisions

1. 76 Morris Street (TMS# 460-12-01-112) .27 acre – Request final subdivision approval for 2 lots. Zoned DR-2 (Diverse Residential).

Recommendation: APPROVAL WITH CONDITIONS

2. 1713 and 1717 Ashley River Road (TMS# 351-16-00-032) .515 acre – Request final subdivision approval for 2 lots. Zoned LB (Limited Business).

Recommendation: APPROVAL

3. Bees Ferry Road and Glenn McConnell Parkway (West Ashley Circle) (Part of TMS 301-00-00-027) 52.54 acres + residual – Request preliminary subdivision approval for 5 lots. Zoned LI (light Industrial), GB (General Business), and GO (General Office).

DEFERRED BY APPLICANT

4. Seven Farms Drive (Daniel Island Parcel L) (Part of TMS# 275-00-00-025) 7.16 acres + residual – Request final subdivision approval for 2 lots. Zoned DI-R (Daniel Island Residential) and DI-LI (Daniel Island Light Industrial).

Recommendation: APPROVAL WITH CONDITIONS

5. 1254 and 1258 Ashley Hall Road and Davan Drive (TMS# 418-01-00-152, 153, and 154) 2.53 acres – Request final subdivision approval for 2 lots. Zoned SR-2 (Single-Family Residential)

DEFERRED BY APPLICANT

Zonings

1. Maybank Highway (TMS# 312-00-00-091 and 092) 12.82 acres – Request zoning of SR-4 (Single-Family Residential) PUD. This property was zoned RSL (Low-Density Suburban Residential) in Charleston County.

DEFERRED BY APPLICANT

2. 3080 and 3092 Ashley River Road (TMS# 358-00-00-010 and 011) .94 acre Request zoning of DR-9 (Diverse Residential). This property was zoned RSL (Low-Density Suburban Residential) in Charleston County.

Recommendation: APPROVAL

3. 2315 Vanderbilt Drive (TMS# 358-08-00-059) .29 acre – Request zoning of SR-1 (Single-Family Residential). This property was zoned RSL (Low-Density Suburban Residential) in Charleston County.

Recommendation: APPROVAL

Ordinance Amendment

Request approval to amend Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) by amending the regulations for permitted uses within the General Office (GO) Zoning District to allow as a principal use civic, social, and fraternal associations.

Recommendation: APPROVAL

City Plan Amendment

IMPACT FEES: City Council requests the Planning Commission study and review the implementation of impact fees to fund certain capital improvements. An amendment to the Century V City Plan will be presented for consideration.

Recommendation: DEFERRAL UNTIL THE MARCH 19, 2003 MEETING

Minutes

Recommendation: APPROVAL

Council first considered the bill to rezone property located at Henry Tecklenburg Drive and 2095 Savage Road (*Essex Farms Village Center*) (104.12 acres) (Part of TMS #309-00-00-003), annexed into the City Of Charleston July 31, 1979 (#1979-47), from Diverse Residential (DR-6) PUD and General Office (GO) classifications to Limited Business (LB) PUD classification.

Director of Planning and Neighborhoods Tim Keane reported that Council had received a full description of the proposed rezoning along with their agenda packets. He referred Council to a large exhibit map that was part of a power point presentation and pointed out the location of the subject property. To further orient everyone, he pointed out the locations of Savage Road and Glenn McConnell Parkway.

Mr. Keane stated of the 104 acres involved, just over 63 acres would be designated for a business district anticipated to contain up to 50,000 square feet of retail space, 450,000 square feet of office space and as many as 50 apartments. He commented that the business district would be a traditional office and commercial center developed in a pedestrian way. He said all of the uses allowed in LB zoning would be permitted and they would be subject to the hours of operation limitations as part of the LB district.

He remarked that it was anticipated that medical offices would be the primary use while the retail uses would serve workers in the area. Mr. Keane stated that offices and residential units may be built above the retail space and he said that the LB would permit residential use as well.

Continuing, Mr. Keane commented that the whole plan was intended to be pedestrian oriented with good sidewalks, mixed-use, walkways, etc. He said that 29 acres of the entire project would be devoted to open space and buffers. He noted that an area of approximately 6.5 acres accessible only through Melrose subdivision would be devoted to a maximum of 39 residential units. He pointed out the proposed location for the units and said they could be either attached or detached residential units.

Mr. Keane noted that the entire project would be accessed via Henry Tecklenburg Drive, which was in the process of being extended through the property to its boundary near Savage Road. He commented that ultimately Henry Tecklenburg Drive would connect with Savage Road across from Town Center Drive. He said that the City had been working on obtaining titles to properties that would allow Henry Tecklenburg Drive to continue to Savage Road at Town Center. He stated that the applicant had committed to not getting a Certificate of Occupancy until the connection occurs.

He pointed out that the agenda packet included some proposed conditions on the PUD related to the street connection. He offered to go over this information if Council so desired. Mr. Keane stated that staff and the Planning Commission had recommended approval of this proposed rezoning with the conditions as outlined in the agenda packets.

The Mayor invited comments from the public on this matter. The following persons addressed Council:

1) Foster Gaillard, Esq., representing the applicant, spoke in support of the rezoning and explained the overall rationale of the project. Mr. Gaillard noted that Essex Farms is a family owned partnership consisting of various members of the Rhodes family. He then introduced Mike Rhodes, a member of the family, and Bill Wallace, land planner for the proposed project. He said that the project consisted of a 104-acre parcel. He referred to a large exhibit map and pointed out the location of the Highway 61 Expressway and the Mark Clark Highway (I-526). He noted the subject property to be located at the southwest intersection of these highways. Mr. Gaillard noted that the proposal before Council included some limited business, some multi-family and some open space. He recalled that in the late 1970s this property was part of the St. Andrews Public Service District (PSD) and the PSD had discussed the possibility of forming a new city in this area. He said if that had happened it would have stopped the City of Charleston's annexation and growth in the subject area.

Continuing, he stated at that time the City had approached the Rhodes family and asked them to annex this property and some other property into the City. He noted that the Rhodes family had agreed to do so on a voluntary basis. He said that the Rhodes family at no expense to the City had given right-of-way for the Highway 61 Expressway to the City and the Department of Transportation (DOT). He added that the Rhodes family had also given right-of-way for Magwood Road, which intersects the Highway 61 Expressway.

Mr. Gaillard said that he would submit that the Rhodes family had been extremely good corporate citizens over the last 23 years that this property has been in the City.

Mr. Gaillard went on to say that a lot had happened since the subject property had been annexed into the City. He commented there was no Highway 61 Expressway, no Mark Clark Highway, no hospital, no Wal-Mart, no Lowe's, etc. so the environment is totally different. He said that the existing zoning simply did not make good planning sense.

He commented that in 1999 the City had commissioned a comprehensive zoning study of this entire area, which culminated in what is called the Glenn McConnell Parkway Workshop Study. He said that the subject property had been included in the study and said that the proposed PUD would be consistent with that study. He stated that this matter was before Council with the unanimous recommendation of staff and with the unanimous endorsement of the Planning Commission.

He then referred to the conditions that Mr. Keane had mentioned earlier. He turned to the large exhibit map and pointed out the current terminating point of Henry Tecklenburg Drive. He said that the Rhodes family had agreed to extend Henry Tecklenburg Drive to the end of their property, and he said that the City had agreed by Resolution, which he said had been adopted last year, to acquire additional right-of-way. As a condition to the rezoning, Mr. Gaillard stated that the Rhodes family had agreed that no Certificate of Occupancy would be issued on any of this property with two exceptions.

Mr. Gaillard turned to the exhibit map and pointed out one piece of property with frontage on Savage Road and one piece of property with frontage on Melrose Drive. He said that the road was under construction and he expected it to be completed within a matter of months. He expressed his understanding that some residents of Melrose subdivision had raised some concerns. He pointed out the location of the portion of the property, which would only be

accessed by Melrose Drive, and said that portion of the property was currently zoned DR-6, multi-family. He stated that under the proposed rezoning it would continue to have the DR-6 zoning, but there were two important exceptions.

Mr. Gaillard noted that the first exception pertained to approximately 3.5 acres of high ground and he pointed out the location of this portion. He said as part of the plan all of this would be dedicated to open space and it would not be developed whatsoever.

In addition, Mr. Gaillard said that as part of the PUD a 25-foot, Type D buffer that would separate the multi-family from Melrose.

2) Bill Wallace, planner for the proposed project, also spoke in support. He commented that the property had been given its existing zoning in 1987. He said that it had been approximately 25 years that the property had been in the City and has had multi-family and office zoning, but he said the circumstances in the surrounding areas had changed pretty dramatically during that time.

Mr. Wallace pointed out the location of the property on a large exhibit map and said that it is part of a larger piece of property with 300 more acres that goes north of it. He stated that the City had rezoned the property for residential and limited business purposes about five or six years ago.

He described the property as immediately adjacent to St. Francis Hospital. He noted the location where Henry Tecklenburg Drive deadends at the property boundary. He referred to the plan for the Glenn McConnell Parkway area and said that it contained several general goals that he felt would directly impact this property.

Mr. Wallace said that there was virtually no way to get back and forth between the Highway 61 Expressway and Highway 17; there are virtually no roads that go in between other than Bees Ferry Road and Savage Road. He stated that one of those goals was to try to introduce some connecting streets that would take some of the pressure off the existing streets such as Savage Road and Orleans Road to improve the traffic flow in the general area.

He stated that the plan showed a connection going through this piece of property and tying into Town Center Drive. Mr. Wallace said the plan before Council would do that and would alleviate some of the traffic in the vicinity of the hospital. He noted this would provide an alternative route to Highway 17 without having to go to the Highway 61 Expressway or the I-526 area.

Mr. Wallace commented that it was also consistent in showing that the area around the hospital should be a mixed-use development. He noted that it was all primarily multi-family at this time and he said that there was already substantial multi-family use in the area. He noted that Castlewood Apartments is immediately adjacent to the subject property. He added that there is also other multi-family development further up the Highway 61 Expressway.

He expressed the belief that there was ample multi-family zoning and development in this area and that the area would be better served by having a more mixed-use development, which would allow businesses and jobs to locate there. He talked about giving people more opportunities to walk, ride short distances or ride bicycles into this complex.

Continuing, Mr. Wallace said that the applicants were actually trying to downzone the piece of property adjacent to Melrose subdivision. He stated that about 60 units could be built under the existing zoning that had been in place approximately 25 years. He stated that the applicant would be reserving a portion of the property for permanent open space and only part of it would be developed as the DR-6 criteria. He stated that granting the requested rezoning would

downzone the area that allowed multi-family. He said it would reduce the number of units that could be built down to 39.

Mr. Wallace expressed his belief that it was also important to look at the overall scheme of the property. He referred to the exhibit map and said that everything in the dark green would be either permanent open space or permanent buffers. He noted that the Zoning Ordinance requires approximately 20 percent of the property in a PUD to be reserved as open space. In this particular case, he said that 27 percent of the property would be open space. He further explained that the ordinance only required 20 acres of open space based on the acreage in the subject development and there would be 29 acres of open space. He reiterated that this would be substantially above the open space requirements in the PUD section of the Zoning Ordinance. He then spoke of the intersection of Magwood Road and the Highway 61 Connector. He said even if nothing was developed on the subject property, the level of service at this intersection would be an E just based on the surrounding traffic and growth of the area. He commented that the intersection would be a level of service F with the development of the proposed project. He pointed out that just with the natural growth of traffic in the surrounding area it would be a level of service F. He added that the proposed development would not substantially change the intersection capability.

Mr. Wallace stated that the proposed development would give people an alternative route to get out of the area rather than forcing everyone to come to the hospital or the surrounding area to go through that intersection. He restated that the plan would provide the connection that had been suggested in the Glenn McConnell Parkway Plan to alleviate some of this.

He then spoke about traffic on Town Center Drive and said that traffic studies have basically shown that perhaps by the year 2020 a signal would be required at that intersection. He noted that it is not required during the initial phases of the development. However, he stated that as the project is developed, any buildings that are built must go through the City's Technical Review Committee (TRC) process as well other review processes. He commented that based on traffic warrants whenever those particular buildings are built this initiative could be discussed and could be decided at that point in time.

Councilmember Shirley said that he and Councilmember Morinelli had spent time on this matter. He expressed his interest in hearing from the opponents prior to making any comments.

There were no other comments or questions of Council at this time.

3) Marc Knapp, West Ashley resident, spoke in opposition to the proposed rezoning because of traffic problems. He stated that he was aware that Mack Rhodes does a real nice job of taking care of his land. However, he said that he lives just down the street from the proposed development and he did not think that the traffic on Highway 17 had been considered. He said that traffic at Orleans Road and Savage Road backs up in every direction at rush hour. He commented that there are two traffic lights located very close to each other and he said that they obviously do not work correctly.

Mr. Knapp then described Town Center Drive as a two-lane divided road that all comes out on Highway 17. He invited Council to take a ride down Highway 17 between the hours of 4:30 p.m. and 6:00 p.m. He said that the light should not trip more often because the traffic backs up at Town Center Drive and Savage Road all the way past Farmfield Drive.

He expressed concern that dumping the traffic onto Highway 17 would result in a bottleneck that would be a catastrophe. He said that it is almost impossible in the mornings and afternoons to

make a left turn from Savage Road onto Orleans Drive to get onto the Glenn McConnell Parkway in order to get onto I-526.

He asked Council to imagine what the traffic would be like. He described Savage Road as two lanes and residential. He commented that those people would really love more traffic but unfortunately he did not think any of them live in the City.

He said the City would be creating a traffic problem by giving someone access to a road that is not designed to carry any where near the capacity that would be filled. He remarked that it was almost over capacity already. He recommended widening Savage Road and doing something at Orleans Road.

4) Johnny Fogle, Melrose Drive resident, addressed Mr. Wallace and said that it was very commendable of him to go from 79 townhouses to 39 on 6.5 acres, which he described as quite dense. He stated his belief that the people of Melrose would rather see 13 single-family homes on one-half acre lots on the 6.5 acres. He commented that traffic problems already existed on Melrose Drive and said there are more than 600 homes in the area. He remarked that 5 percent more cars would be added with the addition of 39 condominiums in the area. He said that one-half of the residents leave Melrose on Savage Road because they cannot even get out on Savannah Highway without using Savage Road and turning onto Savannah Highway at the traffic light.

5) Donna Smith, Melrose Drive resident, stated that she was concerned about the way the City gets information to residents. She expressed disappointment in the way the City of Charleston gets information to the public and said that she felt that the City does not give adequate notice of major changes like this. She stated that Mr. Fogle had come to her house and told her about this matter. Mr. Foley added that he had provided the information three days ago. Ms. Smith described the sign that had been posted at the end of the deadend street and Mr. Fogle interjected that had been the only news the residents had received about this. He commented that there was a very large representation from the community at this meeting.

Continuing, Ms. Smith commented that she had "beat the street for 2 1/2 hours putting up notices on people's mailboxes", which got the people to this meeting. She stated that an earlier speaker had brought up valid points about traffic on Orleans Road and Savage Roads. She expressed the opinion that these roads had not been designed to alleviate traffic to hospitals.

Ms. Smith commented that she had listened carefully to the presentation. She noted that although she knew very little about this it showed traditional growth of offices and apartments and other development. She said that all of the roads are two-lane roads and a lot of the roads do not have turn signals. She spoke about the traffic on Savage Road and said that there is no turn signal at the intersection of Savage Road and the Savannah Highway. She went on to describe the through traffic that cuts through Melrose. She expressed her concern for the residents on Savage Road and said that she slows down on this route.

She said that although the zoning requirement for the end of Melrose Drive had improved the area does not need 39 units because that would mean almost 80 more cars travelling a totally residential road.

6) Donald Wiggins, 50-year resident of Melrose resident, spoke in opposition to the proposed development. He said that he had come into the City about 18 years ago. He remarked that he was told at that time if he came into the City a ditch beside his house

would be fixed. He gestured toward Councilmember Morinelli and said that thanks to that lady he thought the ditch would be fixed.

He also expressed concern about drainage problems in Melrose. Mr. Wiggins said that the water gets 6 inches deep on his side of the street when the rain comes. He said that the water on this side of the ditch it gets 5 feet deep and people get water in their houses.

7) A Melrose Drive resident wanted to know if the housing would be for rent or for sale. She was concerned there would be additional traffic.

8) Delores Manning Melrose resident, said that she lives two doors from the proposed multi-family housing. She asked if the multi-family zoning would be for rent or for sale. She stated that the Melrose, Longbranch and Shaftsbury have a community center just off of Melrose Drive. She noted that particularly during the summer months many children in the community walk to that facility. She expressed concern about apartments or condominiums adding to the traffic and she saw this as a hazard.

9) Robert Davis, resident on Melrose Drive, also spoke in opposition and said that he did not want to see another Town Center. He asked if multi-family zoning meant that the property would be strictly condominiums or if it was the same zoning that is required for apartments. Mr. Keane rose to respond that in this type of zoning it could be either apartments or condominiums. He stated that it could be rental or it could be for sale.

When Mr. Davis asked if the developers could change their minds and put 150 apartments on the site, Mr. Keane said that 39 would be the maximum number of units.

Mr. Davis asked if that was in the zoning requirement and Mr. Keane replied affirmatively. Ms. Smith then interrupted to ask how she would go about getting the 39 units reduced to a lower number. Mr. Keane explained that the density that had been applied to the subject property was part of this process.

10) A gentleman stated that he felt it was safe to say that the people in Melrose did not need another Town Center, did not need another strip mall, did not need another office park, did not need another Costco in their backyards.

He noted that comments had been made about a lot of changes over the last 25 years, but a lot of people still live there. He said that was one thing that had not changed.

Some people began to talk over each other. The Mayor explained that everyone would be allowed to speak, but once he/she speaks they should listen to others.

11) Brenda Hawkins, Melrose resident, wanted to know if there would be any egress from the units to the business district.

Mr. Gaillard pointed to the exhibit map and said there would not be any ingress/egress to the business area because it would not be possible to cross the wetlands.

When she asked if the only ingress/egress would be Melrose Drive, Mr. Gaillard replied affirmatively.

12) Helen Rumph, Melrose Drive resident, said that she would just like to see a show of hands of those present to oppose this rezoning. Mayor Riley responded that he would ask for the count after every one had spoken.

Ms. Rumph said that she had gone away on Thursday. When she returned on Saturday, she said there was a sign and it was the only sign she had seen. She stated that the residents had not had a chance to get organized or to discuss this.

13) Joe Qualey, Esq., James Island resident, said that these types of projects had been put on James Island for many years. He said that the Planning Commission and City Council had ignored the residents of James Island. He stated that the density the City has been allowing "is unforgivable". He said that he supported the people who opposed the subject rezoning. He remarked that "we are fighting a tidal wave against density." He said that most of the people on Council never sit in the traffic and it they did, they would have a different perspective. 14) James Liner Palmer, Jr., James Island resident, advised those in opposition to fight the rezoning. He expressed the hope that the West Ashley residents could fight to change this situation.

15) Joyce Murray, 45-year resident of Melrose, said that a lot of the land in the area is very low and she wanted to know about drainage plans. She expressed concern that there would be more drainage problems and asked if there were any plans to build it up.

Mr. Wallace rose to reply that the wetlands could not be filled without a getting a permit. He estimated that only about seven tenths of an acre of wetlands would be filled where the road is to be constructed. In exchange for that he said that it had been necessary to provide permanent buffer around the other wetlands that would remain. He added no other wetlands would be filled on this site.

When the Mayor asked those in opposition to stand or raise their hands, approximately 30 people indicated their opposition.

No one else expressed a desire to speak for or against this proposed amendment to the Zoning Ordinance. The Mayor declared this public hearing concluded.

Councilmember Campbell moved to defer this matter so that the developers and the community could have the time to talk and work things out such as density, traffic, drainage, etc.

Councilmember Tinkler seconded the motion.

Councilmember Campbell noted that Council had recently voted to put a moratorium on land not too far from the subject property. He felt there were a lot of issues that should be addressed.

Councilmember George expressed his support for the motion to defer. He noted that the Rhodes family has had a record of being wonderful stewards and he said they had patiently waited a long time. In some sense, he felt that this family was about to be penalized for waiting too long. He noted that he had looked at the traffic impact studies and said that his office has for almost 16 years been located at the corner of Mutual Drive and Highway 17. He spoke of travelling Highway 17 everyday and said that he agreed with comments about the traffic in the area. He referred to "p.m. platooning" on Highway 17 and commented that he believed this would affect lights as far back as Wappoo Road.

Councilmember George described this as a regional issue and expressed concern about adding this to a major circular regional intersection at the intersection of Bees Ferry Road and the Glenn McConnell Expressway. He spoke about expected growth and said that the City was looking at a regional traffic problem, not one that could simply be looked into at the two ends of the roadway. He stated that there was a need to study the long term, much greater impact that has been occurring in the West Ashley area.

Continuing, he said that Highway 61 was literally being strangled and that the Highway 61 Expressway was already backed up. He stressed the need to mitigate today's problems before adding the veneer of more on them. He commented that a terrible legacy would be left for the people who follow us.

Councilmember Bleecker stated that she would also support the motion to defer. She concurred with the remarks Councilmember George had made about the Rhodes family and said that they "are extraordinary corporate citizens."

She expressed her understanding about the concerns expressed by the Rhodes and said in her opinion it seemed appropriate to have the landowners look at this. She also agreed to revisit her study. She spoke of the traffic congestion and said that she does not enjoy traveling to her home because of it. She told of staying at her office in the evening until 7:30 p.m. or 8:00 p.m. so she does not have to travel in the traffic. She further commented that she thought anything that was done would impact the area.

Councilmember Bleecker then asked everyone to take a deep breath and to sit down to discuss this matter. She noted that these are very good people and described Foster Gaillard as a great lawyer, former City Councilmember and a very dear friend. She suggested that everyone "step back and do the right thing."

Councilmember Shirley said that he would also go along with the motion to defer. He spoke of a recent meeting that he and Councilmember Morinelli had with the area residents about a week prior to this meeting. He was under the impression that the proposed development would be somewhat upscale because of the marsh and the view. Addressing Director of Traffic and Transportation Hernan Pena, Councilmember Shirley recalled discussing these traffic issues earlier. He spoke of concerns about forcing traffic onto the Glenn McConnell Parkway. He added that although this was Councilmember Morinelli's district, he thought this matter should be deferred so that it could be discussed further. He commented on his familiarity with the subject area and said that he honestly felt that the family had tried to come up with a good plan. He expressed the hope that things could be worked out since the residences had brought more into the fold and they also knew a little more about the plan. He reiterated his support for the motion to defer.

Councilmember Morinelli stated that she also supported the motion to defer. Referring to some remarks that were made during the public comment period, she said that Melrose does not have a neighborhood president. She addressed the residents stating her belief that communication with the neighborhood would be much quicker if they could get a neighborhood president. She explained that she would be better able to get information to the community through a neighborhood president.

She went on to say that she had met with the developers to discuss drainage issues because Melrose is so low. She noted that a lot of the ditches had not been cleaned out in a long time.

Councilmember Morinelli noted that a number of the residents are in Charleston County rather than in the City. She made it clear that she was not trying to push this off on the county, but she said that the county needed to work more closely with the City. She commented that she was in the process of trying to do that. She added that she wanted the flooding issue to be squared away prior to the development.

Councilmember Tinkler said that he would also vote in support of the motion to defer this matter. He commented on the need to look at the public notice procedures in these rezoning matters. He expressed the belief that the City complies with the law, but he said perhaps the law should be looked at a little bit.

He agreed with Councilmember Morinelli that it is good for neighborhoods to be organized so that the Councilmember has a means of getting the word out to a community in/his her district.

He said this would be a way for these kinds of issues to be addressed.
Councilmember Gallant said that he wanted to offer encouragement to his fellow Councilmembers and to the citizens attending this meeting. He spoke about his community and said that his community had been stuck with a dagger of the new Cooper River Bridge coming through it. He stressed that if something is not done in this City, there would be a major problem with the roads five years from now. He remarked that the City has the worse roads and the worse configuration in this state.
He shared with those who had addressed Council about sitting in traffic that his community had been stuck with a dagger three times. He talked about I-26 and said that it gone through all of his family's houses. He talked about the traffic on I-26 and that on the Cooper River Bridge. He said that his community suffers with this traffic. He suggested the citizens speak some of the residents of his community about how they felt when they lost their home to I-26 and the Crosstown.
Continuing, he described the Crosstown as a mess. He said that in order to get to his house he had to travel through the Crosstown. He noted that he does not live West of the Ashley or East of the Cooper. However, he said in order to get north on the Peninsula to where he lives, he is not able to get across the Crosstown. He also talked about telephone calls from parents whose children must walk across the Crosstown.
Councilmember Gallant said that "we are in this together and somewhere down the road we need to get on our state representatives and our national representatives." He noted that City Council could only do so much and suggested that the community needed to come together and to be sensitive to one another. He added that everyone sits in traffic somewhere in this town because this is an area that is not that big and everyone wants to live in Charleston. He addressed the Melrose residents and told them that he felt their pain, to get together and that he would support the deferral.
Councilmember Waring described this as some of the fruits of having a good city that a whole lot of people visit and fall in love with. He noted that the bulk of the residents who might live in the proposed development are not necessarily Charlestonians. He commented that it would not be possible to put up sign telling people they could not come to Charleston.
Continuing, Councilmember Waring remarked that two decent factions were involved, a decent and a good lawyer and a decent and good community. He recognized that the community could be right that they had not been given enough time and/or enough notice. Councilmember Waring asked that in the interim prior to this matter coming back to Council for everyone to get together. He suggested that both sides should give. He said that he would go along with the deferral.
He asked staff to be sure the residents were given enough notice. He addressed the citizens and recommended they look around the community and read the signs that are posted.
Councilmember Waring also asked the citizens to keep in mind that all of Melrose is not located in the City of Charleston.
Councilmember Campbell commented that he thought Councilmember Waring had made some good points. He spoke about the tremendous growth that the City has experienced and the need to manage it correctly with smart growth. He referred to the way the City had dealt with the DR Horton tract.
Councilmember Campbell then moved to amend his earlier motion to add that the Director of the

Department of Planning and Neighborhoods Tim Keane coordinate meetings with the community, that the Director of the Department of Public Service Laura Cabiness and that Director of Traffic and Transportation Hernan Pena be a part of those meetings. Councilmember Gilliard seconded the motion.

Council accepted the amendment.

Mayor Riley said that this proposal had been the result of community participation and smart growth. He noted that this would be a downzoning on this property. The Mayor commented that the Melrose community might take exception, but the zoning on the subject property was higher than what was proposed. He expressed the belief that the thought had been that the quite substantial downzoning was a substantial improvement and the lessening of the density would have reasonably have been expected to be warmly received.

The Mayor then referred to the property adjacent to St. Francis Hospital. He commented that the proposed redevelopment envisioned the expansion of the hospital complex and would be serving this part of the community. He expressed understanding that Highway 17 is a busy highway, but he said the plan would allow a way to get from Highway 17 to the hospital district without having to get on the Glenn McConnell/Magwood Road intersection.

He further commented on the work the property owners had done to make the connection possible from the extension of Henry Tecklenburg to Town Center Drive. The Mayor said this would be a great convenience for the people living in this area. He said there was an awful lot in the plan that commends itself. He recognized that it was obviously the wish of City Council to defer, but he felt that honesty compelled him to convey this information. He described the proposal as a very fine commendable effort of very responsible landowners that had come up with a smarter growth, more pedestrian friendly, a more neighborhood supportive plan than existed previously. He commented that they should be commended for doing so.

There were no further questions or comments of Council.

Council then voted unanimously to *defer* rezoning property located at Henry Tecklenburg Drive and 2095 Savage Road (*Essex Farms Village Center*) (104.12 acres) (Part of TMS #309-00-00-003), annexed into the City Of Charleston July 31, 1979 (#1979-47), from Diverse Residential (DR-6) PUD and General Office (GO) classifications to Limited Business (LB) PUD classification including the amendment to schedule community meetings as stated above.

Without objection and at the Mayor's request, Council agreed to allow some students to make a presentation at this time. Mayor Riley noted that the presentation would be made during the Citizen Participation period of this meeting, but he explained that the students had been waiting for some time and they needed to get home for supper and to do homework.

