

**RECEIVED**

DEC 31 2021

SC Court of Appeals

AGREEMENT FOR THE PURCHASE & SALE  
OF REAL PROPERTY

THIS AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY is made and entered into by and between **Jo Ellen R. Johnson, Robert Michael Gaddis, Elaine Gaddis Neff, and Grayson Roberts Gaddis** (hereinafter the "Seller"), and **Red Clay Development, SC, LLC**, a South Carolina Limited Liability Company (hereinafter the "Buyer").

WITNESSETH:

WHEREAS, Seller is the owner of a certain tract, lot or parcel of land which is more precisely defined in Paragraph 1 below, (the "Property"); and

WHEREAS, Buyer desires to acquire the Property from Seller, and the Seller desires to sell the Property to Buyer, upon the terms and conditions set forth herein;

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

1. PROPERTY

Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller that certain tract or parcel of land in Greenville County, South Carolina containing approximately 41.95 acres, at the Southwest intersection of Stallings Road and Mountain Creek Church Road, together with all easements appurtenant thereto and improvements located thereon (the "Property"), as is more particularly described on the attached Exhibit "A", and having multiple Tax Parcel Numbers as listed on Exhibit A.

2. PURCHASE PRICE

The purchase price ("Purchase Price") for the Property, shall be Two Million, Five Hundred, Seventeen Thousand, and No/100 Dollars (\$2,517,000.00), and shall be payable as follows:

a. Earnest Money Deposit in the amount of Twenty Five Thousand and No/100 Dollars (\$25,000.00), paid to the Escrow Agent within TWO (2) business days following the Effective Date, to be held in escrow subject to the terms set forth in Paragraph 8 hereof;

b. The balance of the purchase price shall be due and payable in certified or wired funds at Closing;

3. Sewer Plan Contingency. Buyer's obligation to close is contingent on final written approval of the Buyer's pending Sewer Line Engineering and Improvement Plan application by the Metropolitan Sewer Subdistrict and/or Renewable Water Resources (ReWa), on or before November 30<sup>th</sup>, 2020.

4. CLOSING

The Closing of this transaction (the "Closing") shall occur on or before the sooner of (a) two (2) business days following the end of the Sewer Plan Contingency or (b) two (2) business days following the final approval of the Sewer Line Improvement Plan, acceptable to Buyer, by the Metropolitan Sewer Subdistrict and/or Renewable Water Resources (ReWa) the ("Closing Date"), or on such other date as the parties may mutually agree, at the office of Buyer's counsel, Lawrence Law Firm, L.L.C., in Greenville County, South Carolina. All risk of loss shall remain with the Seller until recordation of the deed to the Buyer. Possession shall be delivered at Closing.

5. TITLE & CLOSING DOCUMENTS

(a) Buyer shall have its attorney examine the title to the Property during the Contingency Period. Should Buyer's attorney not approve the title to the Property to be received by Buyer, Buyer shall advise Seller in writing, within Ten days of the Effective Date, of its objections to title (which objections shall not include ad valorem taxes and general utility easements described below), and Seller shall have a period of fifteen (15) days from the date of the notice within which to remedy the objections to the satisfaction of the Buyer's attorney. In the event the objections are not cured or remedied within the fifteen (15) day period, Buyer, at its election and as its sole remedy, shall have the right to either (i) accept title to the Property subject to the objections (which shall be deemed "Permitted Exceptions") or (ii) terminate this Agreement and receive the return of all sums paid as earnest money and all interest, if any, earned thereon and the parties shall have no further obligations to each other.

(b) At Closing, Seller shall execute and deliver to Buyer (i) a General Warranty Deed, with revenue stamps attached, conveying valid, insurable (at regular title insurance rates), marketable and indefeasible fee simple title to the Property free and clear of all liens and encumbrances except ad valorem real property taxes for the calendar year of sale (to be prorated as of the Closing Date), general utility easements which do not limit the development of the Property for Buyer's proposed use and such other matters as are not objected to by Buyer (collectively referred to herein as the "Permitted Exceptions"); (ii) an owner's affidavit in form reasonably acceptable to Buyer and Buyer's title insurer affirming that there are no outstanding liens against the Property and indemnifying Buyer against all liens from claims arising prior to Closing; (iii) a FIRPTA affidavit in the form complying with the Internal Revenue Code of 1986, as amended, so that withholding from the Purchase Price will not be required, and (iv) such other items as may reasonably be requested by Buyer or the title insurance company.