Mayor Riley referred to this as a portion of the Citizen Participation period dedicated to students. The Mayor then invited Samantha German and Legare Settle, Porter-Gaud students, to join him at the podium. While Ms. German read a statement in opposition to secondhand smoke, Ms. Settle distributed copies of letters to Council. They gave Mayor Riley a sack full of letters, which are on file in the office of the Clerk of Council in the 2003 Election/Petitions folder. Ms. German reported that her class had studied the effects of smoking and second-hand smoke in their guidance class. She spoke of the work the students had done to help them make choices about smoking and to help them understand how harmful second-hand smoke could be to them. She stated that second-hand smoke is just as bad as smoking cigarettes or cigars.

Continuing, she said that it could cause Cancer, bronchitis, emphysema and many other diseases. She commented that it also kills 55,000 people every year in the United States. She stressed that she would never smoke a cigarette and said that she does not like breathing smoke from other people's cigarettes either.

She went on to state her understanding that this is a free country and that people have the right to smoke. She commented that she has coughing asthma and cigarette smoking makes it worse. Ms. German spoke of how much she loves her grandmother and how hard it is for her that her grandmother smokes. She noted that she cannot be close to her grandmother very long because her asthma acts up.

Ms. German remarked that if she goes into a public place where people are smoking, this also causes her to have problems. She stated that having a smoke-free Charleston would surely help her and a lot of others like her. Ms. German then thanked Council for considering this very important decision.

An extended round of applause followed Ms. German's presentation. Councilmember Fishburne said that everyone could be looking at the future mayor. When Mayor Riley commented good-naturedly that he would probably be ready to retire by then, the room filled with laughter. Councilmember Fishburne thanked both of these students for their input and also expressed his appreciation to all of the other students who had written letters on this matter. He assured them that they were listened to and what they do does make a difference. He invited the students to come back to Council about any other public issues in which they became involved. Mayor Riley thanked them for coming and wished them best of luck. He told them they had done a great job.

Council returned to the orders of the day.

The next public hearing pertained to the rezoning of 3080 and 3092 Ashley River Road (Item E-2 on the agenda) (1.06 acres) (TMS #358-00-00-010 & 011).

Without objection and at the request of Councilmember Shirley, Council agreed to consider both this public hearing and the public hearing to zone 3080 and 3092 Ashley River Road (Item E-5 on the agenda) (0.94 acres) (TMS #358-00-00-010 & 011), annexed into the City of Charleston February 11, 2003 (#2003-21), to Diverse Residential (DR-9).

Mr. Keane reported that one of these public hearings pertained to the rezoning of property already in the City and the other pertained to the zoning of property recently annexed into the City. Mr. Keane referred to a large map and pointed out the locations of the subject property. He noted that the first public hearing pertained to property currently zone SR-1. He stated the proposal before Council would rezone the property DR-9.

Continuing, Mr. Keane also reported on the public hearing matter pertaining to the zoning of 0.94 acres at 3080 and 3092 Ashley River Road (TMS #358-00-00-010 & 011), which was annexed into the City on February 11, 2003. He stated the proposal before Council would rezone the property DR-9.

He noted these matters were before Council to incorporate the subject properties into a development plan for condominiums on the adjoining 22.4 acres. He commented that the subject properties were currently occupied by single-family homes. He again pointed out that a portion of these two parcels of property had been annexed into the City in February of this year. Mr. Keane stated that the condominium property itself that is on the subject DR-9 zoned property would be permitted to do up to 300 units on the site. He commented that the developers had

proposed to do 230 to 250 condominiums on the property. He noted that making the approximately two acres of land DR-9 had come up as a result of the design review process when this matter came before the Corridor Design Review Board (CDRB). He explained that the thought in adding the two acres had been that the 230 to 250 units could be spread over some additional property and perhaps would allow for some larger buffers and perhaps save some more trees.

He indicated that both staff and the Planning Commission recommended approval of both of these matters.

Councilmember Campbell left the meeting at this time.

Council briefly discussed how much time to allow for this public hearing and agreed to ask everyone to try to keep their comments to three to five minutes if possible.

Mayor Riley invited public comment on this matter. . The following persons addressed City Council:

1) Sid Boone, Esq., 140 East Bay Street, spoke in support of this matter on behalf of the applicants. He expressed the belief that Council was probably familiar with the history of this property and knew that it had originally been zoned for 658 units. He noted that 105 units had been placed in McLaura Hall.

He went on to say that his clients own the 22 acres around the subject two acres. He referred to the map and indicated that all of the property was zoned DR-9 with the exception of seven lots around the border. He noted that in March 2002 those lots had been zoned SR-1. He said he was sure that had been done to be sure there was additional buffer, which he said had been provided.

Mr. Boone spoke of meetings with McLaura Hall residents and plans that had been submitted. He said that plans had been changed and his clients had done everything that they could do to accommodate the residents regarding this project, which was zoned DR-9. He stated that they had not been able to address the concerns of those who did not want this project to ever be built. He stated that Mr. Pantlik, who had led the opposition, had received a letter in 1994 that informed that the property was zoned DR-9. He commented this was not a case where the people in McLaura Hall woke up one morning and found out that this property was zoned for this number of units. He remarked that the applicants had agreed to reduce the number to 250. He anticipated there would be less units as the project goes through the design review process. Mr. Boone described the proposed development as being literally located in Councilmember Shirley's backyard. Mr. Boone stated that Councilmember Shirley had said that he could live with the stair stepping of the building in his backyard.

He went on to say that the owners had acquired the two acres at the request of the City in order to better address the concerns of McLaura Hall. He reminded everyone that only the zoning of two acres of land was at issue at this time, not to get more density, but to be able to address the needs and concerns of the community so that setbacks could be done and there could be buffers along the front. He commented that the proposed development included a 100-foot buffer on Ashley River Road and a 100-foot buffer on the back of this property.

He said the request before Council made sense and he asked them to approve this request. He said that it would go to the design review board and the applicants were willing to meet to address the concerns. He noted that the area would have more buffering and this would also cut off several access points on Highway 61.

Councilmember Shirley stated that he wanted it to be understood as people spoke about this matter that this was not a McLaura Hall situation. He described this matter as a Highway 61 situation. He suggested each speaker identify the subdivision where they live.
When the Mayor asked how many people wanted to speak against this matter, approximately 16 people indicated they would like to address Council.
Council briefly discussed how much time to allow each person to speak and agreed to ask everyone to limit their discussion to three minutes each if possible.
2) Ray Pantlik, 12-year resident at 3236 Hagerty Drive in McLaura Hall, spoke in opposition to DR-9 zoning. He also spoke of his membership in Old St. Andrews Church. He said that he mentioned that because it is one of two National Register historic properties along Ashley River Road along with Drayton Hall. He stated that he believed this information to be pertinent because it sort of set the context of what was sort of underlying the proposal here. He stated that Mr. Boone had represented that 250 units had been proposed for the project. He found it interesting that the proposal listed the developer from Atlanta, GA and the architect from Charlotte, NC. He noted that perhaps where they were coming from four-story condominium buildings in a suburban area might be appropriate.
Mr. Pantlik commented that remarks had been made earlier about the number of people moving to this area. He suggested that they might be moving here because they did not want to live in places like Atlanta or Charlotte. He said they were attracted to all the great things about this City.
He reminded Council that DR-9 zoning meant nine units to the acre. He said if the math was done using the acreage, Council would see that this would exceed nine units to the acre. He said that was one reason that the residents did not want to add to the 22-acre tract because it would add nine more units per acre to the tract.
Mr. Pantlik stated the zoning allowed a 50-foot limited DR-9 for three habitable floors. However, he understood that the proposed project would have four stories. He expressed a sense that if Council granted the DR-9 zoning, it looked like those limitations would be exceeded.
He referred to August 1986 and said that the Highway 61 Growth Corridor Plan had been adopted by this City Council at this time. He stated that the plan had recommended rural low density for the subject area. He described as being "so low, one unit per two acres." He stated that it could not be compatible to have adopted this plan in 1986 and consider tonight, with the traffic problems that have been alluded to, to zone the property for nine units per acre.
Mr. Pantlik then referenced an item that would be before Council later in this meeting regarding amendments to the City's Century V Plan that had been adopted in June 2000. He said there were a number of points in that plan that should be followed to guide the vision for the development of this City.
He pointed out that the Land Use Plan designated this site for more rural residential development. He did not see how nine units to the acre would comply with that element of this plan.
Mr. Pantlik read some additional information from the plan that "to engage in positioning neighborhoods in more detailed design studies to examine specifically how growth can improve the quality of life." He stated that certainly 250 units adding to the traffic problem on Highway 61 would not add to anyone's quality of life. He expressed the belief that he could speak for

anyone West of the Ashley whether they were residents of Schieveling Plantation, Shadowmoss, Village Green or just up the road and say that this would not be acceptable.

He remarked that the plan also called for the creation of neighborhood parks. He noted that there was one fine park off of the Glenn McConnell Parkway, but he said there was nothing north of Bees Ferry Road.

Mr. Pantlik said that the plan also stated efforts should be continued to provide unique waterfront parks at quality locations throughout the City. He noted that this is a waterfront site on the Ashley River.

He commented that he had made some of these points back in February and nothing material had changed about the development proposal. He stated that he had met one time with the architects, but he felt that these plans should be reconsidered and something should be developed that would be compatible with the neighborhoods. He recommended two-story, single-family development, certainly not the density, not the mass, not the scale, not the traffic impacts that are proposed by this development.

3) Joe Qualey, Esq., James Island resident, spoke in support of the residents who were opposed to the subject development. He said there were going to be condominiums all over the Lowcountry. He said that it is a troubling issue to rezone to get higher density.

He went on to say that he had not seen any rezoning or increase in density that the Planning Commission had not passed. He referred to other zonings and said that this was like a tidal wave.

4) Will Sheppard, President of the Forest Neighborhood Coalition, said that he would like the state contacted to see what could be done to alleviate the traffic area. He had observed an increase in traffic and in density of population.

5) Sgt. Trevor Shelor, Village Green resident and City of Charleston Police Crime Prevention Coordinator, said that from his official standpoint he wanted to point out that density like this creates a propensity for a group of victims of crime to be in place. He cited car break-ins and car thefts as examples. He said that these types of crime would increase because of the number of cars that would be parked at a large apartment complex.

He also spoke of the difficulty in safely lighting a development with 40-50 foot tall buildings. He noted that the residents might not thought of this.

As a resident of Village Green, Sgt. Shealer stated that it takes him an hour to get to work at the police station in the morning. He remarked that sometimes the traffic is backed up to the entrance of Village Green or at least to the second entrance into Shadowmoss. He was concerned about adding 500 cars to the existing traffic.

Mayor Riley commended Sgt. Shealer on the wonderful job he does. The Mayor added that the Crime Prevention Unit has great information, great aids, ideas and tips. He said that the City craves the opportunity to communicate with the citizens of Charleston and invited them to contact the unit to schedule a presentation in their communities.

6) Caroline Creech, Village Green resident, spoke of the traffic backup at the entrance beginning at 6:45 a.m. She stated that people could not get out on Highway 61 and said that when she worked downtown it had taken more than hour to get there. She expressed concern about what would happen if an emergency occurred.

7) John Blanton, Village Green resident, expressed his concern that zonings that had been put in place 10, 15 or 20 years ago should be addressed. He noted that he had seen turn downs to

requests to put four-story buildings on the Peninsula and did understand why anyone would put four-stories on a rural scenic highway.

Mr. Blanton also spoke the fact that there is no police station or fire station. He had heard that one would be coming. He questioned how the proposed four-story buildings could be covered in a fire situation. He also commented that it takes him 45 minutes to one hour to get to work. 8) Edward Delaney, President of Village Green Homeowners Association, was also concerned about traffic. He said that there were already issues on Highway 61 and any extra zoning did not make a lot of sense to him. He referred to this as irresponsible.

9) George McDaniel, Executive Director of Drayton Hall, stated his support for the previous remarks made in opposition to the proposed rezoning. He also expressed support for a regional study regarding traffic. He noted that Highway 61 (Ashley River Road) is a National Scenic Highway, one of the few in the nation. He added that the highway itself is listed on the National Register of Historic Places.

10) Robert Gurley, Preservation Society of Charleston, agreed with Mr. McDaniel and others. He said that the Ashley River District has been struggling to retain its character. He stated the belief that the single-family designation would be appropriate for this property.

11) Cindy Winegar, former president of Village Green Neighborhood Association, said that this neighborhood consists of 639 homes. She spoke about the roads and the continuing growth. Ms. Winegar commented that the homes would all be built before the roads. She said if the City allowed an additional 250 condominiums, they would be complete before the roads are.

She said that "we keep plugging in people, plugging in new homes, plugging in cars and trying to catch up with the roads." She stated that one-third of the residents are senior citizens that are 50 or over and one-third of the residents are children. She spoke about a recent fire and the difficulty with traffic.

Ms. Winegar said that everyone was living on borrowed time. She stressed her concern that the residents of Village Green would not be able to get out during a hurricane. She spoke of meetings with the Mayor, Councilmember Morinelli, Councilmember Shirley and Mr. Keane at which she had discussed this issue.

12) John Steinberger, resident of the north end of Shadowmoss, spoke of his experience in trying to get on Highway 61. He said that he leaves home at 6:30 a.m. and turns right on Highway 61 to get downtown. His wife leaves at 6:45 a.m. and she cannot make a right hand turn onto Highway 61 because it is already filled up. He stated if they waited until 7:00 a.m. it would take them about 15 minutes to get to Bees Ferry Road through the neighborhoods. He said this is ridiculous and we just cannot have any more of this.

13) Marilyn Henderson, Shadowmoss resident, referred to serving on a commission many years ago. She said there was supposed to be low density and she did not think it was fair that it was still necessary to fight this matter.

14) Liz Jones, Village Green resident, said that she wanted to echo what had been said. She spoke about the continuing development and said that the traffic would be getting worse. She asked what it would take to get Council to turn this down.

Mayor Riley responded that the specific issues pertaining to 3080 and 3092 Ashley River Road would be decided at this meeting. He noted that the other issues were more complicated and he believed those matters Commercial Corridor Review Board. He noted that approval had not

been given yet because of the concerns raised about the scale that this would be so overwhelmingly out of character with the area in which it is located.

15) A gentleman stated that he resides in McLaura Hall and it takes one hour for him to travel into the City. He commented that the development should be comparable with what they already have.

16) Larry Lopez, 12-year resident of McLaura Hall and former president of the homeowners association, was also concerned about traffic. He compared the traffic into town to the traffic going away from the City during Hurricane Floyd.

17) Bill Hallbritter, 3162 Stanyarne Drive, also spoke in opposition. He noted his belief that his family was the first to move into the community and said if he had known that this kind of situation would occur in the area they would never have moved there. He expressed concern about traffic and about the chances people take to get into the traffic from the subdivision onto Ashley River Road. He said that it is very dangerous and would get worse. He remarked that he was concerned about putting 500 additional cars per day on that two-lane road. 18) Jill Weatherford, Village Green resident and real estate agent, said that she was concerned about the effect traffic was having on property values in this area. She described it as "a hard sell now because of the traffic." She expressed her concern if the condominiums were allowed people would use Village Green as a cut through to get to the Glenn McConnell Parkway. She added that their neighborhood has more children than any other neighborhood West of the Ashley. Ms. Weatherford stated she did not want to see this deferred. She said that she wanted to see that highway put further down the road because essentially she thought this would happen no matter was done.

Mayor Riley then asked those opposed to this matter to please stand or raise their hands. Approximately 35 people indicated their opposition.

No one else indicated a desire to speak for or against this matter. The Mayor declared this public hearing concluded.

Councilmember Shirley, a resident of McLaura Hall, expressed his appreciation to those who had come to address Council. He noted that Mr. Boone had been correct that he would be willing to have one of those four-story units behind his house if everything else could remain single-family residential. He said that it would be great if the property could be downzoned. He explained why he wanted to turn back the Planning Commission classification. He said at the last meeting he had asked staff to take the matter to the Planning Commission and have it annexed into the City as he had requested. He commented that they had done the opposite of that. He felt that they had probably had been trying in all sincerity to try to spread the project out.

Continuing, he stated that the project had not been spread out to begin with. He said basically they had shown the same units without annexing that property into the City. He about turning down this rezoning and referring it back to the Planning Commission. He commented that he had felt it would be better to annex the property into the City rather than leave it in the County so that they would come before Council.

Councilmember Shirley remarked that he was laying his cards on the table. He wanted to turn this down, refer it back to the Planning Commission and ask as he had done previously for it to be zoned SR-1. He commented if they said that really would put them in the corner, then they would have to go to the CCDRB.

He was under the impression that the property owner is a reasonable businessman out of Atlanta. Councilmember Shirley stated that although he is not an architect he did not feel the plans would fit the nature of where it is going. He had heard that the owners of the property are a group out of Kuwait. He noted that they are people who are friendly to us and he was not taking any potshots at foreign government.

Councilmember Shirley expressed the opinion that we are far removed from whoever is financing this property. He said that we are also far removed from the density and said that he could not understand so many units.

He went on to thank Councilmember Morinelli and said that although she had not had an opportunity to say so she had petitions signed by approximately 80 people in her district opposing this. He asked Council to deny this request and to go for SR-1 zoning.

As an afterthought, Councilmember Shirley told the Mayor that he had discussed this matter with the City Fire Chief Russell Thomas. He said that the best dream come true would be a passive park on the property with a fire station going there. He stated his understanding that the City did not have a land swap and that it might be a deal that the City could not do. He said that would be his fondest wish.

Continuing, Councilmember Shirley also spoke of safety issues about getting a ladder that far down Highway 61 that quick in the event of a major fire. He stated that Chief Thomas had told him once the four-story units were built, the City's only ladder truck that could reach the top of these buildings is on Savannah Highway.

Councilmember Shirley then moved to deny both the request to rezone 3080 and 3092 Ashley River Road (1.06 acres) (TMS #358-00-00-010 & 011) and to zone 3080 and 3092 Ashley River Road (0.94 acres) (TMS #358-00-00-010 & 011). Councilmember George seconded the motion.

Mayor Riley supported Councilmember Shirley's motion. He noted that the land had been zoned this way many, many years ago, but he said as numerous people had stated earlier circumstances had changed substantially. The Mayor spoke of the need to put the quality of life of our citizens and residents first. He spoke of meetings with the developers and their lawyer, whom he described as one of the nicest people in town and one of the best lawyers. The Mayor said that he had explained to them that although the scale for the proposed development is seen in larger cities such as Atlanta, GA and Charlotte, NC, it would be substantially out of character on Highway 61.

The Mayor talked about the need to work to find a resolution that would respect the character and would not exacerbate the traffic conditions. He expressed the belief that the extension of the Glenn McConnell Parkway would help.

He went on to speak of the City's plans to build a fire station and park in the area. He noted that there was plenty to do and said that we also must respect the quality of life for our citizens. He said the ability to move around and travel at reasonable speeds is part of quality of life. The Mayor stated his support for the motion before Council and said that he would be working very hard with everyone to find a solution that would respect the area and would not harm the quality of life.

Councilmember Lewis agreed with comments about traffic problems on Highway 61. Addressing the citizens, he said that the City could only do so much because part of the area is in the City, but part of it is in the county. He commented that the rights-of-way belong to the state and he encouraged the residents to contact their state and county legislators to ask them to

alleviate these problems. He noted that City Council takes a good beating about traffic issues, but he said in the case of Highway 61 there is not a lot that Council can do.

When Councilmember Gilliard asked if there were two public hearing matters before Council (Items E-2 and E-5), Councilmember Shirley and the Mayor responded affirmatively.

Councilmember George compared this issue to a previous one on Lake Frances Drive on James Island. He commented that the City had downzoned this property to single-family zoning. He said that tonight seemed to be the night to talk about traffic and master plans. He remarked that these kinds of issues are discussed frequently but they are not addressed that often.

He spoke of work that he and former City Councilmember John Thomas had done beginning in 1976. He stated that Councilmember Thomas had been elected to City Council as a result of the Lake Frances issue. Councilmember George said that the property is located in an area off of Harborview Road and it had been zoned for very high density multi-family at that time.

Continuing, he stated that infant subdivisions in the Lawton Bluff area had been very concerned about high-density development on Harborview Road. He commented through the efforts of many people and those of the City every bit of that property had been downzoned to basically single-family zoning.

When he asked Deputy Corporation Counsel Adelaide Andrews if the City had recently defended this decision and won in the SC Supreme Court, she responded affirmatively. He commented that bold steps are called for in times like this.

Councilmember George then moved to instruct planning, public service and legal staff to prepare a brief to be presented at the next City Council meeting for a method and the impact of downzoning the entire tract to single-family zoning. Councilmember Tinkler seconded the motion. The motion carried.

Councilmember Evans commended those who came to Council about this matter. She said they had been very well organized and had made their case. She remarked that is what happens when neighbors come together and speak with one voice. She also spoke of the need to think about public transportation and said that more roads were not the only solution. She said that there are others that we as a community need to start looking at.

Director of Design, Development and Preservation Yvonne Fortenberry rose to say that only one of the bills was before Council for rezoning. She said one of the properties had recently annexed into the City and was before Council for its initial zoning at this meeting.

There were no further questions or comments of Council.

By unanimous consent, Council voted to *deny* only the request to rezone 3080 and 3092 Ashley River Road (1.06 acres) (TMS #358-00-00-010 & 011).

Council then considered the zoning of 3080 and 3092 Ashley River Road (0.94 acres) (TMS #358-00-00-010 & 011).

On motion of Councilmember George, seconded by Councilmember Bleecker, Council voted to zone 3080 and 3092 Ashley River Road (0.94 acres) (TMS #358-00-00-010 & 011) Single-Family Residential (SR-1).

First reading was given to a bill entitled:

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF CHARLESTON BY CHANGING THE ZONE MAP, WHICH IS A PART THEREOF, SO

THAT 3080 AND 3092 ASHLEY RIVER ROAD (0.94 ACRES) (TMS #358-00-00-010 & 011), ANNEXED INTO THE CITY OF CHARLESTON FEBRUARY 11, 2003 (#2003-21), BE ZONED SINGLE-FAMILY (SR-1) CLASSIFICATION.

Next, Council considered the bill to rezone property located on Bees Ferry Road (*Middleborough At Shadowmoss*) (1.821 acres) (TMS #358-00-00-098), from Single-Family Residential (SR-1) and Commercial Transitional (CT) classifications to Commercial Transitional (CT) (.95 acre) and Single-Family Residential (SR-1) (.871 acre) classifications.

Mr. Keane pointed out the location of the subject properties on a large exhibit map in the area of Shadowmoss Parkway at Bees Ferry Road. He explained this would swap some frontage of Bees Ferry Road and make it CT and make the property behind it SR-1. Both staff and the Planning Commission recommended approval.

Mayor Riley invited public comment on this proposed rezoning. No indicated a desire to speak for or against this matter. The Mayor declared this public hearing concluded.

On motion of Councilmember Evans, seconded by Councilmember Tinkler, Council voted to adopt the City Planning Commission's recommendation and to give first reading to the subject bill.

The vote was not unanimous; Councilmember George voted nay.

First reading was given to a bill entitled:

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF CHARLESTON BY CHANGING THE ZONE MAP, WHICH IS A PART THEREOF, SO THAT PROPERTY LOCATED ON BEES FERRY ROAD (*MIDDLEBOROUGH AT SHADOWMOSS*) (1.821 ACRES) (TMS #358-00-00-098), ANNEXED INTO THE CITY OF CHARLESTON JULY 31, 1979 (#1979-48), BE REZONED FROM SINGLE-FAMILY RESIDENTIAL (SR-1) AND COMMERCIAL TRANSITIONAL (CT) CLASSIFICATIONS TO COMMERCIAL TRANSITIONAL (CT) (.95 ACRE) AND SINGLE-FAMILY RESIDENTIAL (SR-1) (.871 ACRE) CLASSIFICATIONS.

The next public hearing pertained to the rezoning of property located at 1847 Ashley River Road and Ancrum Hill Road (4.32 acres) (TMS #351-07-00-026), annexed into the City of Charleston February 25, 1985 (#1985-29), General Office (GO) and Diverse Residential (DR-4) classifications to Diverse Residential (DR-2F) classification.

Mr. Keane reported that housing for low-moderate income families was being proposed for the site. He said the DR-2F zoning would allow a maximum of 114 residential units on this 4.32-acre tract. He commented that the current DR-4 zoning on the northeastern portion of the site would allow high-density residential for elderly housing and the current GO zoning would permit a full range of office development.

He stated that the site was currently vacant and offered several potential access points and connections to several streets around it. He remarked that the feeling had been that it would be a good infill site for housing with shopping, schools, etc. nearby. Both staff and the Planning Commission recommended the approval.

Mayor Riley invited public comment on this matter. The following persons addressed Council:

1) Bonnie Lester, Humanities Foundation, said the subject property would be used for elderly housing. The applicant had requested this so that the zoning would be consistent on the entire site.

2) Joseph Ancrum, Ancrum Hill Road resident, said that the subject property is adjacent to his property. He wanted to know the reason for the change to the zoning.

Mr. Keane responded that the applicant had requested the rezoning to do some elderly housing on the site. He noted that currently the property had split zoning and some of it could be used for office and some of it could be used for apartments. He explained that the applicant wanted the rezoning so that the units for the elderly could be developed.

Mr. Ancrum asked about the number of units. Mr. Keane said that the zoning would allow 114 units and noted that the request had been for fewer units than would be allowed.

In answer to another question from Mr. Ancrum, Mr. Keane thought the proposal had been for approximately 75 units. Mr. Ancrum then asked if the property would be for sale or for lease. Mr. Keane said the zoning would allow either. He thought that the elderly housing would be rental housing.

3) J. A. Wilson, Ancrum Hill Road resident, expressed his concern that the proposed development would cause the residents to lose all of their tranquility. He said the residents had no idea who would be coming into the community.

4) Nathan Gladden, Ancrum Hill Road resident, said that he had listened to the earlier concerns expressed about the traffic on Highway 61. He stated that he was just as concerned about the entrance to the subject property on Ancrum Hill Road.

5) Beatrice Wilson, Ancrum Hill Road resident, expressed her concern about the traffic. She commented that it is very hard to get out. She stated that her daughter takes the school bus and the traffic does not stop. She said that the Ancrum Hill Road does not go the length of the property and there would be no other entrance. She remarked that the drainage system is not good. Ms. Wilson spoke of the problems that occur when it rains. She said that the traffic is too heavy and she did not feel that this project was needed.

No one else indicated a desire to speak for or against this matter. The Mayor declared this public hearing concluded.

Councilmember Gallant felt in lieu of what had happened, it appeared there was a consensus of things happening. He stated that he was hearing that the residents did not understand the proposed project and they did not want it. He commented that the community should be allowed to know what is coming at them.

Councilmember Lewis said there seemed to be a different understanding about the number of units. He noted there also seemed to be some questions about ingress and egress in the community.

When Councilmember Gilliard asked if staff had followed normal process by contacting the neighborhood association, Mr. Keane responded there was no neighborhood association in this case. He commented that some of the folks had attended the Planning Commission meeting. He said there had been some discussion at that meeting, but there had been no objections at that time.

Councilmember Gallant said that most of the residents seemed to be concerned about the development. He asked that Ms. Lester touch base with these residents and any other residents that would be affected by the development.

When Councilmember Shirley asked for an orientation of the location of the subject property from Highway 61, Councilmember Gallant said that the property is located across from Southeastern Galleries (furniture store). When Councilmember Shirley asked if it would be near

the Salvation Army, Mr. Keane replied that it would not. Councilmember Bleecker commented that the property is located across from In Good Taste. Councilmember Shirley indicated that he understood the location.

Mayor Riley assured everyone that the Humanities Foundation produces very fine quality housing and had done so for seniors and others in a very commendable way. He expressed confidence that in working together a good level of assurance could be reached.

On motion of Councilmember Gallant, seconded by Councilmember Gilliard, Council voted to *defer* the bill to rezone property located at 1847 Ashley River Road and Ancrum Hill Road (4.32 acres) (TMS #351-07-00-026), annexed into the City of Charleston February 25, 1985 (#1985-29), from General Office (GO) and Diverse Residential (DR-4) classifications to Diverse Residential (DR-2F) classification so that Ms. Lester and representatives of the Humanities Foundation could get together with the residents to come up with some admirable situation to really give them some feed back of what they want to do.

Councilmember Waring was not present for the vote.