6. CLOSING EXPENSES

Each party shall be responsible for the following closing expenses:

- a. Seller shall be responsible for the cost of preparation of its deed, and the cost of revenue stamps, if any, attached to the deed.
- b. Buyer shall be responsible for the cost of the loan (if any), recording the deed, title examination and title insurance.
- c. Each party will be responsible for all of its other closing costs, including its respective attorneys' fees.
- d. Seller will credit to Buyer at Closing an amount equal to fifty percent (50%) of the estimated *Roll-Back* Taxes, being the deferred property taxes which will become due upon change of use from the current Agricultural classification. Buyer will thereafter be responsible for payment of such *Roll-back* taxes when billed.

7. AD VALOREM TAXES OR ASSESSEMENTS

City and/or County Ad Valorem taxes on the Property for the year in which the Closing occurs will be prorated to the Closing Date. Any assessments against the Property of which Seller has notice shall be paid by Seller on or prior to the Closing Date.

8. ESCROW OF EARNEST MONEY

Lawrence Law Firm, LLC, is appointed Escrow Agent to receive, hold and disburse earnest money paid or payable by Buyer pursuant to the terms hereof, in accordance with the following terms and conditions:

- a. In the event of default by either party of the terms hereof, Escrow Agent is instructed to deliver all earnest money to the other party in accordance with the provisions of Paragraph 11 hereof.
- b. In the event of termination of this Agreement by Buyer in accordance with the terms of this Agreement, Escrow Agent is instructed to deliver all earnest money held in escrow, together with any interest earned thereon, to Buyer.
- c. In the event the purchase and sale contemplated hereby is closed, or as otherwise provided herein, Escrow Agent is instructed to deliver the earnest money, along with any interest earned thereon, to Seller, to be treated as a credit against the Purchase Price.
- d. In the event of a dispute between the parties with respect to the disbursement of the earnest money, the Escrow Agent shall be authorized to deposit such funds with the Clerk of Court of Greenville County in the form of an Interpleader action. Buyer and Seller agree that Escrow Agent shall not be liable to Buyer and Seller for any reason in connection with the handling of the earnest money, except in the case of Escrow Agent's gross negligence or intentional misconduct.

9. BROKERAGE COMMISSIONS

Buyer and Seller each warrant to each other that no real estate brokerages, agencies, firms, agents or representatives, or any other firms or individuals have acted on its behalf pursuant to this Agreement or in connection with the sale and purchase of the Property, and that no commissions are or will be due arising from this Agreement and the transactions contemplated hereby. Each party hereto shall indemnify and hold harmless the other from and against any loss or liability by reason of the breach by the indemnifying party of the foregoing warranty and representation.

10. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby makes the following representations and warranties, which representations and warranties shall be deemed made by Seller to Buyer also as of the Closing Date unless written notice of any changes in such representations and warranties is delivered by Seller to Buyer not less than ten (10) days prior to said Closing Date:

a. Interests in the Property; Agreements. Seller is the sole legal fee owner of the Property, and is not holding fee title as a nominee for any other person or entity. No person or entity has any right of first refusal, option or other right to acquire any interest in the Property or any part thereof, and Seller has not sold or contracted to sell the Property or any portion thereof or interest therein other than as set forth herein (other than contracts which are no longer enforceable.) There are no parties or trespassers in possession or which have a right to possession of all or any portion of the Property, and there are no leases or licenses affecting the Property.

b. Authority. Seller has the right, power and authority to enter into this Agreement and to sell and convey the Property in accordance with the terms and conditions herein contained.

c. Non-Contravention of Law or Existing Documents. Neither the execution or delivery of this Agreement, nor consummation of the transactions contemplated hereby, nor fulfillment of or compliance with the terms and conditions hereof, contravenes any provision of any law, statute, rule or ordinance to which the Seller or the Property is subject, or conflicts with or results in a breach of, or constitutes a default under, any of the terms, conditions, or provisions of any agreement or instrument to which Seller is a party or by which it or the Property is bound, or constitutes a default under any of the foregoing and there exists no default in respect of any obligation pertaining to the Property.

d. Condemnation or Assessment. There is no pending condemnation or similar proceeding or assessment affecting the Property, or any part thereof, or which would impair or curtail full and free access to the Property from public highways, streets or roads nor, to Seller's knowledge, is there any such proceeding or assessment contemplated by any government authority.

e. Litigation. There is no litigation or threatened litigation which could now or in the future in any way constitute a lien, claim, or obligation of any kind on the Property, affect the use, ownership or operation of the Property or otherwise adversely affect the Property or the performance by Seller of its obligations hereunder. For purposes of this clause, litigation includes lawsuits, actions, administrative proceedings, governmental investigations, arbitration's and all other proceedings before any tribunal having jurisdiction over the Property.

f. Tax liability. Seller is not indebted to the Federal Government or any other public authorities for delinquent taxes, assessments or other charges against the Property of any nature whatsoever for which a lien has been asserted against Seller or the Property.

g. Assumption of Liabilities. Buyer, by virtue of the purchase of the Property, will not be required to satisfy any obligation of Seller arising prior to the Closing Date other than those to be expressly assumed by Buyer pursuant to this Agreement. Other than such obligations so expressly assumed by Buyer or any liens or other obligations with respect to the Property which result from any action or activities by or on behalf of Buyer after Closing Date, Seller, after the date of Closing, will pay and discharge any and all liabilities of each and every kind arising out of or by virtue of possession, ownership or use of the Property prior to the Closing Date, and shall indemnify, defend and hold Buyer harmless therefrom.

h. Payment of Impositions. No assessment, special assessment or tax affecting the Property shall remain unpaid after the due date thereof prior to Closing without the prior written consent of Buyer; provided, however, Seller may in good faith, at its expense and in its own name and behalf, diligently contest by appropriate proceedings any impositions so long as Seller gives Buyer not less than ten (10) days prior notice of the institution of such proceedings, such proceedings are instituted prior to delinquency and Seller shall post such security in such manner, form and amount as Buyer in its discretion may request to ensure that the same will be paid in full prior to any enforcement against Buyer, or the Property, or any part thereof.

i. Foreign Person. Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "Code") and shall deliver to Buyer at or prior to the Closing an Affidavit prepared by Buyer evidencing such fact and such other documents as may be required under the Code.

j. Violations; Defects. Seller has complied with all applicable laws, ordinances, regulations, statutes and rules relating to the Property, and every part thereof. Seller has not received nor is Seller aware of any notification from the Department of Building Standards, Health Department, or such other City, County, State, or Federal authority having jurisdiction, requiring any work to be done on the Property or advising of any condition (including, without limitation, the presence of hazardous substances) which would render the Property dangerous, affect the usability of the Property or any part thereof or otherwise adversely affect the Property or any part thereof.

k. Hazardous Substances. To the best of Seller's knowledge and belief, the Property contains no chemical, material or substance exposure which is prohibited, limited or regulated by

governmental authorities nor is the Property subject to any liability or lien or claim of lien under any statute, regulation, ordinance or other requirement, including without limitation the following: the Clean Air Act, 42 U.S.C. Section 7401 et seq.; The Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et. seq.; The Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.; The Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901-6987.; any and all South Carolina statutes or regulations concerning storm-water management, wastewater management, underground storage tanks, sedimentation control, wetlands management, wildlife management, well water quality, or any other environment condition that pertains to the Property. Seller hereby warrants and represents that, to its actual knowledge during the period of its ownership of the Property, it has not brought onto the Property, or generated, used, stored or allowed to remain thereon, or disposed of upon, within, about or under the Property any waste, debris, or contamination in violation of the above described Regulations.