Mayor Riley noted that Councilmember Campbell had to leave the meeting earlier, and he apologized for not having mentioned that the matter on the agenda pertaining to bar closings would be deferred.

Mr. Keane reported that the next public hearing pertained to the zoning of property located at 2315 Vanderbilt Drive (0.29 acres) (TMS #358-08-00-059). Mr. Keane indicated that this property had been recently annexed into the City. He said the proposed SR-1 zoning was comparable to the zoning of surrounding properties. He noted that it had been zoned RSL in the county, which is comparable to the City's SR-1 zoning. Both staff and the Planning Commission recommended approval.

Mayor Riley invited public comment on this proposed zoning. No one indicated a desire to speak for or against this matter. The Mayor declared this public hearing concluded.

There were no questions or comments of City Council.

On motion of Councilmember Tinkler, seconded by Councilmember Evans, Council voted to adopt the City Planning Commission’s recommendation and to give first reading to the subject bill.

First reading was given to a bill entitled:

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF CHARLESTON BY CHANGING THE ZONE MAP, WHICH IS A PART THEREOF, SO THAT 2315 VANDERBILT DRIVE (0.29 ACRES) (TMS #358-08-00-059), ANNEXED INTO THE CITY OF CHARLESTON JANUARY 28, 2003 (#2003-08), BE ZONED SINGLE-FAMILY RESIDENTIAL (SR-1) CLASSIFICATION.

Zoning Administrator Lee Batchelder presented the next public hearing. He reported that this was a very simple amendment to the Zoning Ordinance. He noted that civic, social and fraternal associations are permitted uses in other commercial zones except for General Office (GO). He indicated the need to make this change became apparent when a property on Sam Rittenberg Boulevard occupied by one of these types of uses was recently annexed into the City.

Mr. Batchelder said that the occupants wanted to pursue efforts to open a clinic for children and they did not want to become a non-conforming use with the rezoning. Both staff and the Planning Commission recommended approval.

Mayor Riley invited public comment on this proposed rezoning. No one indicated a desire to speak for or against this matter. The Mayor declared this public hearing concluded.
There were no questions or comments of City Council.
On motion of Councilmember Tinkler, seconded by Councilmember Gilliard, Council voted to adopt the City Planning Commission's recommendation and to give first reading to the subject bill.
First reading was given to a bill entitled:
AN ORDINANCE TO AMEND CHAPTER 54 OF THE CODE OF THE CITY OF CHARLESTON (ZONING ORDINANCE) BY AMENDING THE REGULATIONS FOR PERMITTED USES WITHIN THE GENERAL OFFICE (GO) ZONING DISTRICT.
Council then considered a public hearing called for by the following advertisement, which appeared in The Post and Courier on and March 2, 2003, and in The Chronicle on March 5, 2003.

PUBLIC HEARING

The public is hereby advised that on Tuesday, March 25, 2003, beginning at 5:00 p.m. the City Council of Charleston will continue the public hearing initially commenced on November 26, 2002, continued on December 17, 2002, January 28, 2003 and February 25, 2003. The public hearing will be held at City Hall, 80 Broad Street and will concern the amendments to the Century V City Plan to provide for updated population estimates, and information and recommendations concerning capital improvements and the implementation of impact fees. Interested persons are invited to attend the hearing and express their views. Extended presentations should be made in writing.

VANESSA TURNER-MAYBANK
Clerk of Council

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The following is a memorandum from Mr. Keane regarding this public hearing matter:

MEMORANDUM

TO: Mayor Joseph P. Riley, Jr.
Charleston City Council
FROM: Tim Keane
DATE: March 20, 2003
REF: Impact Fees

Attached is a City Plan amendment and ordinance implementing impact fees for environmental and public safety services. The Planning Commission recommended approval of this proposal on March 19. The proposal is drafted to comply with the State Development Impact Fee Act of 1999. This new act is much more restrictive that the act used previously by municipalities in South Carolina for similar fees. We believe this proposal fully complies with the new law. Frances Cantwell will attend our meeting Tuesday night to answer any legal questions you have about this proposal.
TJK

The remaining public hearing pertained to amendments to the Century V Plan to provide for updated population estimates, and information and recommendations concerning capital improvements and the implementation of impact fees.

Mr. Keane reported that complete information on this matter had been provided in the agenda packets. He briefly summarized that the proposal before Council would amend the Century V City Plan to incorporate a section on impact fees that would go into the Municipal Services and Facilities of the plan.

He noted that Frances Cantwell, Esq. was present and had been instrumental in putting this together. He also introduced CFO Steve Bedard, Fire Chief Russell Thomas, Director of the Department of Public Service Laura Cabiness and said they had all been involved in this process as well.

Continuing, Mr. Keane stated that impact fees are one-time, up front fees that are applied when someone applies for a building permit. He commented that the fees are used to finance and construct capital facilities. He noted that it is required that they are very specific in terms of their collection and use for specific improvements.

Mr. Keane referred to laws enacted in 1999 and said that they provide that this fee can only be charged for capital improvements that are of a value of at least $100,000 per unit cost. He referred Council to the information in the agenda packets and pointed out the list of capital improvements listed on the page numbered 51 under E-1. He noted that this was not new and pointed out that impact fees have been charged by other municipalities in the state.

He commented that many of the other municipalities had enacted impact fees under the old state law. He noted that the proposal before Council impact fees would initially be for public safety and environmental services. He said that the fees would basically pay for fire stations and then for the trucks that would go into them and then the fees would be used for garbage trucks, which would fall into the $100,000 per unit cost threshold.

He used an overhead slide to show comparable fees in other parts of the state for these same types of facilities. He pointed out Goose Creek and noted the statistics to give Council a sense of what others are charging for impact fees.

When Councilmember Tinkler asked if the totals were per unit, Mr. Keane replied affirmatively. Councilmember Tinkler expressed difficulty in reading the screen, and Mr. Keane referred him to the document in his agenda packet.

Mr. Keane said in addition to this section there was information pertaining to population and growth projections. He commented that those statistics were being updated as a result of the Census 2000 figures. He referred to an overhead slide of a table that was included in the agenda packets and noted that it projected growth in terms of population and housing units on the residential side. He noted that there were also non-residential projections. Mr. Keane stated that this information reflected an update from the time that it was adopted in 2000.

He referred to the Growth and Demand Factors in terms of calculating the fees. He commented that each of these factors might prove useful for a different fee. He cited the example of the size of the household and said that it might be a relevant matter. He noted that he would not be discussing that one at this meeting.

Continuing, he spoke of the margin of service and said that the only thing that garbage trucks were the only thing that would qualify under state law. He stated that the current level of service

was one pickup per week and each route could serve 600 customers. He pointed out the cost of a new truck in 2003 dollars. He also pointed out statistics included in the packets pertaining to the planning year 2015. He stated that the projections indicated 26 new garbage routes with four days to collect them and that would require seven new trucks. He briefly explained how the $82.00 environmental service fee would be calculated.

Next, Mr. Keane referred to a slide pertaining to public safety. He spoke of the need for new fire stations and noted that one had been projected for Bees Ferry Road in this planning period and a new station for Daniel Island was in the works. He commented that a third station would be in the Cainhoy area. He indicated that Council had a projected price list for these facilities in their documents. He said the figures included the land, the building and an apparatus to occupy those buildings.

Mr. Keane commented on the Capital Projects Team and the work that had been done to come up with the projections for costs. He noted the importance of allocating the fee by residential and non-residential land use in the terms of charging a fee.

He said the staff of the Fire Department had been asked to look at their cost of service for the year 2002 and to identify whether or not it had residential or non-residential land use. He noted that they had calculated a total number of calls received that could be applied to residential or non-residential land use had been 3,256. He noted these figures indicated 62 percent were to homes and 38 percent had been to businesses of some sort or another.

Mr. Keane stated the total had been over 4,000 calls, but those above 3,256 could not be attributed to a specific land use. He expressed the opinion that all growth was generating the need for these facilities. He said the fairest way to apply the cost would be along that share that was known, which he said was the 3,256 calls. He pointed out the total public safety facilities cost to be projected at $8,000,000. He noted the residential share to be just over $5,000,000 for the planning period.

He then referred to the total number of units projected in the City by the year 2015 and said that it would be over 63,000 units to apply that residential share among all of those although all of them would not be built between now and then. He said this came to a residential fee of $79.00 per unit. He stated that the building permit for a residence would be $1,700 for the public safety fee.

Mr. Keane also explained the commercial share of the total cost is just over $3,000,000 and the total amount of non-residential square footage would be four cents ($.04) per square foot for public safety.

Councilmember Shirley asked Mr. Keane to explain the figure in red on the overhead. Mr. Keane stated that it was the $.04 per square foot for non-residential.

Mr. Keane went on to say that the plan also included projections for affordable housing. He commented that state law is very specific about what is defined as affordable housing, i.e. housing for those making 80 percent of median income or less. He said that those proposed would be exempt from the fee.

He noted there were also projections for economic development projects. He said that Council if it sees fit could exempt these fees as well.

He commented that the Planning Commission had recommended approval of this proposal at their March 19, 2003 meeting after quite a bit of discussion. Mr. Keane said this proposal was different from the one that had been submitted to Council late last year. He explained that after

the Planning Commission had initially considered the matter and it came to City Council, there were objections from a number of people about the way the public safety fee was being applied and that it was applied just to different districts of the City. He stated that after reconsidering the concerns, the proposal now before Council would apply the fee Citywide. Mr. Keane said that staff felt that would be appropriate, but they wanted to go back to the Planning Commission to get their recommendation as well.

He reiterated that the applying the public safety feature Citywide rather than in certain districts would be the major change.

Mr. Keane spoke of meeting with the Board of Realtors and the Homebuilders Association last year to speak with them about the City's plans for an impact fee program. He again stated that at that time consideration was being given to having the public safety fees in districts. He noted that Council had received some correspondence about objections. He said there had also been some attorneys representing other landowners in the City that had been objecting to the impact fees proposal. He said the objections had been along the same grounds that it was not being applied Citywide. He expressed his belief that these concerns had been addressed; a lot of hard work had gone into complying with the state law and all of the things that were right to do when it comes to impact fees.

CFO Steve Bedard stated that he wanted to re-emphasize that the plan before Council only addressed new facilities and new equipment. He expressed the belief that City Council was well aware that the City has a very robust, ongoing replacement program. He commented that the program had been in place for three years. He said that he could hazard a guess that more sanitation equipment had been purchased in this City than in all of Charleston County combined over the last three years. He said that the matter before Council addressed additional units that the City needs because of the growth.

Mr. Bedard said that once these are put in place the operating costs associated with them and the cost to replace them would be part of the tax base. He reiterated that the matter before Council was only associated with those things needed for growth.

Mayor Riley commended everyone who had worked on this. He noted that Mr. Keane had provided a very brief summary, but there had been a huge amount of work. The Mayor also mentioned the work of Yvonne Fortenberry, Frances Cantwell, Steve Bedard, Laura Cabiness, Chief Russell Thomas, Police Chief Reuben Greenberg, Steve Livingston, Paul Wieters and their respective staffs. He said this work had been very thorough, very detailed and it was been done in collaboration with those who had an interest in this, particularly those in the homebuilding industry, to be sure it was fair and reasonable. He expressed the belief that this had been accomplished and that it would be modest.

Councilmember George said that he shared the Mayor's appreciation of staff's efforts. He spoke about the geographic spread of the City and asked about environmental services. He felt the City in particular and the county in general would benefit from sanitation transfer stations. He felt the City could be more productive with its trucks and he wanted to know if capital costs could be taken for future sanitation transfer stations and pro rate that between existing growth, which cannot be funded through impact fees, and new growth.

Attorney Frances Cantwell thought that it could be done, but she said the analogy would have to done that had been done for the trucks to determine when it would come on line and pro rate it

out system wide. She thought as long as the new people were not charged any more than the proportionate share under the statute, she did not see any impediment.

When Councilmember George asked about amending the bill at a later date, Ms. Cantwell said that it could be amended but it would be necessary to go through the same process to do so. She stated that it could be amended to go up if costs changed or hopefully it could be amended to go down if other funding such as grants could be found. She remarked that there is room to amend and modify so long as the process is followed.

Mr. Keane added that Director of Public Service Laura Cabiness and Mike Metzler had brought that point to the table. He commented that the feeling had been that the decision did not need to be made before preparations could be made to come forward with the inclusion of transfer stations. Mr. Keane said that he anticipated this would come back to City Council in the future.

Mayor Riley invited public comment on this matter. The following persons addressed City Council:

1) Attorney Tom Harper commended the City staff on the hard work they had done. He stated that along with Susan Smythe, Esq. he represents some of the landowners. He stated that they had some concerns about the proposal before Council and they had addressed those with Ms. Cantwell and Mr. Keane. He said that he wanted to make Council aware of these concerns as well.

Mr. Harper commented that the state had enacted this 1999 act on impact fees because it was a dramatic method by which new taxpayers would be funding several years of services, all in front. He stated his belief that when the Legislature passed the act they made it a very exacting act that requires specific findings by the Council before those fees are charged. He commented that it would not be enough to say that more services would be needed that would cost more money, therefore, there is a need to charge impact fees.

He spoke of his understanding that there should be an itemized plan included in this capital improvement plan. He said that the easiest one to see, from an explanation point of view would be how much of these fees would be funded through the general payment of taxes by these new homes. He talked about the new homes expected on Daniel Island, Cainhoy, James Island and Johns Island over the next 12 years. He said that this increased revenue could go towards paying for the additional fire trucks and additional garbage trucks that would be needed. He stated that it would be incumbent upon Council to figure out that number.

Continuing, Mr. Harper remarked that there were numbers in this report and he said those numbers would need to be mitigated or at least analyzed in the context of hard numbers on the other side. He cited the example of someone who pays an impact fee on a home and then pays the taxes thereafter. He said that property owner would be funding the service through those taxes. He also asked which bond revenues were used to pay for some of the existing garbage trucks, fire trucks, etc. He said that would be a double payment for those taxpayers. He noted that the report actually contains a formula for determining that amount.

Mr. Harper stated his opinion that the plan did not address what revenue would be generated by this growth over the next 12 years. He said that was also something that should be factored in under the act before the City determines what the right number would be in order to charge his clients an impact fee.

He referenced garbage trucks and said that the figure generally formulated would take the estimated price of the additional services, not by the new units but the units that could use those

services during that time. He expressed the belief that increasing the City's fleet of garbage trucks and manpower to provide sanitation services would not just benefit new homes. He said that the existing houses would also benefit. Mr. Harper stated the belief that the figure in the report was not fair to the taxpayers, the new residents that would be coming in over that period of time. He asked Council to have the Planning Commission pursuant to the act to make the findings required by the act to determine what revenues could be generated by the new residents, how the trucks could be paid for through the existing means in place now and to have the actual findings so that Council could make a full and informed decision when they determine the hard and fast numbers.

2) Marc Knapp, West Ashley resident, said that the previous speaker had stolen a little bit of his thunder, but basically he had warmed up to the impact fees. He said that the City had gotten to something reasonable. Mr. Knapp commented that it still goes to the same point. He commented the property owner starts paying taxes when a new house comes on line.

He stated that generally you have borrowed the money for those capital improvements and you create an ongoing revenue stream to pay for the debt. He said that impact fees lead to fiscal irresponsibility, which he commented, happens a lot around here in his opinion. He said that you end up in 10-15 years when that fire truck has to be replaced all of that money that should have been going to that revenue stream would have been diverted elsewhere.

Mr. Knapp stated that he was mainly concerned that there would be another tax increase. He did not see police cars or fire trucks as a major impact. He said that you add them as you go. He said they do not come on line 1,000 at a pop; they come on line maybe one or two per day and that is something that you can deal with.

He spoke of the need to consider roads such as Highway 17 and Savage Road. He could see that this could be done. He said "maybe if they have to put some money toward the roads maybe we could some matching funds, set some of that money aside so we can improve our traffic situation." He went on to say that obviously we are not doing anything right now and there is obviously a very nice avenue that we could work on, especially for the roads. He suggested by going with the state and federal money and actually making these developers stop the impact of their traffic on the roads.

3) Philip Ford, representing the Charleston Homebuilders Association, was concerned about the capital improvement element. He expressed the belief that state law does require more information and said that he felt that the City should go further with the detailing. He said he was concerned about double taxation based on the fee that is paid by the homeowner when he comes in, then through bonds, etc.

Mr. Ford said that although he thought the City had done a great job in comparison with what other cities in this area have done to comply with state law, he said that the association would like more details on the capital improvement element. He was also concerned about the 62 percent in the public safety element versus 38 percent of the calls. He said that it should not be on calls. He noted that while a commercial building might be dark at night, it would still be necessary to patrol the area, there would be calls and it would not be necessary to purchase a million-dollar ladder truck just for residential property. He recommended making it 50/50 and said that both would benefit equally from facilities that are built and from the fire trucks that are purchased.

He reiterated the belief that the City had done a great job with this and said that he was asking Council to take a little more time so the Planning Commission could work through some of these things.

No one else expressed a desire to speak for or against this matter. The Mayor declared this public hearing concluded.

In response to a question from Councilmember Tinkler, Ms. Cantwell said that she was very comfortable that the plan and the methodology used to derive the recommendations before Council complied with the law. With respect to the analysis of revenues that are produced by new development, she interpreted the remarks that had been made earlier to be asking Council to look at how much money the new development generates. She said that this appeared to say "let's look and see how much money this new development generates and if we generate more money than somebody else, then don't charge us impact fees because we pay our way."

Continuing, Ms. Cantwell noted that everyone knows that they pay taxes based on an assessed value. She commented that everybody gets the same service whether they live in the finest house in Charleston or whether you live in a more modest house in Charleston. She felt that the request was to maintain the status quo, which she said would be an option. She commented that there could be new development to come on line that would generate more taxes than the house next door. She remarked that this would be a policy call for Council to decide whether or not to continue to use taxes as the sole means of funding capital improvements.

Ms. Cantwell commented most respectfully that it would be a dramatic departure from the way of doing business to consider how much money a house generates to determine what kind of fees could be charged. She expressed concern that it could be a dangerous path to go down when looking at those types of factors, if you will. She did not see the impact fee as the great trauma and traumatic change that has been proposed.

She referred to the state law and described it as a tough law. She expressed the opinion that interests that would rather not have impact fees had probably written this law. She thought that it was good that the law was tough. Ms. Cantwell commented that the thought the bill before Council was better because of the input from the homebuilders, developers, attorneys, landowners, etc.

Ms. Cantwell explained that the state law says that an analysis is done and if it is determined from that analysis that new development coming on line impacts the capital exposure, not the operating expenses, then a fee can be considered to help pay for the impact that is identified. She said that was the proposal before Council at this meeting.

She noted that perhaps it would be possible to remain as is without impact fees and perhaps new development over the course of 15 years might pay for it. She again noted that would be a policy call for Council to determine how to fund capital improvements. She said this would be just an alternate means of financing. She felt strongly that this had been done correctly, that it was pretty fair and that it was reasonable.

Councilmember Tinkler said that his main concern had been about the questions that had been raised about whether this proposal would comply with state law and he said that Ms. Cantwell had answered that she was confident that it did comply.

Ms. Cantwell said that state law says there should be a capital improvements plan, but it also says if there is a comprehensive plan that complies with the act an impact fee ordinance can be enacted. She explained that a capital improvement element had been inserted into the City's

Land Use Plan, which allows the City to address capital improvements. She stated that the City was talking about sanitation and fire trucks at this time. She did not want to scare anybody but she said that Council might want to look at traffic, drainage or sanitation or parks at some time. She stated that the framework would be in the plan to do that. She said that it would have to be amended the way that Council was considering at this time. She did not think it would be necessary to have a stand alone capital improvements plan so long as the element is there, the analysis and methodology is done, put into the plan and it is adopted by ordinance.
Councilmember Fishburne stated that he would support this, but he want to talk to some of the folks on the other side before this matter comes back to Council. He said that he heard their concerns and there seemed to be a lot of reason in them.
Councilmember Lewis commented that the City had been working on this a long time. He said that he does not favor taxes and he felt this was a form of taxes. He referred to the City's growth and the effect it has had on sanitation employees. He spoke of the checklist that Council receives when property is annexed and said that it provides information about the impact that annexations have on City services. He commented that thanks to this City Council equipment had been purchased during the middle of last year.
He also commented on a recent meeting the Mayor had with sanitation employees. When he remarked that they were still running behind schedule because some of the equipment was still breaking down, Mayor Riley noted that they were making great progress. Councilmember Lewis agreed that progress was being made. He spoke of the impact on the trucks and said that the City must come up with money from somewhere and he said that it was not available in the general fund. He remarked that property taxes could not be raised and he commented that the City needs two more fire stations.
Councilmember Lewis said that although he was not too satisfied with this, it appeared to be the only way to buy more sanitation trucks and build more fire stations. He spoke of the expenses and said that this would take millions and millions of dollars. He stated that he would vote to give first reading to the subject bill and asked Ms. Cantwell to get him a copy of the state act.
Councilmember Waring said that he had some concerns about this escalating eight to ten years from now. He was concerned that the homeowner or the consumer would face increases. When he asked what would cause increases, Mr. Keane said that there are different reasons for which impact fees could be added, i.e. other capital improvements or other types of public services or public safety.
Councilmember Waring restated that he wanted to know what the rationale or reasoning would be to increase this in two, four or five years from now. Mr. Keane replied that the plan proposed that the actual fee amount escalate based on inflation every year. He commented that kind of yearly increase would not have to come back to City Council. He noted that if Council decided for whatever reason to increase the $82.00 fee to $92.00 that would have to go back to the Planning Commission and then back through City Council for public hearings just like this public hearing. He stated that it would have to be based on some capital need or increase in cost that becomes known at some later time.
When Councilmember Waring asked if it would be automatically increased by inflation, Mr. Keane replied affirmatively.
Ms. Cantwell added that all of the fees were in 2003 dollars. She said the plan would go 12 more years and it would end in 2015. She commented that the inflation factor had been included to be

fair because it would be a little bit unfair to somebody 10 years from now because of increases in cost. She stated that everything was based on 2003 dollars. She said that inflation had been anticipated and consideration had been given to increasing costs for trucks and equipment. She said that the fee would stay with the inflationary figure so that everybody over the long haul would be paying the same in real dollars.

On motion of Councilmember Fishburne, seconded by Councilmember Tinkler, City Council voted to adopt the City Planning Commission's recommendation and to give first reading to the subject bill.

First reading was given to a bill entitled:

AN ORDINANCE TO PROVIDE FOR IMPACT FEES IN THE CITY.

Next on the agenda was the approval of the minutes of City Council's March 11, 2003, meeting. Approval of the minutes was *deferred.*

The Citizen Participation Period followed. The following persons addressed City Council:

1) Iman Muhammed Idris, representing Iman W. D. Mohammed, leader of the American Muslim Society, commented that Muslims did not want this country to go to war without the support of the United Nations. Since the country has gone to war, he said that Muslims support this country 100 percent. He described Saddam Hussein as a terrible, terrible man and said that Muslims are praying to Allah, which is God, that our country will be successful. He expressed hope and successful end to the war. Mr. Idris also hoped that this City Council would spread this message of peace throughout our community.

2) Leonard Higgins, representing the Maryville/Ashleyville Neighborhood Association, thanked the Mayor, Councilmember Gilliard, Police Chief Reuben Greenberg and everyone who had assisted in providing transportation for the recent trip to Anderson, SC. Several citizens had traveled to Anderson for a hearing regarding the adult bookstore on Highway 61. He expressed regret that this trip had been seen in a different light. He was under the impression that there had been a group of protesters that had been concerned about this matter. Mr. Higgins commented that the residents had traveled to Anderson not just for themselves, but also in support of a City ordinance that had gone on record in 1999.

Continuing, Mr. Higgins compared this issue to comments that had been made during the public hearings about impacting communities. He stated that his community was also being impacted in a terrible way. He said that it was not only impacted at the site of the business. He explained that people traveling to the site use the streets of his community to get there. He commented because the people going into the business did not want anyone to know they go to this business they sneak in. He said that they do not want to park their cars on the business parking lot so they impact the community further when they park their cars on the neighborhood streets.

3) James Smalls, West Ashley resident, said that he had come to this meeting to thank Mayor Riley for letting Councilmember Gilliard take the bus. He also thanked Chief Greenberg and all of his staff for their assistance. He expressed his appreciation to everyone who helped in the effort to close this adult bookstore. Mr. Smalls remarked that everyone needs to work together.

Mayor Riley thanked Mr. Higgins and Mr. Smalls for coming to this meeting. He expressed his appreciation to the neighborhood for getting involved in this issue. The Mayor commented that this had not been a group of citizens protesting something with which they disagreed. He said this was a group of citizens working to make their neighborhood safer and standing up to get

filth out of their neighborhood to get rid of activities that no one wants at the entrance to a neighborhood.

He stated that this group of citizens had stood up with their Councilmembers, with their City Council and with their Police Department to say that they were standing up for their neighborhood. The Mayor commented that the Police Department welcomes that kind of citizen interest, dedication and support. He spoke about the police/community relations that had been learned in America over the last generation.

The Mayor noted that a generation ago the police were removed from neighborhoods; they were in their cars; they drove around the neighborhoods with radios and equipment, etc. He said that they had lost contact with the citizens.

Mayor Riley said that the City of Charleston had learned and had shown America when the citizens and police become connected then the criminal is at risk because the police and citizens are one. He went on to say that he could guarantee that the Police Department and the citizens of the Maryville/Ashleyville communities, the law-abiding citizens, are more connected, more united, more mutually supportive than they have ever been before. He referred to this as a great example of the City and the Police Department standing up with the residents of the neighborhood to say that they would make this neighborhood better.

The Mayor remarked that it has been known for sometime that the subject building has been a source of crime and activities. He agreed with Mr. Higgins' comments that people do not want to be caught here so they drive through the neighborhoods and go back out the other way because they are ashamed of what they have been doing right at the entrance to this neighborhood.

Mayor Riley said that the City was glad to work with this community, to stand up with them and looked forward to the day that the business is gone to a place far removed from little children and people living in a neighborhood who want to make it a better place to live.

4) A lady stated that she had been working with Councilmember Fishburne, Councilmember Bleecker and the City Market Task Force. She thanked them for putting that together. She said that motorcycles downtown is one of her issues. She noted that she is lucky enough to have Sgt. Shuler living in her neighborhood and that she is able to speak with him when she sees him jogging. He told her about a meeting, which she attended.

She stated that this was not an effort to ban motorcycles. She said that the noise should be controlled and she did not think that the riders realize how the noise echoes through a building. She commented that children are so frightened they scream and dive under tables. She also remarked that customers cannot hear her when she is trying to make a sale.

She said that this would not be a new law and expressed support of the bill regarding noise that would be before Council later in this meeting. She said the motorcycle rally would be welcome if it comes; they are going to spend dollars in our town; there are things in the market that they are going to want to buy. She said that the enforcement of this should be in place in time. 5) Barbara Burwell, 1314 N. Relyea Avenue, said that she is a Cancer survivor, but unfortunately her mother-in-law was not. She commented that her mother-in-law had died from lung Cancer and had never smoked in her life. Ms. Burwell stated that she did not if her death had been caused by secondhand smoke. She asked Council to consider a ban on smoking in all public buildings, bars and restaurants in the City as soon as possible. She referred to this as a quality of life issue that affects every visitor and every resident.

6) Arthur Lawrence, President of the Westside Neighborhood Association, thanked the Mayor for supporting the schools in District 20 at a meeting the Mayor attended the previous evening. He asked for the Mayor's continued support at a meeting of the constituent board, which had scheduled a meeting on March 26, 2003. He said that the citizen participation that had been shown on March 24, 2003 would continue.

Mr. Lawrence expressed the hope if the Charleston County School District decided to close any schools on the Peninsula that the City of Charleston would purchase those properties and turn them into affordable homes. He said that they have their eyes on are located close to public housing and we know what the trend is when developers build condominiums.

Mayor Riley responded that he did not believe that any school building in the City of Charleston should be sold. He spoke of the need to keep these schools for our children and said that there is nothing wrong with a small school.

The Mayor went on to say that he had attended a small grammar school. He said that it was an old building that was not fancy and he doubted that there were more than 20-25 people in the eight grades. He felt that this had provided a very good education. He said that although the enrollment at Sanders-Clyde seemed to be down to 280-300 people, he felt that it should be seen as an opportunity for those children to get more attention and more support. He remarked that these students would not be little fish in a big pond, but a bigger fish in a smaller pond. He referred to the meeting the previous evening and said that the biggest crowd that had ever been at 75 Calhoun Street had attended the meeting. He remarked that the same thing had occurred Saturday night. He said that it was obvious that these were parents and teachers caring about their children. He commented on the need to mobilize and get together and said that the schools should be looked at from the bottom up. Mayor Riley stated that "we need to keep our schools."

In response to a question from Councilmember Gilliard, Mayor Riley replied that he had written to Harold Allen, Chair of the School District Board, today. The Mayor said that he had FAXed the letter to Mr. Allen and members of the board restating his position, which he had expressed the previous evening. He commented that unfortunately he had a made an out of town commitment many months ago that he could not change and he would be unable to attend the meeting March 26th.

The Mayor stated his understanding that there was no decision on closing schools in District 20 this year.

When Mayor Riley asked if anyone else wanted to be heard, no one else expressed a desire to address Council. The Mayor declared the Citizen Participation period concluded. A proposed amendment to the bar closing ordinance, which had been requested by Councilmember Campbell, was the next item on the agenda. Mayor Riley had announced earlier in the meeting that this item would be *deferred* because Councilmember Campbell had to leave the meeting prior to this matter coming before Council.

Council next considered a proposed amendment to the Ordinance executing the Memorandum of Understanding (MOU) between the City of Charleston and Civitas, LLC. Councilmember Lewis had requested this amendment and the document reflecting the recommended change was included in the agenda packets.

Councilmember George said he did not wish to take a lot of time on this and asked Deputy Corporation Counsel Adelaide Andrews to explain the major points of the amendments.

Ms. Andrews stated there had been one change on Exhibit C. She said that the Park Improvements cost to the developer and value to the City had gone up to $408,429. She recalled that had been in the approximately $300,000 range. She again stated that this was the only change.

There were no further questions or comments of Council on this matter.

On motion of Councilmember Lewis, seconded by Councilmember Bleecker, Council voted to approve and incorporate this amendment into the subject MOU attached to the bill (Item K-3 on the agenda) that would be before them for second reading later in this meeting. Next, City Council received the following report of the Committee on Ways and Means:

The Committee on Ways and Means Reports: 3/25/03

TO THE MAYOR AND COUNCILMEMBERS, THE CITY COUNCIL OF CHARLESTON:

The Committee on Ways and Means recommends that City Council act on each of the following matters as stated below:

1.) **LOCKWOOD MUNICIPAL COMPLEX: CONSTRUCTION CONTRACT, BUILDING AND FINISHES, CHANGE ORDER #1 - $162,424 - LOVELESS COMMERCIAL CONTRACTING, INC. - ACCOUNT #050215-52240:** The Committee on Ways and Means recommends City Council approve, and authorize the Mayor to sign, Change Order #1 in the amount of $162,424 with Loveless Commercial Contracting, Inc. for the installation of a curtain wall and storefront window system in accordance with IBC2000 specifications on the Lockwood Municipal Complex project. The contract time remains uncharged. Funds will come from account #050215-52240.

2.) **LOCKWOOD MUNICIPAL COMPLEX: CONSTRUCTION CONTRACT, BUILDING AND FINISHES, CHANGE ORDER #2 - $103,663 - LOVELESS COMMERCIAL CONTRACTING, INC. - ACCOUNT #050215-52240:** The Committee on Ways and Means recommends City Council approve, and authorize the Mayor to sign, Change Order #2 in the amount of $103,663 with Loveless Commercial Contracting, Inc. for the addition of a fire sprinkler system to the Lockwood Municipal Complex. The contract time remains unchanged. Funds will come from account #050215-52240.

3.) **LOCKWOOD MUNICIPAL COMPLEX: PROFESSIONAL SERVICES AMENDMENT #5 - $31,510 - GOFF-D'ANTONIO ASSOCIATES - ACCOUNT #050215-52238:** The Committee on Ways and Means recommends City Council approve, and authorize the Mayor to sign, Professional Services Amendment #5 in the amount of $31,510 with Goff-D'Antonio Associates for additional services for preparation of construction contract amendments to address code issues on the Lockwood Municipal Complex project. Funds will come from account #050215-52238.

4.) **HOUSING AND COMMUNITY DEVELOPMENT: CONTRACT AMENDMENT FOR 27 AIKEN STREET - ELPIS, INC. - NO COST TO CITY:** The Committee on Ways and Means recommends City Council approve, and authorize the Mayor to sign, a contract amendment at no cost to the City with Elpis, Inc. for the reconstruction of 27 Aiken Street. The original scope of work provided for 6-10 units to be constructed. The new scope of work provides for 2-bedroom apartments with a total of eight (8) unrelated occupants. The funding amount has not changed since the original contract was approved by City Council in December 2002.

Councilmember Gallant did not vote on this matter, and his *Statement of Potential Conflict of Interest* is on file in the office of the Clerk of Council.

5.) **HOUSING AND COMMUNITY DEVELOPMENT: CONTRACT FOR 52 KENNEDY STREET - $40,964.24 - CHARLESTON BANK CONSORTIUM, INC. - ACCOUNT #470010-57184:** The Committee on Ways and Means recommends City Council approve, and authorize the Mayor to sign, a contract in the amount of $40,964.24 for predevelopment and pre-construction costs related to the development of 52 Kennedy Street. Funds will come from account #470010-57184 (reprogrammed 28th year HOME funds).

6.) **BID SPECIFICATIONS FOR STREET VENDOR SPACES:** The Committee, based on the recommendations of the Committee on Traffic and Transportation, recommends City Council the bid specifications for street vendor spaces with the condition that Space #4 be eliminated from the specifications until further study can be done on the space.

Materially the bid specifications are the same as last year. Space #4 is located in the recess of the building at One Vendue Range, which is currently under construction. Staff would like to look at what products should be sold in that space, and their findings will be brought back to the Committee at the next meeting.

LOUIS L. WARING, Chair HENRY B. FISHBURNE, JR.
DEBORAH MORINELLI JAMES LEWIS, JR.
JIMMY S. GALLANT, III WENDELL G. GILLIARD
YVONNE D. EVANS PAUL E. TINKLER
LARRY SHIRLEY ANNE FRANCES BLEECKER
G. ROBERT GEORGE JOSEPH P. RILEY, JR., Mayor

Councilmember Evans moved for adoption of the report of the Committee on Ways and Means, which included the understanding that street vendor space #4 (Vendue Range and Prioleau Street). Councilmember Waring seconded the motion. The motion carried.

Councilmember Gallant did not vote on the matter pertaining to the contract amendment for 27 Aiken Street. His signed *Statement of Potential Conflict of Interest* is on file in the office of the Clerk of Council in the meeting file for this date.

The next matter before Council was five (5) bills up for second reading.

Councilmember Lewis had recommended amending the bill pertaining to the Memorandum of Understanding between the City of Charleston and Civitas, LLC (Item K-3 on the agenda). City Council adopted the recommendation earlier during the Petitions and Communications portion of this meeting and those amendments with the understanding that they would be reflected in the subject bill upon ratification.

Without objection and at the request of Councilmember George, the bill pertaining to the Memorandum of Understanding between the City of Charleston (the "City") and the United States of America (the "Government") acting by and through the General Services Administration ("GSA") for the exchange of 101 Broad Street and 334 Meeting Street (Item K-2 on the Agenda) was separated from the issue.

Without objection and at the request of Councilmember Fishburne, the bill pertaining to the lease to East Coast Concerts the Charleston Maritime Center, located at 10 Wharfside Street for Charleston Alive After Five events (Item K-1 on the Agenda) Street was separated from the issue.

On motion of Councilmember Tinkler, the remaining three (3) bills received second reading. They passed second reading on motion of Councilmember Lewis and third reading on motion of Councilmember Evans. On the further motion of Councilmember George, the rules were suspended and the bills were immediately ratified as:

RATIFICATION NUMBER
2003-28

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CHARLESTON AND CIVITAS, LLC FOR THE CONVEYANCE FROM THE CITY OF CHARLESTON TO CIVITAS, LLC, OF CERTAIN CITY LANDS SITUATE, LYING AND BEING IN THE CITY AND COUNTY OF CHARLESTON, STATE OF SOUTH CAROLINA, BEARING TMS NUMBERS 460-12-01-090, -096 AND -092, A PORTION OF THE RIGHT-OF-WAY MORE COMMONLY KNOWN AS DEREEF COURT WITH THE EXCEPTION OF THAT PORTION OF DEREEF COURT THAT ABUTS TMS NUMBER 460-12-01-005 AND A PORTION OF THE RIGHTS-OF-WAY OF MORRIS STREET, JASPER STREET AND MARION STREET MORE FULLY SET FORTH IN THE MEMORANDUM OF UNDERSTANDING IN EXCHANGE FOR IMPROVED PARKS, DRAINAGE, INFRASTRUCTURE AND RIGHT-OF-WAY IMPROVEMENTS AND A CERTAIN NUMBER OF AFFORDABLE HOUSING UNITS WITHIN THE SMITH MORRIS NEIGHBORHOOD PLANNED UNIT DEVELOPMENT MORE FULLY SET FORTH IN THE MEMORANDUM OF UNDERSTANDING; AND TO FURTHER AUTHORIZE THE MAYOR TO EXECUTE ANY AND ALL DOCUMENTS, INCLUDING BUT NOT LIMITED TO DEEDS, RELEASES OR PERMITS AS SHALL BE NECESSARY TO EFFECTUATE THE PURPOSES AND OBLIGATIONS SET FORTH IN THE MEMORANDUM OF UNDERSTANDING, SAID MEMORANDUM OF UNDERSTANDING IS MARKED AS EXHIBIT 1, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN. **(As Amended)**

(Exhibit 1 was never received by the Clerk of Council's Office)

RATIFICATION NUMBER
2003-29

AN ORDINANCE TO RESCIND A PORTION OF ORDINANCE #2002-144 WHICH AUTHORIZED THE MAYOR TO ENTER INTO THAT CERTAIN TRANSFER AGREEMENT BETWEEN THE CITY OF CHARLESTON AND CHARLESTON AFFORDABLE HOUSING, INC. FOR THE CONVEYANCE OF 52 KENNEDY STREET; AND AUTHORIZE THE MAYOR TO ENTER INTO THAT CERTAIN TRANSFER AGREEMENT BETWEEN THE CITY OF CHARLESTON AND CHARLESTON BANK CONSORTIUM, INC. FOR THE CONVEYANCE OF 52 KENNEDY STREET, BEARING TMS #460-07-04-106 FOR THE SUM OF $51,121.00, SAID PROPERTY BEING LOCATED IN THE CITY AND COUNTY OF CHARLESTON, STATE OF SOUTH CAROLINA, SAID TRANSFER AGREEMENT BEING MARKED AS EXHIBIT A, ATTACHED HERETO, AND INCORPORATED BY REFERENCE HEREIN.

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

Section 1. A portion of Ordinance #2002-144 which authorized the Mayor to enter into that certain Transfer Agreement between the City of Charleston and Charleston Affordable Housing, Inc. for the conveyance of 52 Kennedy Street is hereby rescinded.

Section 2. The Mayor is hereby authorized to execute the necessary documents to enter into that certain Transfer Agreement between the City of Charleston and Charleston Bank Consortium, Inc. for the conveyance of 52 Kennedy Street, bearing TMS #460-07-04-106 for the sum of $51,121.00, said property being located in the City and County of Charleston, State of South Carolina, said Transfer Agreement being marked as Exhibit A, attached hereto, and incorporated by reference herein.

Section 3. This Ordinance shall become effective upon ratification.

STATE OF SOUTH CAROLINA)
) TRANSFER AGREEMENT
COUNTY OF CHARLESTON)

THIS TRANSFER AGREEMENT (the "Transfer Agreement") is made and entered into this 20th day of June , 2003, by and between THE CITY OF CHARLESTON (the "City"), and CHARLESTON BANK CONSORTIUM, INC., a South Carolina non- profit corporation (the "Developer").

WITNESSETH:

1. AGREEMENT. Upon the terms and conditions set forth herein, the City agrees to sell and transfer to Developer and Developer agrees to purchase and acquire from City each of the following real properties located in the City of Charleston, County of Charleston, State of South Carolina:

Property Description	Tax Parcel #	Purchase Price
52 Kennedy Street	460-07-04-106	$51,121.00

Each of the aforesaid properties, together with any and all fixtures, buildings and other improvements now or hereafter located thereon, is singularly referred to herein as a "Property" and collectively as the "Properties". Developer hereby expressly acknowledges and accepts that each Property shall be conveyed by City to Developer in "AS-IS" condition, with no warranties implied, expressed or written.

2. PURCHASE PRICE. The purchase price of each Property shall be as set forth above in **Section 1,** which sum shall be paid to the City as hereinafter described. At the closing of a Property, the Developer shall make, execute and deliver to the City a negotiable promissory note in the full face amount of the purchase price for such Property, which note shall be repaid as follows (the "City Loan"): All unpaid principal shall be due and payable in full one (1) year from the date of closing of such Property, or at such other maturity date as mutually agreed to in writing by City and Developer. No interest shall accrue on the City Loan. The City Loan associated with each Property shall be secured by, among other things, a first lien purchase money mortgage on the Property. The Developer shall execute and deliver to the City such other loan documents as the City may, in its sole discretion, require, including, without limitation, promissory notes, mortgages, deeds of trust, security agreements, assignments of leases and

rents, financing statements, loan agreements, collateral assignments and any other instruments, documents or agreements which might be required by the City (collectively, the "City Loan Documents"). The form and content of the City Loan Documents must be satisfactory to the City and the Developer.

3. Representations and Warranties of the Developer: To induce the City to enter into this Transfer Agreement, the Developer represents and warrants to the City as follows: (A) Due Organization: Developer is a non-profit corporation duly organized and validly existing in good standing under the laws of the State of South Carolina and duly authorized to transact business in the State of South Carolina with full corporate power to execute, deliver and perform the obligations and transactions contemplated in this Transfer Agreement.

(B) Due Authorization: The Developer and any officer, member, manager or partner executing this Transfer Agreement has full power, authority, and legal right to enter into this Transfer Agreement and to carry out the provision of this Transfer Agreement according to the terms hereof. The Developer has duly authorized the execution and delivery of this Transfer Agreement, and no other action of the Developer is requisite to the execution and delivery of this Transfer Agreement. No consents or approvals are required to be obtained from any Legal Authorities (as defined in **Exhibit "D"** attached to this Transfer Agreement and made a part hereof) for the execution and delivery of this Transfer Agreement.

(C) Violation of Other Agreements: The execution of this Transfer Agreement and the performance of the Developer pursuant to this Transfer Agreement does not and will not (i) violate any provision of law or its organizational documents, or (ii) result in a breach of, constitute a default under, require any consent under, or result in the creation of any lien, charge, or encumbrance upon any property of the Developer pursuant to any instrument, order, or other agreement to which the Developer is a party or by which the Developer, or any of its property is bound.

4. CLOSING. Developer may elect to purchase and close on all of the Properties at one closing, or Developer may elect to close on one or more Properties in multiple closings over a period of time and in any order or combination which Developer desires; provided, however, that the closing or closings on all of the Properties shall take place no later than December 31, 2003. All closings shall take place in Charleston County, South Carolina, at a time, date and place mutually agreed to by the City and the Developer.

5. POSSESSION. City shall give Developer possession of a Property at the closing for such Property, provided title has passed.

6. TITLE. At each Property's respective closing, City shall convey good and marketable or insurable fee simple absolute title to such Property by Limited Warranty Deed duly executed with revenue stamps in the proper amount affixed thereto, free and clear of all defects, restrictions, leases, judgments, taxes and assessments, liens or encumbrances of any sort; provided, however, that the City shall convey title to each Property to the Developer and the Developer agrees to take title to each Property subject to the following:

(A) That certain Declaration of Transfer Restrictions set forth on **Exhibit "A"** attached hereto and incorporated herein by reference (the "Declaration of Transfer Restrictions") to be executed by the Developer and delivered to the City at the same time that the

City executes and delivers the deed conveying title to a Property to the Developer, which Declaration of Transfer Restrictions will be recorded in the R.M.C. Office for Charleston County, South Carolina.

(B) Each and every one of the single family affordable housing restrictive covenants and other terms, conditions and restrictions (the "Restrictive Covenants") set forth and contained in **Exhibit** "B" which is attached to the Declaration of Transfer Restrictions and incorporated herein by reference;

(C) Those other matters set forth in **Exhibit** "C" attached hereto and incorporated herein by reference (the "Permitted Exceptions"); and

(D) Such other matters as otherwise agreed to in writing by the City and the Developer.

If City is unable to convey marketable or insurable title to a Property without a court action, or incurring any unusual expenses or within thirty (30) days after the herein specified closing date for such Property, then City or Developer shall have the option of terminating this Transfer Agreement as to such Property by giving written notice to the other party hereto; provided, however, that notwithstanding such termination as to such Property, this Transfer Agreement shall not be terminated as to the other Properties covered by this Transfer Agreement and shall nonetheless continue in full force and effect as to such other Properties.

7. CLOSING COSTS. The City shall be responsible for the fees and expenses of the City's attorneys, the fees for the preparation of the Limited Warranty Deed(s), the fees or taxes for documentary stamps due with respect to the Deed by which each Property is conveyed to the Developer, the costs necessary to provide marketable or insurable title to the Property being conveyed (except as otherwise provided in Section 6 above), and any other costs and expenses actually incurred by the City. Except as may otherwise be provided in **Section 8(F)** herein below, the Developer shall be responsible for all other closing costs.

8. CONTINGENCIES. The obligations of the parties hereunder as to each Property shall be subject to the fulfillment on the date of closing of each such Property, or sooner, of each of the following conditions:

(A) The representations and warranties of the Developer contained in this Transfer Agreement and otherwise made by or on behalf of the Developer shall be true and correct in all material respects on and as of the date of the closing of each Property.

(B) This Transfer Agreement is contingent on City Council for the City of Charleston approving this Transfer Agreement, the Development Agreement (as hereinafter defined), and the purchase of the Properties by the Developer.

(C) This Transfer Agreement shall be further contingent upon satisfaction of each of the conditions precedent to closing as set forth in the Redevelopment Contingencies Addendum attached to this Transfer Agreement as **Exhibit "D"** and made a part hereof.

(D) This Transfer Agreement is further contingent on the Developer entering into an agreement with the City to redevelop each Property, which agreement must be satisfactory to the City (the "Development Agreement"). The Development Agreement shall provide, among other things, that the Developer shall, upon completion of redevelopment, resell the Property to a low- to moderate- income

individual or family pre-approved by the City in accordance with the City of Charleston's Homeownership Initiative Redevelopment Plan, the Declaration of Transfer Restrictions and the Restrictive Covenants. A separate Development Agreement must be executed for each Property and must be delivered to the City on or before the closing of each Property.

(E) This Transfer Agreement is further contingent on the Developer executing and delivering the Declaration of Transfer Restrictions to the City at the same time that the City executes and delivers the deed conveying title to a Property to the Developer, which Declaration of Transfer Restrictions will be recorded in the R.M.C. Office for Charleston County, South Carolina. A separate Declaration of Transfer Restrictions must be executed for each property and must be delivered to the City on or before the closing of each Property, and, unless otherwise consented to in writing by the City, shall be in the same form and content as the sample form Declaration of Transfer Restrictions attached hereto as **Exhibit** "A" and made a part hereof. (F) This Transfer Agreement is further contingent on the Developer obtaining additional financing from the City and/or another lender participating in the City of Charleston's Homeownership Initiative Redevelopment Plan and approved by the City (the "Participating Lender") for the sole purpose of financing the costs and expenses associated with the closing of each Property and with the Developer's redevelopment of each such Property pursuant to the Development Agreement for each such Property. The terms and conditions of any such additional financing, including, without limitation, loan amounts, repayment terms, interest rates, collateral and subordination agreements, must be mutually agreeable to the City, the Developer and the lenders involved.

If the above contingencies are not satisfied by closing for a Property, then either Developer or City shall have the option, in its sole discretion, to terminate and cancel this Transfer Agreement as to such Property; provided, however, that notwithstanding such termination as to such Property, this Transfer Agreement shall not be terminated as to the other Properties covered by this Transfer Agreement and shall nonetheless continue in full force and effect as to such other Properties. Each of the above contingencies shall apply to each Property to be conveyed under this Transfer Agreement, and each such contingency shall survive the closing of each Property, and, as a result, shall be a condition precedent to the closing of each other Property not then yet closed.

9. PRORATIONS. All ad valorem taxes due with respect to each Property for the calendar year of the closing shall be prorated between the Developer and the City as of the closing date for such Property. If the actual amount of such taxes is not known as of such date, the proration at the closing will be on a equitable basis and will be based on the most current and accurate billing information available. All prorations at closing shall be final.

10. AGENTS/BROKERS. The City and the Developer hereby acknowledge, confirm and agree that no real estate agent or broker is involved in this transaction and, further, that no commissions are or will be due and/or payable to any real estate agent or broker as a result of this Transfer Agreement and the closing(s) contemplated hereby.

11. RISK OF LOSS OR DAMAGE. In case a Property herein referred to is destroyed wholly or partially by fire or other casualty prior to the closing and delivery of the Deed for such

Property, then City or Developer shall have the option of proceeding hereunder as to such Property or of terminating this Transfer Agreement solely as to such Property. In the event either party elects to terminate this Transfer Agreement as to such damaged or destroyed Property, then the terminating party must give the non-terminating party written notice of such termination; provided, however, that notwithstanding such termination as to the damaged or destroyed Property, this Transfer Agreement shall not be terminated as to the other Properties covered by this Transfer Agreement and shall nonetheless continue in full force and effect as to such other Properties. In the event that none of the parties elects to terminate this Transfer Agreement as a result of such damage or destruction, then City shall be entitled to retain and keep any insurance proceeds payable on account of the damage or destruction unless the parties otherwise agree in writing.

12. DEFAULT AND REMEDY. In the event of a breach of this Transfer Agreement, the non-breaching party shall have all rights and remedies afforded under South Carolina law, including, without limitation, the right of specific performance, and the breaching party shall be liable to reimburse the non-breaching party for reasonable attorney's fees and all expenses incurred in enforcing any provisions hereof

13. NOTICES. Any notice, demand, or communication called for hereunder shall be in writing, shall be signed by the party giving same, and shall be given, served, or delivered either in person, or by first-class, certified mail, return receipt requested, postage prepaid, or by Federal Express (or other nationally recognized overnight courier), return receipt requested, with postage or delivery charge prepaid, and if to the Developer, addressed to the Developer at the Developer's mailing address set forth below in this Section, and if to the City, addressed to the City's mailing address set forth in this Section, or to such other address as either party may designate by written notice to the other. Any and all such notices, demands or other communications addressed to the Developer shall be deemed to be given to and received by the Developer on the date of delivery if personally delivered, and two (2) days after the date of mailing if mailed as aforesaid, and one (1) day after it was placed with the overnight courier as aforesaid. Any and all such notices, demands or other communications addressed to the City shall be deemed to be given to and received by the City on the date of delivery if personally delivered, and two (2) days after the date of mailing if mailed as aforesaid, and one (1) day after it was placed with the overnight courier as aforesaid, to the City's Clerk of Council, to the Director of the City of Charleston's Department of Housing and Community Development, and to Corporation Counsel for the City, whichever date is later. Such notices, demands or other communications shall be addressed as follows. If to Developer:

Charleston Bank Consortium, Inc.
Attention:_____
_____
_____

If to City:
The City of Charleston
Attention: Clerk of Council
City Hall
80 Broad Street
Charleston, SC 29401

Copy to: The City of Charleston
The City of Charleston
Department of Housing and Community Development
75 Calhoun Street, Division 616
Charleston, SC 29401-3506
Attention: Patricia W. Crawford, Director
City of Charleston
Attention: Corporation Counsel
Legal Department
80 Broad Street
Charleston, SC 29401 Robert
H. Mozingo, Esquire
Clawson & Staubes, LLC
304 Meeting Street
Charleston, SC 29401

14. MISCELLANEOUS.

(A) Successors. This Transfer Agreement shall inure to the benefit of and shall be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto.

(B) Governing Law. This Transfer Agreement is being made in South Carolina and shall be construed and enforced in accordance with the laws of South Carolina.

(C) Survival. This Transfer Agreement and the provisions hereof shall survive the closing of each Property and shall not be merged by the City's execution and delivery to the Developer of the Limited Warranty Deed for each such Property or the recording thereof.

(D) Severability. Wherever possible, each provision of the Transfer Agreement shall be interpreted in such manner as to be effective and valid under applicable law, and such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Transfer Agreement.

(E) Waiver of Breach. The failure or delay of any party to insist upon compliance with any provision hereof shall not operate as and is not to be construed to be a waiver or amendment of the provision or of the right of the aggrieved party to insist upon compliance with such provision or to take remedial steps to recover damages or other relief for noncompliance. Any express waiver of a breach of any provision of this Transfer Agreement shall not operate and is not to be construed as a waiver of any other or subsequent breach, irrespective of whether occurring under similar or dissimilar circumstances.

(F) Entire Agreement. This Transfer Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. No provision hereof shall be changed orally, and no change or attempted waiver of any provision hereof shall be binding unless in writing and signed by the party against whom the same is sought to be enforced. The masculine pronoun, when used herein, shall include the feminine and neuter pronoun, if applicable, and the singular shall include the plural, if applicable.

(G) Authority of Redevelopment & Preservation Commission to Modify Agreement: The City of Charleston Redevelopment & Preservation Commission, on behalf of the City,

shall have authority to modify any provisions of this Transfer Agreement as mutually agreed to in writing with the Developer.

(H) Counterparts. This Transfer Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

(I) Days: Dates: Unless other specified herein, all references to "day" or "days" in this Transfer Agreement shall mean a calendar day or calendar days. If any date set forth in this Transfer Agreement or computed pursuant to this Transfer Agreement falls on a Saturday, Sunday, or national holiday, such date shall be deemed automatically amended to be the first business day following such weekend day or holiday.

(J) Execution of Agreement. This Transfer Agreement must be executed by all parties and delivered to the City by 3: 00 P.M., July 31 , _____,2003, or the offer is automatically withdrawn and this Transfer Agreement shall be null and void.

(K) **TIME IS OF THE ESSENCE. TIME IS OF THE ESSENCE AS TO ALL TERMS AND CONDITIONS OF THIS Transfer Agreement.**

(L) ***THIS IS A LEGALLY BINDING AGREEMENT. THE DEVELOPER ACKNOWLEDGES AND AGREES THAT CLAWSON & STAUBES, LLC, ATTORNEYS AT LAJ1~ ARE SERVING AS THE CITY'S ATTORNEYS IN THIS TRANSACTION AND DO NOT REPRESENT THE DE VEL OPER. THEDEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT THE DEVELOPER HAS BEEN ADVISED BY THE CITY AND THE CITY'S ATTORNEYS TO SEEK ASSISTANCE FROM INDEPENDENT LEGAL COUNSEL PRIOR TO THE DEVELOPER'S EXECUTION OF THIS*** **AGREEMENT.**

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first herein above written.

WITNESSES CITY:

The City of Charleston

/S/ Debra Matthews By: /S/ Joseph P. Riley, Jr.

/S/ LaNonna Grant Its: Mayor

DEVELOPER

/S/ Julie N Heizer Charleston Bank Consortium Inc

/S/ Tammy Jones By: /S/ Nancy Fabian

Its: Executive Director

LIST OF EXHIBITS, ADDENDUMS AND OTHER ATTACHMENTS TO TRANSFER AGREEMENT

Exhibit "A" Sample Declaration of Transfer Restrictions Exhibit "C" Permitted Exceptions

Exhibit "D" Redevelopment Contingencies Addendum

EXHIBIT" A"

TO

TRANSFER AGREEMENT

Sample Declaration of Transfer Restrictions

STATE OF SOUTH CAROLINA)

) DECLARATION OF TRANSFER

COUNTY OF CHARLESTON) RESTRICTION

THIS DECLARATION OF TRANSFER RESTRICTIONS (the "Declaration") is made and entered into this _____day of_____, 200____, by and between _____, a non-profit organization in the form of a organized and existing under the laws of the State of _____, having its principal address at _____ ("Developer"), and the CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of South Carolina, having its principal address at 80 Broad Street, Charleston, South Carolina 29401 ("City").

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and other good and valuable consideration, Developer and City agree as follows:

1. City has previously conveyed, or simultaneously herewith is conveying, to Developer that certain real property commonly known as_____, City of Charleston, County of Charleston, State of South Carolina, TMS #_____, and more particularly described and identified on **Exhibit" A"** attached hereto and made a part hereof (said property, together with any and all fixtures, buildings and improvements now or hereafter located thereon, is collectively referred to herein as the "Property").

2. Developer and City hereby make the Property subject to the single family affordable housing restrictive covenants attached hereto as **Exhibit "B"** and incorporated by reference as if fully set forth in the body of this Declaration. (the "Restrictive Covenants") and hereby agree that the Restrictive Covenants shall take effect immediately upon the execution and recording of this Declaration in the RMC Office for Charleston County, South Carolina. Each subsequent sale, transfer or conveyance of the Property and deed to the Property shall be subject to the Restrictive Covenants.

3. Developer agrees that it will transfer the Property only to a Qualified Purchaser, as defined in the Restrictive Covenants, that it will attach the Restrictive Covenants as an exhibit to the deed out of Developer conveying the Property and that it will properly complete Sections 2.2 "Base AMI" and 2.3 "Base Purchase Price" of the Restrictive Covenants prior to the recording of such deed. Thereafter, the definition of "Base AMI" contained in Section 2.2 and the definition of "Base Purchase Price" contained in Section 2.3 of the Restrictive Covenants attached to the deed out of Developer shall apply to all subsequent transfers for such Property. 4. With respect to Section 2.11 "City Subsidy", the Developer acknowledges that the Developer is indebted to the City in an amount evidenced by a promissory note and secured by a mortgage. Prior to the conveyance to the first Qualified Purchaser, the City shall determine if there will be any permanent City Subsidy and will advise the Developer on how to complete Section 2.11 "City Subsidy" of the Restrictive Covenants.

5. Developer agrees that it will provide City with advance written notice of any sale, transfer or other conveyance of the Property and will provide a copy of the proposed deed by Developer to the purchaser/grantee and any income or other documentation reasonably requested by City as to the purchaser/grantee not less than fourteen (14) days prior to the conveyance by Developer of the Property to a purchaser/grantee.

This Declaration can only be amended by a written instrument signed by both Developer and City, its successors or assigns.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

WITNESSES:

_____

_____

CITY:

The City of Charleston

By: Joseph R. Riley, Jr.

Its: Mayor

_____

_____

DEVELOPER:

By:

Its:

STATE OF SOUTH CAROLINA)

)

COUNTY OF CHARLESTON)

THE FOREGOING DECLARATION OF TRANSFER RESTRICTIONS was acknowledged before me this _____ day of_____,200____,by the CITY OF CHARLESTON, by Joseph P. Riley, Jr., its Mayor.

Notary Public for South Carolina

My Commission Expires: _____

STATE OF SOUTH CAROLINA)

)

COUNTY OF CHARLESTON)

THE FOREGOING DECLARATION OF TRANSFER RESTRICTIONS was acknowledged before me this _____ day of _____200____, by the _____, by _____,its _____.

Notary Public for South Carolina

My Commission Expires

EXHIBIT "A"

TO

DECLARA TION OF TRANSFER RESTRICTIONS EXHIBIT "B"

Property Description

TO

DECLARATION OF TRANSFER RESTRICTIONS

Single Family Affordable Housing Restrictive Covenants City of Charleston

1. Covenant and Purpose. The Property shall be conveyed subject to the conditions, covenants, restrictions and limitations set forth below (collectively, the "Restrictive Covenants"). The Restrictive Covenants shall be considered as covenants running with the land, and shall be binding on the Developer, its heirs, successors and assigns, together with all successors in title to the Property (the Developer, its heirs, successors and assigns, together with all successors in title to the Property, being collectively referred to herein as the "Owner"). Each Owner covenants and agrees, in the event the Property is sold, conveyed or otherwise disposed of, the Property shall be sold subject to these Restrictive Covenants and that the recording information for this deed shall be inserted in the deed of conveyance or other instrument disposing of the Property.

2. Definitions. As used in these covenants, conditions, and restrictions the following terms shall have the meaning set forth:

2.1. "Area Median Income" shall mean and have reference to the median family income, based upon applicable family size of a Qualified Purchaser (or of a Qualified Renter, if applicable), for the Charleston-North Charleston metropolitan statistical area as published by the United States Department of Housing and Urban Development. If the United States Department of Housing and Urban Development should 110 longer compile and publish such statistical information, the most similar information compiled and published by said Department or any other branch or department of the federal government or by the State of South Carolina shall be used for the purpose of determining Area Median Income.

2.2. "Base AMI" shall mean the Area Median Income for a family of four persons as of the date of the deed from the Developer to the first Qualified Purchaser of the Property. The Base AMI for this deed is $_____.

2.3. "Base Purchase Price" shall mean the gross purchase price paid to the Developer by the first Qualified Purchaser of the Property. The Base Purchase Price for this deed is $_____.

2.4. "AMI Increase" shall mean the Area Median Income for a family of four persons at the date of calculation divided by the Base AMI. By way of example only and solely for purposes of illustration, if the Developer conveyed the Property in July, 2002 to the first Qualified Purchaser and the Area Median Income for a family of four persons were $39,400 in July, 2002 (the "Base AMI" for purposes of this illustration only) and if the Area Median Income for a family of four persons were $43,340 in September, 2005 when an Owner proposed to sell the Property, the AMI Increase would be $43,340 divided by $39,400 or 1.10 (i.e. 110%).

2.5. "City" shall mean and have reference to the City of Charleston, a municipal corporation, duly organized and existing under the laws of South Carolina.

2.6. "Developer" shall mean and have reference to _____.

2.7. "Qualified Purchaser" shall mean and have reference to a proposed purchaser of the Property whose household income is between fifty percent (50%) and one hundred and twenty percent (120%) of Area Median Income as of the anticipated date of purchase of the Property by the Qualified Purchaser and who is certified in writing by the City as having the requisite income.

2.8. "Owner" shall mean and have reference to, at any particular point in time, the owner in fee simple of the Property, and the owner's heirs, successors and assigns. The Owner shall initially be the Developer, and shall subsequently be the Qualified Purchaser who purchases the Property from the Developer. Owner shall include any party that acquires fee simple ownership of the property by virtue of foreclosure of mortgage or deed of trust conveying the Property as security for an obligation or any transfer in lieu of such foreclosure.

2.9. "Property" shall mean and have reference to that certain tract or parcel of land conveyed by this deed, together with all improvements, fixtures and equipment located thereon.

2.10. "Resale Price" shall mean and have reference to an amount determined as the product of the Base Purchase Price multiplied by the AMI Increase, or such higher amount as may be determined in accordance with Section 5 herein. By way

of example and solely for purposes of illustration, if the Base Purchase Price were $140,000 (solely for purposes of this illustration only) when the Developer transferred the Property to the first Qualified Purchaser in July, 2002 and the AMI Increase were 1.10 at the time of a proposed sale in September, 2005, the Resale Price would be $140,000 times 1.10 (i.e. 110%) or $154,000.

2.11. "City Subsidy" shall mean $ _____.

2.12. "City Subsidy Percentage" shall mean the City Subsidy divided by the Base Purchase Price.

By way of example only and solely for purposes of illustration, if the Base Purchase Price were $140,000 and the City Subsidy were $21,000, the City Subsidy Percentage would be $21,000 divided by $140,000 or 15%.

2.13. "Lien Limitation Percentage" shall mean 100% minus the City Subsidy Percentage. By way of example only and solely for purposes of illustration, if the City Subsidy Percentage were 15%, the Lien Limitation Percentage would be 85%.

2.14. "Lien Limit" shall mean the amount that equal the Lien Limitation Percentage times the Resale Price as calculated by the City immediately prior to the execution of the mortgage. By way of example and solely for the purposes of illustration, if the Owner wanted to mortgage the Property in September, 2005 and the Resale Price in September, 2005 were $154,000, the City Subsidy Percentage were 15%, the Lien Limitation Percentage were 85% , then the Lien Limit would be $154,000 times 85% or $130,900.

2.15. "Adjusted City Subsidy" shall mean the City Subsidy Percentage times the Resale Price as calculated at the time of determining the Adjusted City Subsidy. By way of example and solely for purposes of illustration, if the Resale Price in September, 2005 were $154,000 and the City Subsidy Percentage were 15%, the Adjusted City Subsidy in September, 2005 would be $154,000 times 15% or $23,100.

2.16. "Non-City Share of the Resale :Price" shall mean the Resale Price as calculated at the time of determining the Non-City Share of Resale Price minus the Adjusted City Subsidy. By way of example and solely for purposes of illustration, if the Resale Price were $154,000 and the Adjusted City Subsidy were $23,100 in September, 2005, the Non- 'City Share of Resale Price would be $154,000 minus $23,100 or $130,900. In the event the Property is sold to the City for the Default Option Price, the Non-City Share of the Resale Price shall mean the Default Option Price minus the Adjusted City Subsidy. Byway of example and solely for purposes of illustration, if the Resale Price were $154,000 and the Adjusted City Subsidy were $23,100 in September, 2005 and the Default Option Price applied, the Non-City Share of the Resale Price would be $154,000 times 80% or $123,200 minus $23,100 or $100,100.

2.17. "Default Option Price" shall mean 80% of the Resale Price as calculated at the time of the City's written notice of default under Section 9.1. By way of example and solely for the purposes of illustration, if the City gave notice of default in

September, 2005 and the Resale Price were $154,000 at that time, the Default Option Price would be $154,000 times 80% or $123,200.

2.18. "Option Term" shall mean 90 years from the date of the deed from the Developer to the first Qualified Purchaser. All provisions relating to the City's Right of First Refusal and the City's right to purchase the Property for the Default Option Price shall automatically terminate upon the expiration of the Option Term. If the South Carolina Uniform Statutory Rule Against Perpetuities (Section 27-6-10 et seq., Code of Laws Of South Carolina, 1976, as amended) is amended, the Option Term shall automatically be modified to the longest period authorized by South Carolina law.

2.19. "Qualified Renter" shall mean and have reference to a proposed renter of the Property whose household income is does not exceed eighty percent (80%) of Area Median Income and who is certified by the City as having the requisite income for the applicable household size. 2.20. "Qualified Rent" shall mean the monthly rent approved by the City as affordable rent in accordance with applicable federal guidelines.

2.21. "Qualified Lease" means a written lease approved by the City from the Owner to a Qualified Renter for a Qualified Rent. The lease must be for a term approved by the City and must include periodic recertification by the City of the income of the tenant, if the lease is for more than 12 months to insure that the tenant continues to be a Qualified Renter.

2.22. "City Transfer Certificate" shall mean the written certification to be provided by the City in connection with each transfer of the Property and each granting of a mortgage on the Property. In the event of a transfer, the City Transfer Certificate shall be in a recordable form and shall state the maximum Resale Price as of the date of the specific transfer, the names of the approved Qualified Purchaser(s), the amount of the Adjusted City Subsidy, the amount of the Non- City Share of the Resale Price, each as of the date of the particular transfer and the City's waiver of its right of first refusal. In the event of a mortgage, the City Transfer Certificate shall be in a recordable form and shall state the amount of the Resale Price as of the date of the mortgage, the Lien Limit Percentage, the Lien Limit as of the date of the mortgage, the City Subsidy Percentage, the Adjusted City Subsidy as of the date of the mortgage, together with the City's approval of the new mortgage. In the event that the City has given a one time waiver of any requirements in accordance with the procedures set forth in these Restrictive Covenants, the City Transfer Certificate shall set forth the existence and terms of such waiver. If there is a change in any address listed in Section 16 for notice to the City, the City Transfer Certificate shall provide the new address. An illustration of a City Transfer Certificate based on theoretical facts is attached as an exhibit to these Restrictive Covenants

2.23. "Taxes" means ad valorem taxes on the Property, together with all fees, assessments, penalties and accrued interest charged against the Property or owed by the Owner by reason of its ownership of the Property.

2.24. "City Maintenance Lien" shall have the meaning ascribed in Section 9.

2.25. "City Tax Lien" shall have the meaning ascribed in Section 10.

2.26. "City Lease Lien" shall have the meaning ascribed in Section 13.2.

3. City Subsidy The City has made an investment in the Property equal to the City Subsidy and the City has agreed that each successive Owner of the Property shall have the benefit of the Adjusted City Subsidy for so long as these Restrictive Covenants remain in effect.

3.1. City's Equitable Interest in the Property Each Owner covenants and agrees that the City has an equitable interest in the Property equal to the Adjusted City Subsidy. Each Owner covenants and agrees that the portion of any Resale Price as equals the Adjusted City Subsidy Amount belongs to the City and that the Owner's interest in the Resale Price is limited to the Non- City Share ofthe Resale Price. If these Restrictive Covenants are terminated for any reason, the City shall be entitled to receive payment in full of the Adjusted City Subsidy within thirty (30) days of such termination.

3.2. Transfer and Mortgage :Procedures All transfers of, and all mortgages on, the Property shall be made in accordance with these Restrictive Covenants.

(A) In the event that an Owner wishes to transfer the Property, the Owner shall provide written notice of such proposed transfer to the City. Such written notice shall request assistance from the City to identify potential Qualified Purchasers and shall request the City to calculate the maximum Resale Price. *(See the illustration contained in the definition of Resale Price contained in Section 2.10)* The Owner may transfer the Property for less than the Resale Price but a lower purchase price will not change the amount of the Adjusted City Subsidy.

(B) Each Owner covenants and agrees that no transfer of the Property shall take place and no mortgage of the Property shall be granted unless it is in conformance with these Restrictive Covenants and unless the City has delivered a City Transfer Certificate. Each Owner agrees to record the City Transfer Certificate with the transferring deed and with any mortgage. (C)

The aggregate proceeds that the Owner and its mortgagees may receive, and the maximum amount that a Qualified Purchaser may pay, upon the transfer of the Property shall be limited to the lesser of (i) the Non-City Share of the Resale Price and (ii) the purchase price minus the Adjusted City Subsidy. Byway of example and solely for purposes of illustration, if the Resale Price were $154,000 and the Adjusted City Subsidy were $23,100, the Qualifying Purchaser would pay $130,900 and the maximum amount that would be available to pay closing costs, to satisfy any mortgages or other outstanding liens and to pay the selling Owner would be the Non-City Share of the Resale Price or $130,900.

3.3 City Subsidy Lien The City shall have a continuing lien against the Property in the amount of the Adjusted City Subsidy which lien shall survive the foreclosure of any mortgage or other lien on the Property and shall survive any other transfers of the Property.

4. Resale Only to Qualified Purchasers. Each Owner covenants and agrees that the Property shall be sold, transferred and conveyed only to such individual, party, or entity as described in this paragraph.

4.1. Qualified Purchasers The Property shall be conveyed only to Qualified Purchasers who are certified by the City in accordance with subparagraph 4.4 (City Certification) or to such persons, parties or entities who are deemed Qualified Purchasers in accordance with subparagraphs 4.2 (Inheritance), 4.3 (Foreclosure), or 4.5 (City Waiver) of this paragraph or in accordance with Paragraph 6 (City Right of First Refusal).

4.2. Inheritance A transfer that occurs by virtue of the death of an Owner, and testate or intestate administration of the estate of the Owner shall be deemed a transfer to a Qualified Purchaser.

4.3. Foreclosure A transfer that occurs by virtue of foreclosure of a mortgage encumbering the Property or a transfer that occurs by reason of a deed in lieu of foreclosure shall be deemed to be a transfer to a Qualified Purchaser.

4.4. City Certification An Owner shall submit, or cause to be submitted, to the City for certification as a Qualified Purchaser, any proposed purchaser of the Property. An Owner shall transfer the Property only to a purchaser who has been certified by the City as a Qualified Purchaser in a City Transfer Certificate. The City shall not decline, refuse or fail to certify as a Qualified Purchaser any potential purchaser of the Property except on the sole ground that the City is unable to verify that the income of such proposed purchaser is within the income limits required of a Qualified Purchaser.

4.5. City Waiver The City shall have the right to waive, in its sole discretion, the requirement for a specific purchaser that the purchaser be a Qualified Purchaser. A waiver shall apply to only one transfer and shall not apply to subsequent transfers. Upon receipt of a City Transfer Certificate that contains the written waiver from the City, the specific purchaser shall be deemed to be a Qualified Purchaser.

5. Resale Price. No Owner shall transfer the Property for an amount in excess of the Resale Price. The gross proceeds payable to the Owner on the transfer of the Property shall be limited to the lesser of (i) the Non-City Share of the Resale Price and (ii) the purchase price minus the Adjusted City Subsidy.

5.1. Adjustment to Resale Price The Resale Price may be adjusted upward by the City to a higher amount if the City determines in its sole discretion that the nature and circumstances of the Owner, and the nature and condition of the Property, warrant such a higher amount and that such higher amount will not preclude the ability to certify a potential purchaser as a Qualified Purchaser. The determination of any such upward adjustment in the Resale Price shall be in the sole discretion of the City which may elect to refuse to increase the Resale Price for any reason.

5.2. Documentation of Adjustment No increase in the Resale Price shall be permitted or authorized unless the basis for the increase, and the amount of the Resale Price as adjusted, is set forth in the City Transfer Certificate. Such an increase to the Resale Price shall apply only for a period of 12 months from the date of the City Transfer Certificate and shall not apply to subsequent transfers.

6. Right of First Refusal. In the event that an Owner shall receive an offer to purchase the Property from a Qualified Purchaser or a person who is deemed to be a Qualified Purchaser pursuant to Section 3 for an amount equal to or less than the Resale Price which is acceptable to the Owner (the "Offer"), the City shall have a right to purchase the Property from the Owner for the price set forth in the Offer (the "Right of First Refusal"). Upon the receipt of an Offer, the Owner shall promptly forward a copy of the Offer to the City. In the event that the City elects to exercise the Right of First Refusal, the City shall give written notice thereof to the Owner within sixty (60) days of the City's receipt of the Offer and the closing of such purchase shall occur no later than ninety (90) days following the City's receipt of the Offer. In such circumstances, the

sale and transfer of the Property to the City shall be subject to all other provisions of these Restrictive Covenants, and the City shall be deemed to be a Qualified Purchaser. In the event that the City does not exercise its Right of First Refusal within the time periods set forth above, the City Transfer Certificate shall include a waiver of the City's Right of First Refusal. This Right of First Refusal shall be a continuing right that applies to each proposed transfer of the Property.

This Right of First Refusal shall automatically terminate upon the expiration of the Option Term.

7. Single Family Use and Leases. The Owner covenants and agrees that the Property shall be used and occupied solely as an Owner occupied, single family residential dwelling. The Owner shall not lease, nor permit to be leased, the Property, except as expressly authorized by this Section 7.

7.1. City Inspection The City shall have the right to inspect the Property from time to time to insure compliance with these Restrictive Covenants. The Owner shall furnish the City upon request with copies of paid Tax receipts, insurance policies, termite bonds and other documents required by these Restrictive Covenants.

7.2. Obligation to Sell If an Owner ceases to occupy the Property, the Owner agrees to give prompt written notice to the City that the Property is no longer Owner occupied and the Owner agrees to sell the Property to a Qualified Purchaser for the Resale Price. The Owner agrees to actively list and market the Property and agrees that the City and its agents shall be entitled to show the Property to prospective purchasers at reasonable times of the day upon 24 hours notice.

7.3. Obligation to Rent to Qualified Renter If an Owner ceases to occupy the Property, the Property may be occupied only by a Qualified Renter pursuant to a Qualified Lease for a Qualified Rent during the period of time that the Property is being marketed for resale to a Qualified Purchaser.

8. Lien Limit The equity in the Property represented by the Adjusted City Subsidy shall not be mortgaged or otherwise encumbered by the Owner. The Owner agrees that the aggregate liens on the Property shall not exceed the Lien Limit. The Lien Limit includes any City Tax Lien, City Lease Lien and City Maintenance Lien but does not include the City's lien for the Adjusted City Subsidy. The Owner agrees that City shall have the right to review any proposed mortgage or other encumbrance on the Property and that no lien shall be placed on the Property unless the City delivers a City Transfer Certificate approving such lien. The City may in the exercise of its sole discretion authorize a higher level of encumbrances on the Property in the City Transfer Certificate. Any lien amount waiver by the City shall apply only to the current level of indebtedness of the existing encumbrances and shall not apply to any new obligations, judgments or debts.

9. Maintenance and Insurance Obligations The exterior appearance of the Property shall be maintained in an attractive and orderly condition and shall be kept free from trash, salvage, junk cars, rubbish, garbage, and other unsightly or offensive material. The buildings now or hereafter located on the said premises shall be maintained in an attractive and sound condition and repairs as necessary to prevent damage to the building(s) or any part thereof shall be made promptly. The Owner shall maintain flood insurance and "All Risk" insurance on the Property for the lesser of the replacement value and its insurable value. All insurance policies shall name the City as an additional insured. The Owner shall maintain a current termite bond on the

Property. In the event that the Owner shall breach the obligations contained in this Section, the City shall have the right (but not the obligation) to enter the property to make repairs, to remove material and to otherwise correct the Owner's breaches and the City shall have the right (but not the obligation) to purchase such insurance and terminate bonds as are required by these Restrictive Covenants. The Owner shall promptly reimburse the City upon written demand for the costs incurred by the City to correct the Owner's breaches under this Section and the City shall have a continuing lien against the Property in the amount of such costs until paid in full which is separate and distinct from the City's lien for the Adjusted City Subsidy ("City Maintenance Lien").

10. Payment of Taxes The Owner shall promptly pay each year the Taxes on the Property and shall deliver a copy of the paid receipt for such Taxes to the City within 30 days of payment. In order to protect the City's equitable interest in the Property, the City shall have the right (but not the obligation) to pay any delinquent Taxes on the Property and in such event, the Owner shall promptly reimburse the City for such Taxes upon written demand of the City. The City shall have a continuing lien against the Property for the amount of such Taxes paid by the City which is separate and distinct from the City's lien for the Adjusted City Subsidy ("Tax Lien").

11. No Subdivision Without the prior express written consent of the City, the Property shall not be subdivided, nor converted to any form of horizontal property regime, nor any portion less than all the Property be conveyed, nor shall any form of interval ownership of or time sharing of the Property be permitted.

12. Prevention of Heirs Property The Owner shall maintain a current last Will and Testament and will use reasonable efforts to prevent the Property from transferring upon the Owner's death pursuant to the laws of intestacy.

13. Enforcement of Covenants. The Developer and each Owner hereby acknowledge and agree that the covenants, conditions and restrictions set forth herein are imposed for the benefit of the City of Charleston, and that the City has interests in real property and social, cultural and economic interests that benefit from the imposition of these covenants and restrictions. The benefits of these covenants, conditions and restrictions run with the Property, and bind and burden the Property. These Restrictive Covenants shall be enforceable by the City. The Developer and each Owner further acknowledge and agree that a breach of the covenants, conditions, and restrictions set forth herein shall potentially result in a broad range of economic, social, cultural and residential damages to a large number of parties, that such damages are difficult if not impossible to determine, and that the City shall be entitled to seek such remedies as may be available at law or in equity including but not limited to injunctive relief and specific performance. The City shall be entitled to recover reasonable attorney fees and costs from the Owner in the event of a breach by the Owner of these Restrictive Covenants.

13.1. Default Option Price During the Option Term and as an additional remedy in the event of an Owner's breach of these Restrictive Covenants, the City shall have the right to purchase the Property for the Default Option Price from the then current Owner:

(A) if a selling Owner sells the Property to a purchaser who is not a Qualified Purchaser or who is not deemed to be a Qualified Purchaser under the provisions of these Restrictive Covenants; or

(B) if a selling Owner sells the Property for a purchase price in excess the Resale Price and the City has not agreed in writing to an increased purchase price pursuant to Section 5. If the City purchases the Property for the Default Option Price, the then current Owner will be required to sell the Property to the City for a purchase price that is less than the price such Owner paid for the Property. The City shall have no obligation to the current Owner or its mortgagee to provide legal assistance in seeking redress against an Owner whose breach resulted in the City's exercising its right to purchase the Property at the Default Option Price. Purchasers and mortgagees can protect themselves from the losses resulting from the City's purchase at the Default Option Price by requiring a City Transfer Certificate as a condition of a sale or of a mortgage.

13.2. Unauthorized Leasing In the event that the Owner leases the Property pursuant to a lease that is not a Qualified Lease, or leases the Property to someone who is not a Qualified Renter, or receives rent in excess of the Qualified Rent, the City shall have the remedies provided by this Section, in addition to any other remedies provided by law or equity. In the event that the Owner receives rent from a person who is not a Qualified Renter, or receives rent that is not Qualified Rent or receives rent pursuant to any lease other than a Qualified Lease, the Owner shall promptly remit all such unauthorized rent to the City upon written demand. The City shall have a lien against the Property in the amount of such unauthorized rent ("City Lease Lien"). In the event that the Owner leases the Property to a person who is not a Qualified Renter, the Owner shall cause such person to vacate the Property within ten (10) days of written notice from the City.

13.3. City Liens In addition to any other remedies provided by law or equity for the breach of these Restrictive Covenants, the City shall have the right to foreclose on a City Tax Lien, a City Lease Lien and a City Maintenance Lien in the event that the Owner fails to reimburse the City within sixty (60) days of written notice from the City. In such foreclosure action, the City shall be entitled to add to the amount of the liens, and to recover, its reasonable attorney fees and the costs of such a foreclosure action. All City Tax Liens, City Lease Liens and City Maintenance Liens shall be subordinate to any mortgage approved

by the City in a City Transfer Certificate. If the Owner and the City mutually agree, the Owner and the City can elect to modify these Restrictive Covenants to add the amount of any outstanding City Tax Lien, City Lease Lien and/or City Maintenance Lien to the amount of the Adjusted City Subsidy; any such amendment must be in compliance with Section 14 (Duration and Amendment) and neither party has any obligation to consent to such an amendment, 14. Duration and Amendment This Restrictive Covenants shall bind all persons claiming any interest in the Property and run with the land for a period of ninety (90) years from the date of recording, after which time these Restrictive Covenants shall be automatically extended for successive periods often (l0) years unless amended as provided in this Section. These Restrictive Covenants may be amended only by a writing executed by both the then current Owner and the City which is filed in the land records office of the County where the Property is located.

15. Severability. Whenever possible, each provision of these Restrictive Covenants shall be interpreted in such manner as to be effective and valid, but if the application of any provision of these Restrictive Covenants shall be prohibited or held invalid, such

prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of these Restrictive Covenants are declared to be severable. Notwithstanding anything contained herein to the contrary, if any of provision of these Restrictive Covenants shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until ninety (90) years from the date of first recordation.

16. Notices. Any written notice, required by these Restrictive Covenants shall be in writing, and shall be delivered either (i) in person, or (ii) by first-class, certified mail, return receipt requested, postage prepaid, or (iii) by Federal Express (or other nationally recognized overnight courier), return receipt requested, with postage or delivery charge prepaid. If the notice is to the Owner, it shall be addressed to the Owner at the street mailing address for the Property. If the notice is to the City, it shall be addressed to the City at the three addresses set forth below, or as corrected in the last recorded City Transfer Certificate. In addition, either party may designate another address by notice to the other. Any notice shall be deemed to be given to and received by the other party on the date of delivery if personally delivered, and two (2) days after the date of mailing if mailed as described above, and one (1) day after it was placed with the overnight courier as described above. Notice to the City shall be complete only after City Hall, the Housing Director (or the equivalent successor) and Corporation Counsel have each received delivery of the notice:

The City of Charleston
Attention: Clerk of Council
City Hall
80 Broad Street
Charleston, SC 29401

Copy to: The City of Charleston
Department of Housing and Community Development
75 Calhoun Street, Division 616
Charleston, SC 29401-3506
Attention: Patricia W. Crawford, Director

City of Charleston
Attention: Corporation Counsel
Legal Department
80 Broad Street
Charleston, SC 29401

STATE OF SOUTH CAROLINA)
) CITY TRANSFER CERTIFICATE
) FOR SINGLE FAMILY
COUNTY OF CHARLESTON) AFFORDABLE HOUSING

Property	*25 ABC Street Charleston* SC *TMS 123-00-00-456*
Current Owners	*Richard and Susan Jones*
First Deed:	*Recorded in Book __, Page __ and dated January S, 2003*
Base Purchase Price	*$]40,000*

AMI Increase	*110% from January* 5, *2003 to September* 15, *2005*
Resale Price	*$154,000 as of September 15, 2005*
City Subsidy	$*21,000*
City Subsidy Percentage	15%
Adjusted City Subsidy Amount	*$23,100 as of September* 15, *2005*
Non-City Share of Resale Price	*$130,900 as of September* 14, *2005*
Lien Limitation Percentage	85%
Lien Limit	*$130,900 as of September* 15, *2005*

The City approves the transfer of the Property for *$154,000* to *John and Mary" Smith* as Qualified Purchasers; provided that the gross proceeds paid by the Qualified Purchasers (inclusive of any financing) do not exceed *$130,900*.. The City waives its right of first refusal to purchase the Property. The City approves the mortgaging of the Property to XYZ *Savings & Loan* to secure a loan in the amount of *$128,000*.

Date: *September* 15, *2005* City of Charleston Department of Housing and Community Development

_____ By:_____

(first witness)

_____ Its: Housing Development Officer

(second witness)

STATE OF SOUTH CAROLINA)

) ACKNOWLEDGMENT

COUNTY OF CHARLESTON)

I, the undersigned Notary Public, do hereby certify that _____, a Housing Development Officer for the City of Charleston Department 0 Housing and Community Development, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the ___ day of , 2003

_____

Notary Public For South Carolina

My Commission Expires **EXHIBIT**

"C"

TO

TRANSFER AGREEMENT

Permitted Exceptions

1. Ad valorem real property taxes and user fees for the year of closing (provided same are not yet due and payable) and all subsequent years.
2. The Development Agreement referenced in the Transfer Agreement.
3. The Declaration of Transfer Restrictions and the Restrictive Covenants referenced in the Transfer Agreement.
4. All restrictive covenants, rights of way and easements of record as of the date of this Transfer Agreement, if any, provided they do not make the title unmarketable or uninsurable.
5. All existing federal, state, county, municipal and local governmental statutes, ordinances, rules and regulations, including, without limitation, zoning ordinances.

EXHIBIT "D"

TO
TRANSFER AGREEMENT
Redevelopment Contingencies Addendum

1. Definitions: In addition to the words and terms defined elsewhere in the Transfer Agreement, the following terms shall have the following meanings for purposes of this Addendum:

(A) "Architect" means the Developer's design architect, or such other architect or architects as shall be employed by the Developer and approved by the City.

(B) "Architect's Contract" means the written agreement between the Developer and the Architect providing for architectural services to the Developer relating to the Development of the Project.

(C) "Change Orders" means any amendment or modification of the Development Documents.

(D) "Construction Contract" means the agreement between the Developer and the General Contractor, as approved by the City, signed by all of the parties thereto and dated on or before the Initial Closing providing for the Development of the Property.

(E) "Cost Estimate" means the detailed schedule and construction budget prepared by the Developer, as approved by the City, showing a detailed itemization of the costs of acquiring the Property and the Development, including a line item development budget (including a listing of all sources and uses of funds), an itemization of all costs anticipated by the Developer incident to the Project and the resale of the Project to a Qualified Purchaser, and all costs or other amounts funded or to be funded by the City Loan, the Participating Lender Loan and from equity contributions of the Developer or others.

(F) "Developer" means the original Developer named above, and its successors and assigns.

(G) "Developer's Inspector" means an engineering or architectural firm hired by the Developer and approved by the City, which may be the Architect.

(H) "Development" means any and all repairs, construction, reconstruction, renovations, development, redevelopment, improvements, modifications or additions now or hereafter made to or constructed on the Property as contemplated by the Transfer Agreement, the Development Agreement, the Drawings and the Development Documents.

(I) "Development Documents" means the Construction Contract together with the general and special conditions attached thereto, the Architect's Contract, the Drawings, any Change Orders, and the General Contractor's bids and proposals.

(J) "Development Schedule" means a schedule prepared by the Developer and delivered to and approved by the City providing a detailed schedule of the dates by which portions of the Project shall be completed, together with a detailed funding schedule for all items and showing the amount the Developer anticipates drawing during the Development of the Project from loans and other sources, as approved by the City, including any amendments or modifications thereto as may be made by the Developer from time to time and approved by the City according to the terms of the Development Agreement.

(K) "Draw Request" means a request for disbursement of the City Loan proceeds prepared by the Developer and delivered to the City.

(L) "Drawings" means the final plans and specifications for the Development of the Property, as approved by the City, including any amendments or modifications thereto as may be made by the Developer from time to time and approved by the City according to the terms of the Development Agreement.

(M) "Final Closing" means the date on which the Project is sold and title thereto conveyed by the Developer to a Qualified Purchaser.

(N) "General Contractor" means such contractor or contractors as shall be employed by the Developer for Development of the Project and approved by the City.

(0) "Initial Closing" means the date on which a Property is sold and title thereto conveyed by the City to the Developer.

(P) "Insurance Requirements" means the City's requirements for the policies of insurance as provided for and required by the Transfer Agreement, the Development Agreement, the City Loan Documents, the Restrictive Covenants and the Participating Lender. (Q) "Legal Authorities" or ""Legal Authority" means any federal, state or local governmental or quasi-governmental body, office, department, agency, board, court or other instrumentality thereof exercising jurisdiction over the Development of the Project, the operation and occupancy of the Project, the Developer, the performance by the Developer of any act or obligation, or the observance by the Developer of any agreement, provision or condition of any nature whatsoever contained in this Agreement.

(R) "Legal Requirements" means any law, ordinance, order, code, rule, regulation or standard of any Legal Authority.

(S) "Project" means the Property and the Development collectively.

(U) "Qualified Purchaser" means a person (or persons) who is (are) qualified by the City for home ownership and to purchase the Project upon completion thereof in accordance with the Restrictive Covenants and the City of Charleston's Homeownership Initiative Redevelopment Plan's existing or future guidelines.

(V) "Restrictive Covenants" means those certain covenants and restrictions specified in the Transfer Agreement.

(W) "Substantial Completion" or "Substantially Completed" means the date when: (i) the Development of the Project shall have been fully completed in a good and workmanlike manner and according to the Development Documents, in full compliance with all applicable Legal Requirements of any Legal Authority, except for punch list items approved by the City; and (ii) all certificates of use and occupancy have been issued by all appropriate Legal Authorities for the Project.

2. The following contingencies shall apply to each Property to be conveyed under the Transfer Agreement. The City shall not be obligated to close and convey a Property to the Developer under the Transfer Agreement unless the following conditions shall have been satisfied for such Property on or before the closing for such Property:

(A) The representations and warranties of the Developer contained in the Transfer Agreement, the Development Agreement, and otherwise made by or on behalf of the Developer shall be true and correct in all material respects on and as of the closing for such Property. (B) The Developer shall have satisfied each of

the conditions precedent to the closing for the Property as contained in the Transfer Agreement.

(C) The Developer shall have satisfied each of the conditions precedent to the closing of the City Loan for the Property as contained in the City Loan Documents and the City Loan must close on or before the date of the closing for the Property.

(D) The Developer shall have satisfied each of the conditions precedent to the closing of any other loan or loans, if any, approved by the City and necessary to finance the acquisition of the Property and the Development of the Project, and each such loan or loans must close on or before the date of the closing for the Property and each such loan is junior and subordinate to the City Loan, the City Loan Documents, the Declaration of Transfer Restrictions and the Restrictive Covenants.

(E) The Developer, at its sole cost and expense, must have provided or caused to be provided to the City, in a format prescribed by the City, and the City must have received, reviewed and approved the following:

(1) Authority and Capacity: Evidence of the Developer's organization, valid existence, authority to enter into the Development Agreement, good standing, current compliance with all laws, payments of taxes, and such other documents as the City may require.

(2) Financial Statements: The Developer shall provide the City with such financial reports and information relating to the Developer, the General Contractor and the Project as the City may request (including, without limitation, balance sheets, profit/loss statements, and tax returns for the current year and the prior three (3) years), which financial reports and information shall be prepared in accordance with the requirements of the City, certified by an officer of the Developer or the General Contractor as the case may be, and, if requested by the City, prepared by an independent certified public account.

(3) Other Developer Information: The Developer shall provide the City with such other reports and information relating to the Developer as the City may request, including, without limitation, information on the Developer's background, mission, history, list of Board of Directors and/or Trustees, experience, qualifications, list of projects, and resumes of key staff members.

(4) Insurance: The original policies of insurance or certificates of insurance satisfactory to the City satisfying the Insurance Requirements, together with evidence of the payment of premiums therefore. Such insurance shall include, without limitation, Developer's effective, paid-up policies of fire, flood and all-risk replacement cost coverage of all insurable improvements on the Property (during and with respect to Development, in builder's risk completed value form); workers compensation insurance; comprehensive general public liability insurance; and such other or additional insurance, and covering such risks, as the City requires. All policies must be written by insurers, in amounts, with endorsements, and on terms and conditions satisfactory to the City. If requested by the City, the Developer will have the City named as an additional insured under the above-referenced insurance policies. The Developer shall keep all such insurance coverage in place until such time as the Final Closing occurs and has concluded.

(5) Availability of Funds: Assurance satisfactory to the City of the availability of any and all funds required for completion of the Project in excess of the proceeds of the City Loan and the Participating Lender Loan, including payment to the City of such sums as may be required by the City.

(6) Legal Opinion: An opinion of Developer's counsel to the effect that the Developer is duly organized and validly existing and in good standing under the laws of the state of its organization, authorized to do business in the State of South Carolina, with full power to own the Property and execute, deliver and perform its obligations under the Development Agreement; that the Development Agreement is valid and legally binding and enforceable against the Developer in accordance with its terms, subject to laws pertaining to bankruptcy and insolvency; and opining to such other matters as may be required by the City.

(7) Errors and Omissions Insurance: Copies of the Architects and Developer's Inspector's certificate of Errors and Omissions Insurance in an amount acceptable to the City, and endorsed so that the policies will not be terminated, expired or canceled without thirty (30) days. advance written notice to the City.

(8) Cost Estimate and Development Documents: The Cost Estimate and all Development Documents with any modifications thereto, together with evidence of written approval thereof by the City. If requested by the City, the Developer must also provide the City or cause to be provided to the City, and the City must have received, reviewed and approved, consents for the City to use the Development Documents in connection with the Development and collateral assignments to the City of the Developer's rights in the Development Documents and in such other contracts and agreements as the City shall require. The Developer's contractors, architects, engineers and any major subcontractors shall be subject to approval by the City. All Development Documents, including, without limitation, the Construction Contract, must be "guaranteed maximum price" contracts.

(9) Payment and Performance Bonds: Assurance of completion of the Development by the General Contractor in the form of payment and performance bonds, each in the amount of one hundred percent (100%) of the Construction Contract satisfactory in all respects to the City and the Participating Lender as obligees, or, in the alternative, at the discretion of the City and the Participating Lender, a completion assurance agreement and an unconditional irrevocable letter of credit acceptable in all respects to the City and the Participating Lender in an amount equal to one hundred percent (100%) of the total sum of the Construction Contract to assure performance and payment, ,or other assurance acceptable to the City and the Participating Lender.

(10) Authorized Signers: The Developer and the General Contractor shall advise the City in writing of the individual(s) within their organizations who are authorized to sign Draw Requests, Change Orders, forms relating to completion and cost certification, or any other forms required by the City during Development, or to certify completion of Development. It shall be the responsibility of the Developer and the General Contractor to notify the City in writing in advance of any changes in the designated signatories.

(11) Development Schedule: The Developer shall deliver the Development Schedule to the City and the City must approve same. The Developer may revise the draw schedule for the City Loan, as included in the Development Schedule, by submitting the revision to the City before the fifteenth (15^{th}) day of each month. If approved by the City, the revised Development Schedule will take effect on the first (I") day of the second calendar month following its submission.

(12) Other Lender Documents: The Developer shall deliver to the City true copies of the promissory note(s) evidencing all loans relating to the Project, including, without limitation, the Participating Lender loan(s), together with any mortgage(s) securing said loans, certified by the lenders thereof as to their authenticity.

(13) Development Team: The Developer shall provide in writing a list (including names, addresses and telephone numbers) of all development team members, including, but not limited to, Developer's attorney, general contractor, architect, surveyor, consultants, etc..

(14) Appraisal: An initial appraisal of the estimated market value of the Property with the proposed improvements to be followed by a certification of final "as-built" value upon Substantial Completion. The appraisal(s) must be addressed to the City and must conform to the Uniform Standards of Professional Appraisal Practice (“USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation. Any deviation from the USP AP must be explained in the appraisal(s). The appraiser(s) must be licensed and/or certified if required by applicable Federal Deposit Insurance Corporation regulations or state laws, and must be approved by the City and the Participating Lender.

(15) Survey: A current survey of the Property prepared by a registered surveyor satisfactory to the City within sixty (60) days of the Initial Closing, signed, sealed and certified by the surveyor to the Developer and the City.

(16) Sales Pro-forma: A sales pro-forma evidencing the projected price for which the Project will be re-sold by the Developer to a Qualified Purchaser; provided, however, the parties hereby acknowledge and agree that the projected price may change as provided in the Development Agreement based on unexpected and/or unanticipated costs actually incurred by the Developer in the Development of the Project.

(17) Building Permit/Approvals/Licenses: Copies of a valid building permit for the Project and all other permits, licenses and approvals necessary for Development of the Project, including, without limitation, any necessary permits, licenses and approvals for the Drawings, any demolition, historic preservation, use and occupancy, and for access and utility services to the Project.

(18) Soil Tests: Soil tests and a foundation report regarding the Property by an engineer satisfactory to the City; provided, however, City, at its option, may agree to waive this requirement if the Architect, General Contractor, or engineer provides the City with written certification satisfactory to the City that such tests and reports are not necessary.

(19) Utilities: Evidence that the Project will be directly connected to abutting public water, sewer, gas, electrical and telephone lines and pipes (and any other utilities necessary for the Project) properly operating and in sufficient capacity with all charges currently paid.

(20) Zoning: Evidence that all applicable zoning ordinances and similar Legal Requirements permit the use for which the Project is intended and have been and will be complied with (including building codes and requirements as to parking, building setbacks, lot size and ingress and egress), without the necessity of variance, without reliance on any other property, and without the Project being a nonconforming use.

(21) Disabilities Laws: Evidence that the Developer, the Project and the Drawings, and the Development and present and intended use and occupancy of the Project, do and will comply with all other applicable Legal Requirements, including those regarding access and facilities for handicapped or disabled persons.

(22) Access: Evidence that the Project abuts and has fully adequate direct and free access to one or more dedicated public streets and thoroughfares and that all easements, leases and other rights necessary for the present and intended use of the Project, including those for ingress and egress, for vehicular and pedestrian traffic and for vehicle parking, are and will continue to effect.

(23) Storm Water: Evidence that the Project will have adequate, properly approved and permitted storm water run-off and/or detention.

(24) Cost Estimate: The Cost Estimate.

(25) Taxpayer Identification Number: The federal identification number for the Developer.

(26) Miscellaneous: Such other evidence, documents, certificates and items reasonably requested by the City or the Participating Lender.

If the above contingencies are not satisfied by closing for a Property, then either Developer of City shall have the option, in its sole discretion, to terminate and cancel this Transfer Agreement as to such Property; provided, however, that notwithstanding such termination as to such Property, this Transfer Agreement shall not be terminated as to the other Properties covered by this Transfer Agreement and shall nonetheless continue in full force and effect as to such other Properties. Each of the above contingencies shall apply to each Property to be conveyed under this Transfer Agreement, and each such contingency shall survive the closing of each Property, and, as a result, shall be a condition precedent to the closing of each other Property not then yet closed.

RATIFICATION NUMBER
2003-30

AN ORDINANCE TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 2120 BARBOUR DRIVE (0.25 ACRES) (TMS #310-12-00-006). ST. ANDREWS PARISH, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON AND INCLUDES ALL

MARSHES, PUBLIC WATERWAYS, AND PUBLIC RIGHTS-OF-WAY, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED (MAP IS ATTACHED TO ORIGINAL ORDINANCE) HERETO AND MAKE IT PART OF DISTRICT 11.

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

Section 1. Finding of Fact

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

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

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

C) The area comprising the said property is contiguous to the City of Charleston. Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 11 of the City of Charleston, to wit: SAID PROPERTY to be annexed, 2120 Barbour Drive (0.25 acre), St. Andrews Parish, is identified by the Charleston County Assessors Office as TMS# 310-12-00-006 (see attached map) (map is attached to original ordinance) and includes all marshes, public waterways and public rights-of-way, shown within the area annexed upon a map attached (map is attached to original ordinance) hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Next, Council considered the bill pertaining to the lease of the Maritime Center.

On motion of Councilmember Evans, the subject bill received second reading. It passed second reading on motion of Councilmember Tinkler and third reading on motion of Councilmember Bleecker. On the further motion of Councilmember Evans, the rules were suspended and the bill was immediately ratified as:

RATIFICATION NUMBER

2003-31

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS TO LEASE TO EAST COAST CONCERTS THE CHARLESTON MARITIME CENTER, LOCATED AT 10 WHARFSIDE STREET, CHARLESTON, SOUTH CAROLINA, FOR CHARLESTON ALIVE AFTER FIVE EVENTS, SAID LEASE BEING MARKED AS EXHIBIT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN. BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute the necessary documents to Lease to East Coast Concerts the Charleston Maritime Center, located at 10 Wharfside Street, Charleston, South Carolina, for the purpose of Charleston Alive After Five events, said lease being marked

as Exhibit A, attached hereto and incorporated by reference herein. Section 2. This Ordinance shall become effective upon ratification.

_____

EXHIBIT A
CHARLESTON MARITIME CENTER RENTAL CONTRACT
Name/Type of Event: Charleston Alive After Five
Event Dates: May 2, 16, 30, 2003; June 13, 27, 2003; July 11, 25, 2003; August 8, 22, 2003; September 5,19,2003; and October 3, 17, 2003.
Event Time: 5:00 PM through 9:30 PM
Earliest Access Time: 3:00 PM **Latest Departure Time**: 10:00 PM **Number of Guest Expected**: 300 - 2,000 per event

This Rental Contract is made in the County and City of Charleston, *SC,* on April 22nd, 2003, by and between the City of Charleston, operating as the Charleston Maritime Center, located at 10 Wharfside Street, Charleston, SC 29401 (hereinafter referred to as "**LESSOR**") and East Coast Concerts, 1039-D Anna Knapp Blvd., Mt. Pleasant, SC 29464, Telephone (843) 856-9922 (hereinafter referred to as "**LESSEE**").
Lessor agrees to rent the following premises at the Charleston Maritime Center to the Lessee upon the following terms and conditions (hereinafter referred to as the "**Premises**"): A. X Meeting Room and Upstairs Bathrooms B. X Conference Room C. X Park D. X First Floor Bay Area, Outside Area, the western 100' of the Southern Pier and the western 8' x 10' portion of the Cooler Space.
I. DEFINITIONS (as used in this Rental Contract)
A. Meeting Room and Upstairs Bathrooms shall mean the "large" meeting room and bathrooms on the second floor of the building known as the Charleston Maritime Center located at 10 Wharf side Street, Charleston, SC., 29401 (hereinafter referred to as the "**Building**"). This excludes office space and storage areas.
B. Conference Room shall mean the "small" conference room on the second floor of the Building. This excludes office space, storage areas, and the adjacent Meeting Room.
C. Park shall mean the grassy area and the sidewalk on the northern side of the Building between the promenade and Wharfside Street.
D. First Floor Bay Area, Outside Area, the western 100' of the Southern Pier and the western 8' x 10' portion of the Cooler Space shall mean the interior portion of the first floor of the Building excluding the seafood retail space and a portion of the Cooler Space as hereinafter defined, the outside promenade area between the eastern side of the Building and the Bulkhead, the western 100' of the Southern Pier and the western 8' x 10' portion of the Cooler Space in the Building. Lessee shall be responsible for securing the 8' x 10' portion of the Cooler Space, which shall be available to Lessee during and between each event. Lessee shall be permitted to store personal property within said Cooler Space but shall do so at no risk to the Lessor. Not included in the Premises are the seafood retail space and the balance of the Cooler Space not included in the Premises; provided, however, that Lessee shall be permitted to use the seafood retail space and the balance of the Cooler Space not included in the Premises on a per-event basis if not otherwise leased as provided in Paragraph V. Furthermore, Lessee shall not be permitted to

allow any boats to tie up to either pier at the Charleston Maritime Center during any event unless approved by the Lessor.

E. **Rental Fee** shall mean monies paid to the Lessor by the Lessee for rent and additional services.

F. **Damage deposit** shall mean monies paid to the Lessor to provide evidence of good faith the event of damage to the location(s) as stated in the lease, or any additional charges as appropriate. This deposit is refundable after the event on October 17, 2003 upon post-rental inspection provided that Lessor shall inspect the Premises after each event. In the event damage is discovered during said inspection, Lessor shall be entitled to use the Damage deposit to repair the damage and Lessee shall replenish the Damage deposit to the original Five Hundred ($500.00) Dollars. If, after any event, Lessor discovers damage to the Premises in excess of the Damage deposit, it shall notify Lessee of the amount of the damage to the Premises in excess of the Damage deposit, and Lessee shall remit the full sum to the Lessor within ten (10) days of receipt of the notice of damage from Lessor.

II. COMPENSATION

A. Rental Fee Per Event (13)
Due & Payable on Monday prior to each event. $1318.00

B. Damage deposit (Refundable after the final event on August 31, 2002 and as provided in section I.F. above;
payable upon the execution of this Rental Contract. $ 500.00

TOTAL AMOUNT OF RENT DUE PURSUANT TO
TO THIS AGREEMENT* $17,634.00

***Alcohol Permit** – Lessee shall obtain for each event at its expense and shall furnish a copy of said permit to Lessor.

III. OBLIGATIONS OF THE LESSOR

A. Lessor shall have available the Premises in a clean and orderly condition as designated in this Rental Contract on the specified dates at the specified time, including normal heat, air conditioning, light, power and water.

B. Make available to Lessee the parking lot immediately adjacent to the Building during each event.

C. Provide the following at each event: one (1) seventy-five (75) gallon gray rolling cart full of ice; fourteen (14) trash cans to be emptied by Lessor as needed during each event; one (1) Dumpster to be emptied by the Lessor as needed after each event; four (4) police-style barricades; and one (1) ten (10') foot ladder for hanging banners.

IV. OBLIGATIONS OF THE LESSEE

A. Abide by the laws of the State of South Carolina, the County and City of Charleston, and the rules and regulations of the Charleston Maritime Center. B. Pay to Lessor the compensation as provided herein.

C. Honor or cause to be honored all debt incurred as a result of this Rental Contract.

D. Be solely responsible for the behavior and safety of the persons in attendance at the Lessee's events; provided, however, that nothing herein shall relieve Lessor of its responsibilities as described in Paragraph III.A herein.

E. Secure any necessary permits or licenses, including those for alcoholic beverages.

F. Prohibit any device being affixed to the facility or its contents (tacks, nails, screws, etc.)

G. Prohibit any use of the Maritime Center which harms, damages, or defaces the general appearance of the Premises.

H. Be solely responsible for setting-up and breaking down the stage and other equipment for each event. Assist the Lessor in cleaning up and restoring the Premises to their pre-event condition after each event.

I. Prohibit smoking the Meeting and Conference Rooms in the Maritime Center, and prohibit the use of any candles, electric devices, or otherwise fire hazards on the Premises.

J. In consideration of the use of the Premises, Lessee agrees to indemnify, save, and hold harmless the City of Charleston from any and all claims connected with, in whole or in part, by act or omission of Lessee or any person admitted to the Premises by the organization or attending any event.

K. Agree to contain all amplified equipment used in conjunction with each event within the Bay Area of the Building.

L. Agree to keep all sound, amplified or otherwise, generated during each event to a decibel level not to exceed 65 peak dBA or 72 peak dBC as measured from any adjacent property boundary of the Premises, to be monitored at all times by the Lessee and the Lessor. Agree to terminate sound-producing activities during any event if sound level(s) generated from same shall exceed prescribed limits as stated herein or upon direction by the Lessor. Agree to terminate sound producing activities promptly at 9:00 PM.

M. Agree to maintain Comprehensive General Liability and Property Insurance with combined single liability limits for personal injury or death and property damage in the amount of $1,000,000.00 per occurrence. Agree to add the Lessor as an additional named insured on insurance policy during the term of this Rental Contract.

N. Agree to provide all staging equipment necessary to accommodate the performers.

O. Provide adequate security, both landside and waterside, at the Premises during each event.

P. Provide adequate port-a-lets to accommodate attendees of events.

V. MISCELLANEOUS Lessee acknowledges that the Maritime Center has a seafood retail store on the First Floor Bay Area, which may be leased and operated by a tenant, other than Lessee, during the hours of a Charleston Alive After Five event. Lessee agrees not to interfere, block, or prohibit any said tenant of the Maritime Center from operating a seafood retail business or other business as approved by the Lessor, during or after its hours of operation. During the hours of each event, Lessor agrees to prohibit any said tenant of the Maritime Center from selling food and beverages, consistent with food and beverages sold at Alive After Five events in the past, which are in direct competition with food and beverages sold by the Lessee.

VI. TERMINATION

Lessor may terminate this Rental Contract in the event that the Lessee fails to make payments hereunder, and such failure is not cured within ten (10) days after written notice is sent to Lessee.

VII. FORCE MAJEURE

Lessor and Lessee shall not be responsible for any delay or failure of the other's performance under this Rental Contract resulting from fire, strike, flood, labor dispute, domestic or international unrest, or any other cause beyond reasonable control.

In witness, the parties, having caused this Rental Contract to be duly executed in duplicate-each of which shall be deemed an original.

CITY OF CHARLESTON **LESSEE**

By: /S/ Joseph P. Riley By: /S/ Steve Harry

Its: Mayor Its: General Manager

Date: 5/20/03 Date: 4/16/03

The vote was not unanimous. Councilmember Fishburne and Councilmember George voted nay to second and third readings.

On motion of Councilmember Waring, the bill received second reading. It passed second reading on motion of Councilmember Tinkler and third reading on motion of Councilmember Evans. On the further motion of Councilmember Tinkler, the rules were suspended and the bill was immediately ratified as:

RATIFICATION NUMBER

2003-32

AN ORDINANCE TO AUTHORIZE THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CHARLESTON (THE "CITY") AND THE UNITED STATES OF AMERICA (THE "GOVERNMENT") ACTING BY AND THROUGH THE GENERAL SERVICES ADMINISTRATION ("GSA") FOR THE EXCHANGE OF 101 BROAD STREET AND 334 MEETING STREET, SITUATE, LYING AND BEING IN THE CITY AND COUNTY OF CHARLESTON, STATE OF SOUTH CAROLINA, A COPY OF THE MEMORANDUM OF UNDERSTANDING BEING MARKED AS EXHIBIT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN. **(As amended)**

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

Section 1. The Mayor is hereby authorized to execute the necessary documents to enter into that certain Memorandum of Understand between the City of Charleston (the "City") and the United States of America (the "Government") acting by and through the General Services Administration ("GSA") for the exchange of 101 Broad Street and 334 Meeting Street, situate, lying and being in the City and County of Charleston, State of South Carolina, a copy of the Memorandum of Understanding being marked as Exhibit A, attached hereto and incorporated by reference herein.

Section 2. This Ordinance shall become effective upon ratification.

EXHIBIT A

MEMORANDUM FOR STEPHEN A. PERRY
ADMINISTRATOR (A)

THROUGH: F. JOSEPH MORAVEC
COMMISSIONER, PUBLIC BUILDINGS SERVICE (P)

BY: EDWIN E FIELDER JR.
REGIONAL ADMINISTRATOR (4A)

SUBJECT: Proposed Exchange of Property
Charleston, SC

The Southeast Sunbelt Regional Office of the General Services Administration hereby requests the Administrator's approval of a real property exchange with the City of Charleston, South Carolina.

GSA owns and operates a building known as the L. Mendel Rivers Federal Building in downtown Charleston. Hurricane Floyd damaged the building in September 1999 and exposed hazardous amounts of asbestos, rendering the building uninhabitable. All building tenants were relocated at that time, and the building has stood vacant since then. The estimated cost of renovation and alteration to the building, including asbestos abatement, exceeds the functional replacement cost of the building. Though the building was once a viable Federal asset, it now incurs operations and maintenance costs while collecting no revenue. It has become a burden to the taxpayer and upon the Federal inventory.

The City of Charleston indicated an interest in exchanging city-owned land for the L. Mendel Rivers Federal Building in 2001. Despite initial setbacks, talks with the City in early 2003 yielded a firm offer from the City to construct a new office building of substantially similar appraised value to the L. Mendel Rivers Federal Building and to be located at 101 Broad Street, a site adjacent to the existing Federal judicial complex that is located at Charleston's historic Four Corners of Law. Upon completion and satisfactory appraisal of the new office building, GSA will exchange the L. Mendel Rivers Building for the new office building, which will provide Federally owned space for tenant agencies located in leased space in the greater Charleston area. In the long term, the new building will provide expansion space for the Courts in the adjacent buildings.

Therefore, GSA proposes an exchange of the L. Mendel Rivers Federal Building at the time of completion of construction on the new office building at 101 Broad Street. This transaction is authorized by the Public Buildings Act of 1959, as amended (40 USC, section 3304(a)). The attached Memorandum of Understanding (MOU) details GSA's and the City of Charleston's intent to proceed with an exchange under these terms.

Upon completion of this exchange, GSA will acquire valuable Federal office space in downtown Charleston with long-term use by the Courts, while also relieving the taxpayer of further expense in operating and maintaining the L. Mendel Rivers Federal Building.

We respectfully request the approval to proceed with this exchange.

CONCUR:
BY:/S/ THOMAS H. WALKER
ITS: ASSISTANT REGIONAL ADMINISTRATOR (4P)
PUBLIC BUILDINGS SERVICE

CONCUR:
BY: /S/ F. JOSEPH MORAVEC
ITS: COMMISSIONER (P)
PUBLIC BUILDINGS SERVICE

Approved for Legal Sufficiency:
/S/: George Lane for JUDY C. STEWART REGIONAL COUNSEL (4L)

APPROVED:
BY: /S/ STEPHEN A. PERRY
ADMINISTRATOR (A)
GENERAL SERVICES ADMINISTRATION

07/14/2003
Date

Attachment

Fact Sheet

Charleston, SC - Exchange Description:

The Southeast Sunbelt Regional Office plans to execute an exchange transaction in Charleston, SC. This transaction provides financial benefit to the Federal Government and the City of Charleston. The General Services Administration proposes to exchange the L. Mendel Rivers Federal Building for a new Federal building to be constructed by the City of Charleston. The action will allow GSA to acquire Federal office space to meet existing federal tenants' needs in downtown Charleston and to relieve the taxpayer of the burden of operating and maintaining the long-vacant L. Mendel Rivers building. The City of Charleston will acquire one of the last remaining unrestricted sites in the heart of historic downtown Charleston, which they plan to develop for mixed use.

Authority: (40 USC § 3304 (a)). Issues:

· The GSA building was damaged by Hurricane Floyd in September 1999, and rendered the building uninhabitable due to friable asbestos.

· The City will construct for GSA a building of similar value in the downtown area to house Federal space needs in exchange for Mendel Rivers.

· The City is fully aware of the asbestos contamination in the L. Mendel Rivers Building. · The proposed exchange was approved by a resolution of the Charleston City Council on March 25, 2003.

Prospectus: Not required.

Entity: The City of Charleston is a local government.

Property Description:

· GSA-owned property: 2.18 acre site with the 6-story, 90,151 rentable square foot L. Mendel Rivers Federal Building, located at 334 Meeting Street, Charleston, SC.

· City-owned property: 0.293-acre site located at 101 Broad Street, Charleston, SC, to be improved with a new office building.

Estimate of Valuation:

· Fair Market Value of GSA-owned property: $4,100,000, based on January 11, 2003, GSA-contracted appraisal

· Fair Market Value of city-owned land to be exchanged: $1,145,000, based on July 25, 2001 GSA-contracted appraisal. The city will improve the site with a 35,000 gross square foot building for a total estimated value of $4,100,000. Benefits:

· GSA will receive a new Federal building to house Federal agencies in downtown Charleston.

· GSA will save more than $26,000 per year in operations and maintenance costs expended on the vacant L. Mendel Rivers Federal Building.

· GSA will save approximately $1.5 million in asbestos abatement costs.

· The City will develop the GSA-owned site for public use.

· The City will benefit from increased Federal presence in the Four Corners of Law neighborhood and will enhance development of the historic downtown central business district.

Findings and Determinations

Charleston, South Carolina Exchange

The Southeast Sunbelt Regional Office proposes to exchange the L. Mendel Rivers Federal

Building for a new Federal building to be constructed by the City of Charleston. The L. Mendel Rivers Building is currently vacant, is contaminated with hazardous levels of friable asbestos, and will require extensive reinvestment if not demolition and reconstruction in order to return it to its former, substantially occupied state. The proposed exchange with the City of Charleston is a desirable one both because it will relieve the Federal Government of the costly burden of maintaining the L. Mendel Rivers Federal Building and also because it will enable the General Services Administration (GSA) to continue to offer Federal agencies desirable office space in downtown Charleston.

This exchange will be completed under the authority of the Public Buildings Act of 1959, as amended (40 USC § 3304 (a)).

Findings. Hurricane Floyd damaged the L. Mendel Rivers Building in September 1999, and rendered hazardous amounts of asbestos friable that had previously been contained in the form of floor tiles, ceiling plaster, sprayed-on fireproofing and pipe fittings insulation. GSA commissioned an asbestos abatement study following the hurricane, and received findings on October 1, 1999. The estimate resulting from the study, performed by Cape Environmental Management Inc (CAPE), totals $1,412,000 for cleanup to be followed by demolition of the building. If the building were to remain in use, CAPE estimates that asbestos abatement would reach $1,890,000. The most recent appraisal of the building, dated January 11, 2003, estimates the value of the L. Mendel Rivers property at $4,100,000. The existing asbestos contamination substantially devalues the property, as the 3rd party appraiser who studied the building and its site estimates that it has a value of $6,325,000 in an uncontaminated state. The 3rd party appraiser proposes demolition of the building as the first step toward redevelopment of the site; due to the building's current state of disrepair as coupled with the need for asbestos abatement. If GSA were to pursue abatement, demolition, and reconstruction as the appraiser reco1mmends, the estimated functional replacement cost is $12,500,000 (including abatement) on its current site, for which the region is unlikely to secure funding.

The City of Charleston expressed interest in the L. Mendel Rivers property beginning in 2001. The City would like to redevelop the highly visible and centrally located site for mixed public use. They have offered to build a new building to GSA's specifications at 101 Broad Street, a site currently used for parking for the Federally-owned Post Office- Courthouse and Hollings Judicial Center, and the leased Hollings Judicial Center Annex, all located at the historic Four Comers of Law in downtown Charleston. The new building, upon completion, will be substantially similar in value to the L. Mendel Rivers property. GSA will exchange the L. Mendel Rivers property for the new building after appraisals of both properties have confirmed their similar value. The Charleston City Council approved the exchange by ordinance on March 25, 2003.

Benefits. An exchange with the City of Charleston for a new Federal building will allow GSA to continue to offer its customers Federal office space in downtown Charleston. The L. Mendel Rivers Building contains 90,151 rentable square feet of space, most of which was occupied prior to damage by the hurricane in 1999. The former tenants were relocated to leased space, where they remain. A new Federal building in the downtown Charleston area is a viable and desirable option for GSA to offer these tenants. GSA also desires to procure expansion space for the Courts, who maintain a significant presence at Charleston's historic Four Comers of Law. The new Federal building will be built to GSA's specifications, and will therefore have a slab-to-slab

height suitable for courtrooms in the future. Finally, GSA will rid itself of a costly asset ($26,000 or more per year to operate and maintain in its vacant state), will avoid the prohibitively expensive demolition and reconstruction of the building, and will procure a new Federal building in downtown Charleston.

The City will gain a prime site in downtown Charleston, which they will seek to redevelop for public use. This will bring new life to what has been a noticeably unused corner of an active historical neighborhood. The City will also gain through continued Federal presence in the Four Comers of Law district.

Determination. It is in the best interest of the Federal Government to exchange the existing L. Mendel Rivers Federal Building for a new building constructed by the City of Charleston.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "**MOU**")A,is entered into as of the 17th day of June ,2003, (the "**Effective Date**") by and between the United States of America (the "**Government**"), acting by and through the General Services Administration (GSA) and the City of Charleston, South Carolina (the "**City**"), a municipal corporation duly organized under the laws of the State of South Carolina, and existing pursuant to its Charter.

This MOU expresses the good-faith intent of GSA and the City of Charleston to explore a fair and equitable real property exchange to the benefit of both parties. Because this is a nonbinding MOU, neither the City nor GSA shall be able to rely upon, take, or cause any action in furtherance of this MOU. Further, no party or its assigns or successors shall be able to enforce this MOU, unless and until its terms and conditions are incorporated into an executed and approved Exchange Agreement between the City and the GSA.

The exchange of real property is subject to the approval of the Administrator of GSA and the City Council of Charleston. The GSA also has a long-standing agreement to notify the House Committee on Government Reform and Oversight and the Senate Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works for exchanges such as this one. This property exchange requires the foregoing notifications.

1. RECITALS

WHEREAS, the City desires to acquire the existing Federal Building (L. Mendel Rivers Federal Building, hereinafter "Rivers") owned by the GSA and located at 334 Meeting Street, Charleston, SC ("334"), and which is currently unoccupied, in exchange for a parcel of land at 10 1 Broad Street, presently owned by the City ("101"), and a building to be built by the City or its designee to GSA specifications on 101 ("New Building") to support the existing Federal functions (the "Exchange");

WHEREAS, the buildings and their sites to be exchanged, the L. Mendel Rivers Federal Building and New Building (hereinafter "Properties"), shall be substantially equivalent in value;

WHEREAS, the Government is willing to make the Exchange, and has the authority for the Exchange pursuant to 40 U.S.C. § 3304(a);

WHEREAS, the City's authority for the Exchange is pursuant to Ordinance No.

2003-32 ratified by Charleston City Council on the 25th of March ,2003, and the State of South Carolina, S.C. Code Section; and

NOW THEREFORE, the GSA and the City have set forth their respective understandings with regard to the referenced Exchange in this nonbinding MOU.

2. **INTENT TO EXCHANGE**

(a) In consideration of the mutual covenants in this Agreement, the parties intend to convey the Properties simultaneously. The current City owned parcel is that certain tract of land, located at 101 Broad Street, located in the City and County of Charleston, State of South Carolina, more fully shown on **Exhibit "A"** (“101”). The Government owned parcel is the existing Federal Building property known as the L. Mendel Rivers Federal Building and by the municipal address of 334 Meeting Street, Charleston, SC and described in **Exhibit "B",** located in the County of Charleston, State of South Carolina ("334"). Once the New Building is constructed, both 101 and 334 are intended to be conveyed together with all strips, gores, rights and appurtenances pertaining to such tracts, including without limitation all mineral rights, riparian rights and beneficial easements.

(b) The City intends to sponsor the completion of a three-part construction project, in Phases One, Two, and Three and as follows:

- Phase One: Construction of the New Building at 101 Broad Street;
- Phase Two: Construction of a parking garage to service, among others, the Government's parking requirements if acceptable to the Government, for the New Building on the City-owned tract of land more commonly known as the King and Queen Garage site ("King and Queen Garage");
- Phase Three: Demolition, at the election of the City or the Developer, and asbestos abatement for the L. Mendel Rivers Federal Building, followed by redevelopment of the site at 334 Meeting Street.

Completion of Phase One is a precondition to the Exchange of Properties between the City of Charleston and GSA. Phase Two can occur concomitantly with Phase One, and would in fact be advantageous to the Government agencies who will occupy the New Building upon its completion. Phase Three would increase the value of 334.

(c) GSA must retain ownership of 334 until the New Building is complete, provided, however, GSA understands early possession of 334 by the City for the purposes of demolition and site preparation may be necessary according to the City's phased construction plans. Any possession by the City, its assignees, contractors, developers, or designees is subject to assurance that GSA would incur no responsibility or liability, whether financial or otherwise, for the possession by the City of 334 prior to the completion of the Exchange.

(d) The parties acknowledge that the Garage shall not be a part of the Exchange that is contemplated herein. The City shall reserve title to the King and Queen Garage and the Government shall have no ownership or equitable interest in such property. The City desires to select and engage a Developer to undertake the design, permitting and construction of the New Building and the King and Queen Garage (the "Development"). In order to select a Developer, the City must issue a Request for Proposals ("RFP") and shall receive proposals from interested developers who will be willing to undertake the Development for the City. GSA acknowledges the City's desire to accomplish the Development through the use of a Developer, and the City acknowledges that GSA shall participate in the City's selection of the Developer through this RFP process. The City also acknowledges that upon conclusion of the RFP process GSA must concur with the City's final Developer selection. GSA proposes that it will not restrict its approval to a single developer for all three phases of the contemplated Development but rather prefers timely completion of Phase 1, by means which could include the retention of multiple

Developers. In addition, the City recognizes that a number of contractors have expressed interest in participating in the Development. The City intends to utilize appropriate procurement procedures with the goal of maximizing opportunities for competition at every stage and phase of the Development. These procedures shall promote as much competition as practicable consistent with the requirements of price, quality and timeliness. All plans and specifications for the New Building and for any demolition of the Rivers Building prior to Exchange shall be approved by GSA. These approvals shall include GSA's participation with the City in the evaluation of the responsiveness of the proposals submitted by the offering developers; provided, however, that the ultimate responsibility for selecting and administering such contracts shall belong to the City.

(e) GSA and the City shall agree upon a reasonable schedule of milestones ("Schedule") for the construction of the New Building. Critical milestones shall include completion of the aforesaid approval process and the RFP selection process in addition to the design, permitting, and construction of the Development. All milestone dates shall be set in relation to the Effective Date of this MOU. The City acknowledges that GSA retains the right to withdraw from the agreement detailed in this MOU should the Developer with whom the City has contracted fails to complete work according to the agreed schedule. In the circumstance of the Developers' failure to meet the agreed milestones, GSA shall give the City thirty (30) days' notice of its intention not to proceed under the MOU. The City shall then be given a reasonable period of time, or not less than ninety (90) days, after receiving the thirty (30) days notice from GSA to obtain another developer acceptable to GSA, to exercise the performance bond that names GSA as an additional obligee, or to construct the building itself. Notwithstanding, after this reasonable time to replace a defaulting Developer has passed, GSA may proceed with disposal of the L. Mendel Rivers Federal Building and 334 with neither financial responsibility for, nor liability associated with, construction already completed.

(f) Upon the approval of this MOU, the aforementioned RFP shall be reviewed and approved by GSA, at which time the RFP shall be published and the Developer-selection process shall be undertaken for the Development detailed in part (d) of this section.

(g) Once a Developer has been selected, the Developer, using his own funds, shall enter into a development agreement with the City, whereby the Developer shall be responsible for completing the construction on the Development, and upon such completion and after the parties hereto consummate the Exchange, the Developer shall acquire title to 334 from the City.

(h) It is the intent of the City that no City funds with the exception of those funds previously expended to acquire 101 and the King and Queen Garage site and funds necessary to effectuate a termination of the parking agreement with Charleston Courthouse Associates, LLC shall be expended in order to complete the Development that is contemplated herein. Likewise, it is the intent of GSA that no GSA funds with the exception of those funds previously obligated to maintain 334 shall be expended in order to complete the Development that is contemplated herein.

(i) It is the intent of the parties that the appraised value of the New Building to be constructed by the City or its designee on 101 when combined with the value of 101 without improvements shall be equal to the appraised value of the existing Federal Building and its 334 Meeting Street site. This appraised value shall be determined by an independent, third party appraiser for whose services GSA shall contract with the consultation of the City of Charleston.

The appraisal shall take into consideration both value and environmental conditions affecting value. If there is a dispute over the appraisal, the appraiser, the methodology, or the valuation, either party shall have the right to retain an independent contract appraiser who is appropriately credentialed (i.e. MAI licensed in South Carolina) to do a third appraisal at the expense of the party requesting the third appraisal. Said appraiser shall be mutually acceptable to both parties and the appraisal shall be in accordance with the Uniform and Federal Appraisal Standards. Either party may review and inspect the data used as a basis for the appraisal, including environmental conditions of the Properties, and also the narrative, valuation and conclusion. Once the independent contract appraisal has been completed, the appraisal value shall be binding on both parties. If, despite a third appraisal as outlined above, the appraised values of the New Building and the existing Federal Building and 334 are not equal, and the City of Charleston cannot reach an agreement with GSA to provide additional consideration to recover the disparity in value, GSA retains the right not to complete the Exchange, while also incurring no financial liability for failing to complete the Exchange.

3. TIME AND LOCATION OF CLOSING

(a) Closing of the Exchange Agreement shall not occur until:

1. The City has entered into a binding contract with the Developer for the Development and the Developer's purchase of 334 upon terms that are acceptable to the City and GSA; and

2. The City has completed the construction of the improvements at 101 pursuant to the requirements of GSA, and the facility is ready for occupancy; and

3. GSA has approved the appraisal for the Properties

(b) It is the intent of the parties to consummate the conveyances of property contemplated hereby on a mutually agreeable date, which date shall be more specifically set forth in the Schedule (see Section 2 (f)).

(c) It is the intent of the parties that the closing on the property being acquired by GSA and the property being acquired by the City shall be held in Charleston County, South Carolina, at a place mutually agreed upon by both parties, or otherwise as the parties may decide.

4. ITEMS TO BE FURNISHED BY THE PARTIES

Within twenty (20) days after the date of this MOU or as soon thereafter as is practicable, the Parties shall provide all available title evidence to each other of the Properties to be exchanged. Title evidence shall include where applicable tax assessments, deeds, surveys, including the most recent, title insurance policies, and if agreed appraisals of the properties. In addition, the parties shall provide copies of all documents, records, correspondence and information in the Parties possession or control or available to it concerning (i) Environmental Conditions relevant to 101 and 334 or any activities thereon, including without limitation all spill control plans and environmental agency reports and correspondence, or (ii) on-site (or off-site to the extent related in any way to 101and 334) generation, treatment, storage, or disposal of Hazardous Materials. The City and GSA shall have an ongoing obligation to provide each other copies of any additional documentation or information which becomes available to each within five days after any such documentation or information becomes available to the respective party. In addition, due to the new construction contemplated the City shall deliver to GSA documents that become available to the City that relate to the design or new construction proposed on 334 by the City or

the offerors and a copy of the City's contract with the Developer, if and when such contract is executed.

5. INSPECTION RIGHTS

Both parties shall be allowed continuing or periodic inspections of the Properties. This shall include such detail as set forth in Exhibit G, "Inspection Rights." Further, because the City will be undertaking new construction, the GSA shall have the right to inspect or have its agents, contractors or designees inspect the property or remain on site to report on the construction's compliance with the Government's provided requirements and specifications, if any.

6. CLOSING OBLIGATIONS

It is the intent of the parties that from the Date of this MOU through the Closing Date:

(a) Each party shall maintain its property, which is the subject of the MOU, in accordance with standard practices of a prudent owner of property similar to the subject properties located in the City and County of Charleston, State of South Carolina.

(b) Each party shall comply with all Environmental Laws and other Legal Requirements applicable to its property, which is the subject of the MOU.

(c) Without the prior written consent of either party, the other party shall not enter into or extend any Lease with respect to its property. Each party shall cause all Leases to be terminated at no cost to the other party effective at least ten (10) days prior to Closing. Without limiting the other party's obligations under applicable law to any Displaced Person, each party, at no expense to the other party, cause its property to be vacated at least ten (10) days prior to the Closing Date.

(d) Neither party shall take any action to affect title to its property other than to satisfy the other party's title objections or to meet the requirements of the Title Company for issuance of the Title Policy.

(e) Subsequent to the Date of this MOU, the parties intend to negotiate and agree upon additional covenants, Historic Preservation covenants and agreements consistent in substance with **Exhibit C** to apply to 334 only, which if agreed upon, shall be presented for incorporation into the MOU by amendment.

7. GENERAL REPRESENTATIONS

As to the City:

The parties represent to each other that as of the date that the parties execute the MOU and shall be deemed to represent as of the Closing Date that:

(a) The City owns legal and equitable fee simple title to 101, and will convey title to the Government subject only to the permitted exceptions to be agreed upon by the parties prior to closing. Subject to all contingencies contained herein, this Agreement is a valid, binding and enforceable obligation of the City. The City has power and authority to enter into and perform its obligations under this Agreement.

(b) Except as disclosed on **Exhibit D, Part 1**, there are no actions, suits or proceedings pending that affect any portion of 101, involve the ownership of 101, or affect the City's ability to perform hereunder.

(c) All Data to be furnished to the Government by the City shall, to the best of the City's knowledge, be true and correct.

(d) There are no existing or threatened condemnation actions or special assessments affecting 101.

(e) To the best of the City's knowledge, no change in the zoning of 101 is pending or contemplated.

(f) 101 will have direct access to public streets or highways.

(g) The City has not received any notice of any violation of any Legal Requirement pertaining to 101 that has not been complied with. 101 and the operation thereof are in full compliance with all Legal Requirements, and the City has all permits and licenses required for the present use of 101. 101 includes no "wetlands" within the meaning of any Legal

Requirement. To the best knowledge of the City, no part of 101 has ever been altered in violation of any Legal Requirement. To the City's knowledge, 101 is not part of the habitat of any endangered or protected species as defined in any Legal Requirement.

(h) To the City's knowledge, there are no unpaid bills or claims for work on 101. **As to the Government:**

(i) The Government owns legal and equitable fee simple title to 334, and will convey title by Quitclaim Deed to the City subject only to the permitted exceptions to be agreed upon by the parties prior to closing. The Government has power and authority to enter into this MOD. (j) Except as disclosed on **Exhibit D, Part 2**, there are no actions, suits or proceedings pending that affect any portion of 334, involve the ownership of 334, or affect the Government's ability to perform hereunder.

(k) All Data to be furnished to the City by the Government shall, to the best of the Government's knowledge, be true and correct.

(1) There are no existing or threatened condemnation actions or special assessments affecting 334.

(m) Local zoning is not applicable to Government-owned property, therefore no change in the zoning of 334 is pending or contemplated prior to the completion of the Exchange Agreement. If the accepted Developer's proposal is at variance with the present zoning, however, then the City may adopt the appropriate zoning, to be effective as of the date of the exchange of the Properties.

(n) 334 will have direct access to public streets or highways.

(o) The Government has not received any notice of any violation of any Legal Requirement pertaining to 334 that has not been complied with. 334 and the operation thereof are in full compliance with all Legal Requirements, and the Government has all permits and licenses required for the present use of 334. 334 includes no "wetlands" within the meaning of any Legal Requirement. To the best knowledge of the Government, no part of 334 has ever been altered in violation of any Legal Requirement. To the Government's knowledge, 334 is not part of the habitat of any endangered or protected species as defined in any Legal Requirement. (p) To the Government's knowledge, there are no unpaid bills or claims for work on 334.

8. CITY'S ENVIRONMENTAL REPRESENTATIONS

The City will represent and warrant to the Government on the date the City executes the MOD and conveys the 101 to Government, that:

(a) The City is not aware that it has liability under, and upon information and belief, believe that it is presently in compliance with all Environmental Laws applicable to 101 and any operations thereon, and, to the best of the City's knowledge, there exist no environmental

conditions with respect to 101 or any operations thereon, except as set forth on **Exhibit E, Part 1**.

(b) Except as set forth on **Exhibit E, Part 2,** (i) neither the City, nor to the best of the City's knowledge any other person, has ever disposed of solid waste on 101 or has ever generated, manufactured, refined, transported, stored, handled, disposed, transferred, produced, or processed any Hazardous Materials on 101 (other than ordinary small quantities of household or office cleaning supplies and office supplies, such as photocopy supplies for ordinary office use, all of which have been used and disposed of in compliance with all Environmental Laws), and (ii) the City has no knowledge of the Release or Threat of Release of any Hazardous Material at or in the vicinity of 101.

(c) No lien has been imposed on 101 by any government entity in connection with the presence on or off 101 of any Hazardous Material.

(d) Except as set forth on **Exhibit E, Part 3**, the City has not: (i) entered into or been subject to any consent decree, compliance order, or administrative order involving an environmental law with respect to 101 or activities thereon; (ii) received notice under the citizen suit provisions of any Environmental Law in connection with 101 or any operations thereon; (iii) received any request for information, notice, demand letter, administrative inquiry, or formal or informal complaint or claim with respect to any Environmental Condition relating to 101 or any operations thereon; or (iv) been subject to or threatened with any governmental or citizen enforcement action involving an Environmental Law with respect to 101 or any operation thereon; and the City has no reason to believe that any of the above will be forthcoming.

(e) The City has all Environmental Permits necessary for its current activities and operations at 101 and for any past or ongoing alterations or improvements at 101, which Environmental Permits are listed on **Exhibit E, Part 4**. All contract rights and other intangible rights owned by the City (including without limitation all permits, licenses, warranties, guaranties, service contracts, and trade name) related or appurtenant to the Land or Improvements are collectively referred to as the "**Intangible Property**." To the best of the City's knowledge, the City is in full compliance with the terms and conditions of the Environmental Permits, and shall validly assign all Environmental Permits to the Government at Closing as part of the Intangible Property.

9. GOVERNMENT'S ENVIRONMENTAL REPRESENTATIONS

The Government will represent and warrant to the City on the date the Government conveys the 334 to the City pursuant to 42 USC Sec.9260(h)(3), that: all remedial action necessary to protect human health and the environment with respect to hazardous substance activity during the time the property was owned by the United States has been taken (CERCLA covenant).

(a) To the best of the Government's knowledge, there exist no environmental conditions with respect to 334 or any operations thereon, except as set forth on **Exhibit F, Part 1**.

(b) Except as set forth on **Exhibit F, Part 2**, (i) neither the Government, nor to the best of the Government's knowledge any other person, has ever disposed of solid waste on 334 or has ever generated, manufactured, refined, transported, stored, handled, disposed, transferred, produced, or processed any Hazardous Materials on 334 (other than ordinary small quantities of household or office cleaning supplies and office supplies, such as photocopy supplies for ordinary office use, all of which have been used and disposed of in compliance with all

Environmental Laws), and (ii) the Government has no knowledge of the Release or Threat of Release of any Hazardous Material at or in the vicinity of 334.

(c) No lien has been imposed on 334 by any government entity in connection with the presence on or off 334 of any Hazardous Material.

(d) Except as set forth on **Exhibit F, Part 3**, the Government has not: (i) entered into or been subject to any consent decree, compliance order, or administrative order involving an environmental law with respect to 334 or activities thereon; (ii) received notice under the citizen suit provisions of any Environmental Law in connection with 334 or any operations thereon; (iii) received any request for information, notice, demand letter, administrative inquiry, or formal or informal complaint or claim with respect to any Environmental Condition relating to 334 or any operations thereon; or (iv) been subject to or threatened with any governmental or citizen enforcement action involving an Environmental Law with respect to 334 or any operation thereon; and the Government has no reason to believe that any of the above will be forthcoming.

(e) The Government has all Environmental Permits necessary for its current activities and operations at 334 and for any past or ongoing alterations or improvements at 334, which Environmental Permits are listed on **Exhibit F, Part 4**. All contract rights and other intangible rights owned by the Government (including without limitation all permits, licenses, warranties, guaranties, service contracts, and trade name) related or appurtenant to the Land or Improvements are collectively referred to as the "**Intangible Property**." To the best of the Government's knowledge, the Government is in full compliance with the terms and conditions of the Environmental Permits, and shall validly assign all Environmental Permits to the City at Closing as part of the Intangible Property.

10. TITLE COMMITMENT

(a) The parties intend to obtain, at no cost to the other party, all costs to be borne by the Developer, current title commitments to issue the Title Policy (the "Title Commitment"), showing the status of title to the Properties including without limitation all easements, restrictions, rights-of-way, and covenants, if any, affecting the Properties, and committing, at or below normal premiums, to issue title policies on forms acceptable to the parties (i.e. US ALTA form for the Government) at Closing in the full amount of the value of the Properties. (b) Except for Permitted Exceptions as defined in section (c), below, all title exceptions on 101 and 334, including liens, that can be eliminated by payment ofa liquidated sum shall be eliminated by the party on whose land the lien encumbers before the Closing or at Closing as may be necessary to cause the exception to be released of record.

(c) The title to 101 must be acceptable to the Attorney General. Title to 334 must be acceptable to the City and the Legal Department for the City. Each party shall endeavor to notify the other party of any objection to the state of title within a reasonable time after the parties receive the other party's available title evidence, survey, title commitment, and title documents. **Failure of a party to notify the other party of its approval of or objections to title within sixty (60) days after receiving such items shall be deemed disapproval of title and shall constitute termination of the Exchange Agreement by the non-notifying party. No exception to title shall be deemed acceptable unless approved by the affected party by Notice to the other party.** The period of up to sixty (60) days in which each party must review title, plus the parties' thirty-day title cure period and the parties' twenty-day response period mentioned below (if applicable), is referred to herein as the "**Title Review Period**." Each party

shall have thirty (30) days after receipt of a title objection to endeavor in good faith to cure such objection and to present a Title Commitment free of the matter(s) objected to, or agree in writing to cure the objection at Closing as provided in Section 9(b) above. If a party fails to cure any objection or agree to cure it at Closing, as applicable, the affected party may terminate the Exchange Agreement by Notice to the other party given within twenty (20) days following the expiration of such thirty-day cure period. Any exceptions approved by the parties in writing are herein referred to as "**Permitted Title Exceptions**."

11. TITLE TO BE CONVEYED AT CLOSING

It is the intent of the City that if the terms of the MOU as adopted by and survived in an Exchange Agreement can be fulfilled; the City shall convey 101 to the Government by Warranty Deed all its right, title and interest it has in 101.

It is the intent of the Government that if the terms of the MOU can be fulfilled, the Government shall convey the Government Land to the City by Quitclaim Deed all its right, title and interest it has in 334.

12. CONDITIONS TO CLOSINGS

Without limiting any other provision of this Agreement, it is the intent of the parties that their obligation to consummate the transactions contemplated hereby is subject to each of the following conditions:

(a) The parties shall have performed all obligations and complied with all conditions required by this MOU to be performed or complied with by the parties on or prior to the Closing Date.

(b) The parties' property shall not have been adversely affected in any material way as a result of any fire, flood, act of God, or the public enemy, unavoidable cause, accident or other casualty.

(c) The transactions to take place at Closing shall not be restrained or prohibited by any injunction or order or judgment rendered by any court or other governmental agency of competent jurisdiction, and no proceeding shall be pending in which any creditor of either party or any other person seeks to restrain such transactions or otherwise to attach any of the Property.

(d) The City's participation in the Exchange and any obligations contained herein shall be subject to the City entering into the Exchange Agreement and a binding contract with the Developer for the Development, including the construction of the New Building, purchase of334 upon terms acceptable to the City after the Exchange.

13. CLOSING COSTS AND PRORATIONS

(a) Property taxes for the current tax year and any other charges against 101 and 334 (other than special assessments or one-time taxes levied or assessed through the Closing Date, all of which shall be paid by the party owning the property that is encumbered by such assesments or taxes), shall be prorated between the City and the Government effective as of the Closing Date based (where possible) on the actual amount of the expenses in question, and shall be paid at the Closing. All prorations shall be determined by the Contracting Officer and the City's attorney in their reasonable discretion based on a draft closing statement to be prepared by the Escrow Agent and submitted to the Contracting Officer at least three (3) business days prior to Closing. All prorations shall be based on the parties retaining all benefits and burdens of their respective properties through the Closing Date. If on the Closing Date either party has not received tax statements for the current tax year for their property, taxes shall be prorated based upon the

Contracting Officer's and the City's attorney's estimate, taking into account taxes for the immediately preceding tax year. After the Closing, upon receipt of bills for taxes or any other any item prorated at Closing based on an estimate of the bill, an accurate adjustment in the tax or other applicable proration shall be made, based upon the actual bill(s), by cash settlement between the City and the Government.

(b) Closing costs shall be borne by the Developer for both the City and the Government.

14. TERMINATION

If this MOU is terminated by either party pursuant to any of the provisions of this MOU authorizing its termination, the City and the Government shall have no further obligation or liabilities to the other under this MOU. Moreover, the parties acknowledge that this MOU is neither an enforceable agreement nor a contract and shall not serve any purpose beyond outlining the intention of the parties. This MOU shall not be used by either party as the basis of a claim of any nature against the other. No binding obligations shall arise between the undersigned parties until a complete and integrated Exchange Agreement is executed by such parties. During the period of this nonbinding MOU, until superseded by a binding Exchange Agreement, either party may give the other 30-days notice that it is terminating this MOU, and at the end of such 30-day period, this MOU shall be no longer in effect.

15. ASSIGNMENT OF AGREEMENT; DELEGATION

This Agreement is not assignable. Either party may delegate its inspection and other rights under this Agreement to its agents, representatives, Developer and contractors, and provide in the Exchange Agreement for such delegation.

16. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise thereupon; but this provision shall not be construed to extend to the Agreement if this Agreement is made with a corporation for its general benefit.

17. COVENANTS AGAINST CONTINGENT FEES AND EXAMINATION OF RECORD

Each party warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this provision, either party shall have the right to annul this Agreement without liability or in its discretion to deduct from the Purchase Price the full amount of such commission, percentage, brokerage, or contingent fee. The City agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the City involving transactions related to this contract. The Government agrees that the City, its auditors, employees and agents or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under this MOU, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Government involving transactions related to this MOU.

18. MISCELLANEOUS

(a) All of the representations, warranties, covenants and agreements of the City and the Government, as well as any rights and benefits of the other party, if any, shall survive the Closing and shall not be merged into the Deed or Closing.

(b) This MOU embodies the present understanding between the parties hereto with respect to the transaction contemplated hereby, and at this time there are no other agreements, representations, or warranties between the parties with respect to 101 or 334.

(c) The City and the Government agree that each will, at any time and from time to time after the Closing Date, upon the request of the other party hereto, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered all further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances reasonably required for the effective assigning, transferring, granting, conveying, assuring and confirming to the other party in collecting and reducing to possession, any or all of the Properties.

(d) This nonbinding MOU, and the rights and obligations of the City and the Government hereunder only after incorporation, if any by the parties hereto, shall be governed by, and construed and interpreted in accordance with Federal law and not the law of any City or locality; provided that as to all matters involving the common law of title to real property and the common law of grantor and grantee of real property, South Carolina law shall govern to the extent not inconsistent with Federal law.

(e) This MOU may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

(f) References in this MOU to "Sections" and "Subsections" refer to this MOU unless otherwise indicated. Exhibits referred to in this MOU are attached hereto and incorporated herein.

(g) All Notices under this MOU shall be in writing and shall be deemed to be delivered on the earlier to occur of (i) the date of actual receipt of the Notice (regardless of how it is delivered), and (ii) whether or not actually received, two days after the Notice has been deposited in the United States Mail, postage paid, registered or certified mail, return receipt requested, addressed to the City or the Government, as the case may be, at the addresses set forth opposite the signature of such party hereto.

19. ADDRESS FOR NOTICES

If to: CITY OF CHARLESTON
80 Broad Street
Charleston, SC 29401
The Legal Department

If to: UNITED STATES OF AMERICA
General Services Administration
Portfolio Management Division (4PT) Attention:
77 Forsyth Street, S.W.
Atlanta, GA 30303

20. CITY COUNCIL APPROVAL

The City's intent to complete the real estate exchange as described herein and pursuant to this MOU, notwithstanding any provision herein to the contrary, is and shall be expressly subject to the approval of the Council of the City of Charleston and then only upon the effective date of an ordinance duly adopted by the Charleston City Council.

21. REAL ESTATE EXCHANGE AGREEMENT-NO DEFINITIVE CONTRACT

The City shall provide the Government with a form of a Real Estate Exchange

Agreement for 101 and 334 containing the essential provisions of this MOU and other provisions mutually acceptable to the parties. This non-binding MOU is intended as an expression of the mutual intent of the parties as to certain aspects of a proposed transaction. The parties, however, agree that there are material terms as to which agreement has not yet been reached. The parties also agree that this MOU is not intended to be and is not to be construed to be a definitive document and is subject to execution and delivery of a separate Real Estate Exchange Agreement, which Real Estate Exchange Agreement remains to be negotiated by the parties in good faith and must be satisfactory to both parties and their respective legal counsel. In the event that the Real Estate Exchange Agreement described in this MOU is not executed by both parties within 6 months after the New Building is certified for occupancy, or by February 10, 2007, whichever is sooner, then this MOU shall have no further force and effect and neither party shall have any obligation under it or have any right to rely upon it.

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

WITNESSES: **CITY OF CHARLESTON**

/S/: Debra Matthews By: /S/ Joseph P. Riley, Jr.

/S/:Teresa L. Weldon Its: Mayor

ATTEST: By: /S/ Vanessa Turner-Maybank

Its: Clerk of Council

WITNESSES: **THE UNITED STATES OF AMERICA**

/S/: Ellen Brooks By: /S/ Thomas H. Walker

/S/: Illegible Its: Assistant Regional Administrator

Public Buildings Service

_____

EXHIBIT A: 101 BROAD STREET, OWNED BY THE CITY ("101")

Property line adjustment is being performed and corrected legal description will be provided.

EXHIBIT B: 334 MEETING STREET OWNED BY THE GOVERNMENT ("334")

L. Mendel Rivers Federal Building

334 Meeting Street

Charleston, SC

All that certain, piece, parcel or lot of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina known as 334 Meeting Street, measuring and containing 2.18 acres (94,895 square feet), more or less, with the following metes and bounds: Beginning at a concrete monument located on the northern right-of-way intersection of Meeting Street and Henrietta Street a bearing of north 29 degrees 18 minutes 37 seconds west a distance of 229.00 feet along the northeastern right-of-way of Meeting Street to a concrete monument on the right-of-way intersection of Meeting Street and Charlotte Street; thence a bearing of north 62 degrees 06 minutes 00 seconds east a distance of 242.36 feet to a concrete monument and a bearing of north 62 degrees 06 minutes 00 seconds east a distance of 290.79 feet to an iron rod, both courses along the southern right-of-way of Charlotte Street; thence a bearing of south 28 degrees 28 minutes 0 seconds east a distance of 114.96 feet to a iron rebar and a bearing of north 62 degrees 15 minutes 00 seconds east a distance of 1.90 feet to a iron rebar, both courses along the Lands of Peggy H. Ricker; thence a bearing of south 25 degrees 44 minutes 00 seconds east a

distance of 67.10 feet to a iron rebar and a bearing of south 27 degrees 21 minutes 00 seconds east a distance of 46.00 to a iron rebar, both courses along the Lands of Wihelmina Ward; thence a bearing of south 62 degrees 00 minutes 00 seconds west a distance of 49.85 feet along the northern right-of-way of Henrietta Street to a iron rod; thence a bearing of north 26 degrees 29 minutes 00 seconds west a distance of 113.19 feet to a iron rod, a bearing of south 62 degrees 15 minutes 00 seconds west a distance of 43.80 feet to a iron rod, a bearing of south 27 degrees 45 minutes 00 seconds east a distance of 14.29 feet to a iron rod, a bearing of south 62 degrees 15 minutes 00 seconds west a distance of 79.71 feet to a iron rod, a bearing of north 27 degrees 45 minutes 00 seconds west a distance of 14.85 feet to a iron rod, a bearing of south 61 degrees 46 minutes 00 seconds west a distance of 120.51 feet to a iron rod and a bearing south 27 degrees 44 minutes 36 seconds east a distance of 113.76 feet to a concrete monument, all courses along the Lands of the Citadel Square Baptist Church; thence a bearing of south 62 degrees 00 minutes 00 seconds west a distance of 236.19 feet along the northern right- of-way of Henrietta Street to the point of beginning.

The property is know as the L. Mendel Rivers Federal Building and is described in a deed recorded in the Charleston County RMC Office in Deed Book H 86 page 233.

EXHIBIT C: HISTORIC PRESERVATION COVENANT

The Grantee covenants for itself, its successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof that the real property, L. Mendel Rivers Federal Building, 334 Meeting Street, is hereby conveyed subject to the conditions, restrictions, and limitations hereinafter set forth which are covenants running with the land; that the grantee, its successors, and assigns, covenants and agrees, that in the event the property is sold or otherwise disposed of, these covenants and restrictions shall be inserted in the instrument of conveyance.

1. The structure situated on said real property does not contribute to Charleston's Old Historic District and will be replaced by new construction. The site's elevation will be approved in writing by the South Carolina State Historic Preservation Officer (SHPO), Ms. Mary W. Edwards, Deputy State Historic Preservation Officer, Department of Archives and History, 8301 Parklane Road, Columbia, SC 29223-4905.
2. In the event of violation of the above restrictions, the General Services Administration (GSA) or the SHPO may institute a suit to enjoin such violation or for damages by reason of any breach thereof.
3. These restrictions shall be binding on the Parties hereto, their successors, and assigns in perpetuity; however, the SHPO may for good cause, and with the concurrence of the ACHP modify or cancel any or all of the foregoing restrictions upon written application of the Grantee, its successors or assigns.
4. The acceptance of the delivery of this Deed shall constitute conclusive evidence of the agreement of the Grantee to be bound by the conditions, restrictions, and limitations, and to perform the obligations herein set forth.
5. Development of the property shall be in compliance with The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and development plans shall be approved by the SHPO for guidance in planning the development of the property. If the Owner and the SHPO are unable to agree on the proposed development, the Owner shall forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation (ACHP). The Owner, SHPO, and the ACHP shall reach an agreement

regarding the proposed development. If such an agreement cannot be reached the ACHP shall forward all relevant project materials with comments to GSA. GSA will consider such comments; and, if necessary, take action in accordance with the terms and conditions of these covenants.

EXHIBIT D: PENDING ACTIONS, SUITS, OR PROCEEDINGS PART 1:

AS TO THE CITY: NONE PART 2:

AS TO THE GOVERNMENT: NONE

EXHIBIT E: PART 1: ENVIRONMENTALCONDITIONS

NONE

EXHIBIT E: PART 2: HAZARDOUS MATERIALS

NONE

EXHIBIT E: PART 3: ENVIRONMENTAL LAW

NONE

EXHIBIT E: PART 4: ENVIRONMENTAL PERMITS

NONE

EXHIBIT F: PART 1: ENVIRONMENTAL CONDITIONS

An Asbestos Abatement Cost Estimate Summary for 334 prepared for GSA is attached hereto and incorporated by reference herein. The entire report is available for review at the Department of Economic Development for the City of Charleston.

EXHIBIT F: PART 2: HAZARDOUS MATERIALS EXHIBIT F: PART 3: ENVIRONMENTAL LAW EXHIBIT F: PART 4: ENVIRONMENTAL PERMITS EXHIBIT G: INSPECTION RIGHTS

(Same as above) (Same as above) (Same as above)

As to the City:

(a) Before and after Closing, the City shall make available to the Government for inspection during normal Government business hours at (as the City elects) City's offices, or the office of the Contracting officer, all books, records, data (including computer data and software in any form), and supporting documents and instruments relating to 101 (the "Data"). The Data shall include all information relating to 101 and its operation and maintenance possessed by, in the control of, or available to the City. Upon Government request, the City shall, at the City's expense, promptly provide the Government with copies of any or all Data.

(b) Before Closing, the Government may enter upon 101 during business hours, and at all other times upon reasonable Notice to the City, and may, at the expense of the Government, make any audits, appraisals, inspections, tests, and other investigations of the City Land, including any Environmental Site Assessment (ESA)(s), that the Government deems necessary or desirable. The City shall cooperate fully with and provide all access and information in the City's possession or control that may be desirable for such investigations.

(c) Before Closing, the Government may cause an independent environmental contractor chosen by the Government in its reasonable discretion (an "**Independent Contractor**") to inspect, audit and test 101 at the Government's expense for the existence of any Environmental Conditions and any Environmental Violations. Such inspection, audit, and testing is referred to herein as the "**Environmental Site Assessment**". The scope, sequence, and timing

of the Environmental Site Assessment shall be at the sole discretion of the Government. (d) If the Environmental Site Assessment reveals, or at any time prior to the Closing Date the Government otherwise becomes aware of, the existence at 101 of any Environmental Condition or any Environmental Violation, other than those already revealed, the Government shall give City Notice thereof, and:

1. For sixty (60) days after Notice to the City of such Environmental Condition or Environmental Violation, and for sixty (60) days after the Effective Date of the MOU in the case of already known Environmental Conditions, the City shall have the right to present evidence to the Government that no Remediation Action is appropriate. No Remediation Action by the City shall be required with respect to a particular Environmental Condition or Environmental Violation if (i) no Remediation Action is required to be undertaken with respect thereto by any Environmental Law, as established to the reasonable satisfaction of the City or the Government by an Agency Letter or a Certification, (ii) no Remediation Action is necessary, in the opinion of the Government, to avoid the possibility of a Claim against the Government arising out of the Environmental Condition or Environmental Violation, and (iii) the Environmental Condition or Environmental Violation does not affect or limit the market value or use of 101; or (iv) the City determines that such Remediation Action is economically not feasible, at which time the parties shall negotiate in good faith to resolve the cost allocation of such Remediation Action and in the absence of a resolution the parties may terminate the Exchange.

2. If the City determines, in accordance with the preceding paragraph, that no Remediation Action is required with respect to an Environmental Condition or Environmental Violation, the Government may in its discretion terminate this Agreement by Notice to the City and/or postpone Closing one or more times by the period the Government deems reasonably necessary to complete such Remediation Action at no cost to the City.

3. If any Remediation Action by the City includes the cleanup of Hazardous Materials, and applicable Environmental Laws do not establish a specific level of cleanup, the level of cleanup required by the Government shall not be more strict than the level then required, or reasonably expected by the Government to be required at a later date, by the Government Entities responsible for enforcing the applicable Environmental Laws, provided, however: (i) that the cleanup shall be sufficient so that the use of the City Land is not affected or limited by the remaining level of Hazardous Materials, (ii) that the level of cleanup required shall be sufficient that the market value of 101 will not be materially reduced by the remaining level of Hazardous materials, and (iii) the City shall provide an Agency Letter or Certification with respect to the cleanup.

(e) The information produced in connection with any Environmental Site Assessment is intended to assist any future determination whether any Liabilities are attributable, wholly or in part, to any Environmental Conditions or violations of Environmental Laws existing as of and/or prior to the Closing Date or arising from conditions existing as of and/or prior to the Closing Date, but such information shall not be conclusive with respect to such Issues.

(f) Nothing in this Agreement shall be construed to excuse the City from complying with all Environmental Laws, regardless of whether this Agreement is terminated. (g) The City will provide the Government copies of any environmental tests completed on 101 (i.e. groundwater testing) in its possession.

As to the Government:

(a) Before and after Closing, the Government shall make available to the City or the Developer for inspection during normal City business hours at (as the Government elects) Government's offices, or the office of the Contracting officer, all books, records, data (including computer data and software in any form), and supporting documents and instruments relating to 334 (the "Data"), except that covered by attorney-client privilege or due to national security. The Data shall include all information relating to 334 and its operation and maintenance possessed by, in the control of, or available to the Government. Upon City request, the Government shall, at the Government's expense, promptly provide the City with copies of any or all Data. (b) Before Closing, the City or the Developer may enter upon 334 during business hours, and at all other times upon reasonable Notice to the Government, and may, at no cost to the Government, make any audits, appraisals, inspections, tests, and other investigations of 334, including any Environmental Site Assessment (ESA)(s), that the City deems necessary or desirable. The Government shall cooperate fully with and provide all access and information in the Government's possession or control that may be desirable for such investigations. (c) Before Closing, the City or the Developer may cause an independent environmental contractor chosen by the City or the Developer in its reasonable discretion (an "**Independent Contractor**") to inspect, audit and test 334 at no cost to the Government for the existence of any Environmental Conditions and any Environmental Violations. Such inspection, audit, and testing is referred to herein as the "**Environmental Site Assessment**". The scope, sequence, and timing of the Environmental Site Assessment shall be at the sole discretion of the City or the Developer.

(d) If the Environmental Site Assessment reveals, or at any time prior to the Closing Date the City or the Developer otherwise becomes aware of, the existence at 334 of any Environmental Condition or any Environmental Violation, other than those already revealed, the City shall give the Government Notice thereof, and:

1. For sixty (60) days after Notice to the Government of such Environmental Condition or Environmental Violation, and for sixty (60) days after the Effective Date of the MOU in the case of already known Environmental Conditions, the Government shall have the right to present evidence to the City that no Remediation Action is appropriate. No Remediation Action by the Government shall be required with respect to a particular Environmental Condition or Environmental Violation; however the Government acknowledges that the Environmental Condition that exists at 334 does affect and limit the market value or use of 334 and the Government further acknowledges that such condition has been factored into the appraisal of 334. The City or the Developer shall have the right to independently assess the Environment Condition or Environmental Violation in order to reach an independent conclusion with regard to its effect on the appraised value and development of 334.

2. If the City or the Developer determines that the Environment Condition or Environmental Violation adversely affect the appraised value or development of 334 to the extent that Remediation Action on 334 is not feasible in their sole discretion, the City may in its discretion terminate this Agreement by Notice to the Government and/or postpone Closing one or more times by the period the City or the Developer deems reasonably necessary to complete such Remediation Action at no cost to the Government.

3. If any Remediation Action by the City or the Developer at 334 includes the cleanup of Hazardous Materials, and applicable Environmental Laws do not establish a

specific level of cleanup, the level of cleanup required by the City or the Developer shall not be more strict than the level then required, or reasonably expected by the City or the Developer to be required at a later date, by the Entities responsible for enforcing the applicable Environmental Laws, provided, however: (i) that the cleanup shall be sufficient so that the use of 334 is not affected or limited by the remaining level of Hazardous Materials, and (ii) the City shall provide an Agency Letter or Certification with respect to the cleanup.

(e) The information produced in connection with any Environmental Site Assessment is intended to assist any future determination whether any Liabilities are attributable, wholly or in part, to any Environmental Conditions or violations of Environmental Laws existing as of and/or prior to the Closing Date or arising from conditions existing as of and/or prior to the Closing Date, but such information shall not be conclusive with respect to such Issues.

(f) Nothing in this Agreement shall be construed to excuse the Government from complying with all Environmental Laws, regardless of whether this Agreement is terminated (g) The Government shall provide the City copies of any environmental tests completed on 334 (i.e. groundwater testing) in its possession.

The vote was not unanimous. Councilmember George voted nay to second and third readings.

Council then considered a bill up for first reading. Mayor Riley briefly reported that this bill was the result of a lot of consideration. He noted that Councilmember Fishburne and a number of others have been very interested in this matter. He commented that there had been some publicity that a biker's rally would be coming to Charleston in April. He spoke of every citizen's right to reasonable quietude and said that this should be protected the same way that citizens are protected for safety from crime and fire.

The Mayor noted that the livability of our City includes reasonable hustle and bustle, but it should not include unnecessary extreme noise. He commented that the City has a noise ordinance that our Police Department is able to use and uses for loud noises. He said this would include loud motorcycle noises, noises where there is a direct muffler or the intentional creation of very substantial noise.

He spoke of looking for a more explicit way to regulate the motorcycle noise. He said that staff had found an ordinance in another city that specified the rapid throttle advancing or revving up. The Mayor said the feeling had been that this would be fairer to the motorcyclists because it made it less subject.

He referred to comments that had been made in Citizen Participation and said that the noise is quite reverberating. Mayor Riley stated that the bill before Council was an effort to strengthen what the City had on the books, to protect our neighborhoods as well as to put forth an objective, discernible standard that motorcyclists would know is the rule in Charleston.

Ms. Andrews added that the rally would be notified of the bill so that they have an opportunity to get the word out to the visitors.

Councilmember Fishburne thanked staff for the work they had done on this matter and said that he thought that it would help. He commented that this should not be seen as neighborhoods versus motorcycles. He noted that this matter had been discussed in the Tourism Commission. He said that the weekend would be the biggest weekend for the tourist industry for the whole year. He commented that they are just as concerned about the situation as the neighborhoods are. He referred to this as a matter of joint concern and said that he recognized that people must

have access to public places. He expressed the belief that this would help the Police Department and commented that he hoped the motorcyclists would understand the intent. He added that everyone, not only the neighbors, but the tourists and the merchants use a limited space.
Councilmember Lewis wanted to know the increase in noise would be determined. He asked if this referred to motorcycle riders who just sit on their bikes and race the motor. Ms. Andrews replied that it would apply to this situation and it also referred to someone taking off from a red light or a stop sign and revving. She said this would be an intentional increase in noise in which they rev the throttle.
When Councilmember Lewis asked if this could be enforced, Major Herbert Whetsell responded that it would be easier to enforce. He said that this would be something that an officer could sink his teeth into because it would not be necessary to worry about decibel levels. Major Whetsell said this bill would apply to an obvious increasing of noise.
Councilmember Waring recalled that certain times are part of the existing noise ordinance. Ms. Andrews said that is a separate noise ordinance that applies to amplified music that can be heard in the public right-of-way and it also applies to unamplified music after midnight. She said the matter before Council was a general noise bill with no specific time applied to it. She added that this bill would be effective 24 hours per day, seven days per week.
Councilmember Shirley remarked that the City would not be going after anyone. He said that people who come to Charleston and abide by the rules and regulations should be welcomed here. He commented that bikers are good people and noted that many of his friends are bikers. He noted that he had been told of instances when revving the motorcycles had set off car alarms.
Major Whetsell commented that Councilmember Shirley was correct. He stated that it would not only be true of the motorcycles. There are cars that have extra mufflers that do the same thing. He said that there are problems with this kind of noise in the subdivisions as well. Mayor Riley said he thought that it was good Councilmember Shirley had brought up this point. He went on to say that people who ride motorcycles are fine upstanding people and this is a recreation vehicle that is enjoyed by many people. He stressed that this was not a negative toward them. He said this was done to be sure that those who abuse know that they cannot do so in Charleston.
There were no further questions or comments of Council.
On motion of Councilmember Tinkler, seconded by Councilmember Evans, Council voted to give first reading to the subject bill.
First reading was given to a bill entitled:
AN ORDINANCE TO AMEND CHAPTER 21 OF THE CODE OF THE CITY OF CHARLESTON BY AMENDING SECTION 21-16 TO PROHIBIT PERSONS FROM ENGAGING IN CLAMOROUS SINGING, YELLING, SHOUTING, WHOOPING, BELLOWING, HOLLERING, OR OTHER LOUD, OBSTREPEROUS, WANTON AND UNNECESSARY NOISES, OR FROM RIDING, DRIVING, PROPELLING, OR OTHERWISE OPERATING ANY MOTORIZED VEHICLE, INCLUDING BUT NOT LIMITED TO CARS, TRUCKS, VANS AND MOTORCYCLES, IN A MANNER WHICH EMITS UNNECESSARY AND LOUD NOISE OR LONG CONTINUED NOISE, EITHER IN THE DAY TIME OR AT NIGHT WHICH DISTURBS THE PEACE AND QUIET OF THE CITY, WHETHER IN THE PUBLIC STREET OR WITHIN ENCLOSURES, PUBLIC OR PRIVATE, AND FURTHER AMENDING SECTION 21-16 TO PROVIDE THAT

OPERATING A MOTORIZED VEHICLE BY RAPID THROTTLE ADVANCING (REVVING) OF AN INTERNAL COMBUSTION ENGINE RESULTING IN INCREASED NOISE FROM THE ENGINE IS PROHIBITED.

The Affordable Housing Production Schedule was the remaining item on the agenda and it was accepted as information. A copy of this information was included in the agenda packets and the information is available through the Department of Housing and Community Development.

Councilmember Gilliard moved that the Mayor Riley to send a letter to the District 20 Constituent School Board and a letter along with the Resolution pertaining to Murray LaSaine School, which Council adopted earlier in this meeting. Councilmember Gallant seconded the motion. The motion carried.

Councilmember Fishburne wanted to know if there was any news on the marina and dock extension. Mayor Riley commented that the City's legal staff was working on this issue. He added that he did not have anything definitive to report at this time.

When Councilmember Fishburne asked for graphs and charts pertaining to the budget information, Mayor Riley said that the information would be sent to him.

The Mayor noted the next City Council meeting would be at 5:00 p.m., Tuesday, April 8, 2003 at City Hall.

There being no further business the meeting adjourned at 8:30 p.m.

Vanessa Turner-Maybank Clerk
of Council