#### 11. DEFAULT; LIQUIDATED DAMAGES

In the event of a default by Buyer under the terms hereof Seller shall be entitled to terminate this Agreement by giving written notice thereof to Buyer, whereupon Escrow Agent shall transfer to Seller all earnest money (if not previously disbursed to Seller as provided herein) as liquidated damages arising from and not as a penalty for Buyer's default. Seller and Buyer acknowledge that because of the difficulty, uncertainty and inconvenience of ascertaining actual damages, the retention of such earnest money as liquidated damages does not constitute a penalty but represents fair, adequate and reasonable compensation to Seller for Buyer's breach, and shall be Seller's sole remedy, and no other damages, rights or remedies shall in any case be collectible, enforceable or available to Seller, including specifically, any right to specific performance.

In the event of a default by Seller under the terms hereof Buyer shall be entitled to either (1) terminate this Agreement by giving written notice thereof to Seller, whereupon Escrow Agent shall return to Buyer all earnest money, together with interest earned thereon, if any, or (2) pursue an action to seek specific performance, and reimbursement for any cost or expense incurred in such action, including but not limited to court costs and reasonable attorneys fees; the Seller shall have no other monetary liability to Buyer whatsoever and no other damages, rights or remedies shall in any case be collectible, enforceable or available to Buyer.

#### 12. ARBITRATION

Prior to the filing of any legal action in connection with or arising out of this Agreement, the party seeking to bring such cause, suit or action must first submit such dispute to binding arbitration under the practices and procedures of the Commercial Arbitration Rules of the American Arbitration Association. Such arbitration shall take place in Greenville County, South Carolina. The decision of the arbitrator(s) shall be final, conclusive and binding upon the parties hereto and shall be enforceable as a binding decision or decree of a court of competent jurisdiction and may be entered as a judgment in any court of competent jurisdiction. The expenses of the arbitrator(s) shall be shared equally by the parties, but each party shall bear its own attorneys fees and costs.

13. CONDEMNATION

In the event of any commenced, to be commenced or consummated proceedings in eminent domain or condemnation (collectively "Condemnation") respecting the Property or any portion thereof prior to Closing, Buyer may elect, by written notice to Seller, to terminate this Agreement and be relieved of its obligation to purchase the Property. If Buyer makes such election, the Earnest Money Deposit (and Additional Earnest Money Deposits, if any) delivered by Buyer to Escrow Agent pursuant to the terms of this Agreement and other sums delivered to Seller by Buyer promptly shall be returned to Buyer and neither Buyer nor Seller shall have any further liability to the other and shall be relieved of all obligations thereunder. If Buyer fails to make such election prior to the Closing Date, this Agreement shall continue in effect, there shall be no reduction in the Purchase Price, and Seller shall, at Closing, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, its entire right, title and interest in and to any condemnation award or settlement made or to be made in connection with such Condemnation proceeding. Buyer shall have the right at all times to participate in all negotiations and dealings with the condemning authority and approve or disapprove any proposed settlement in respect to such matter. Seller shall forthwith notify Buyer in writing of any such Condemnation respecting the Property.

14. GENERAL PROVISIONS

a. EFFECTIVE DATE. The effective date of this agreement shall be the date of full execution hereof by all parties hereto.

b. Notices. All notices and communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person or by an overnight service, such as Federal Express, or deposited in the United States mail by registered or certified mail, postage prepaid, properly addressed to the following three (3) addresses of Sellers' respective counsel:

Bruce Bannister  
Bannister, Wyatt and Stalvey, LLC  
PO Box 10007  
Greenville SC 29603

R. O'Neil Rabon  
Ashemore Leaphart and Rabon  
601 McBee Street, Suite 200  
Greenville SC 29601

S. Allan Hill  
S. Allan Hill. P.C.

819 East North Street  
Greenville SC 29601

If Buyer, to:

Red Clay Development, SC, LLC  
PO Box 3871  
Greenville, SC 20608  
Attn: Frank M. Warlick

with a copy to:

Scott E. Lawrence, Attorney at Law  
Lawrence Law Firm, L.L.C.  
217 E. Park Ave  
Greenville, S.C. 29601

Notices shall be deemed to be given upon personal delivery, or two business days after deposited with the United States mail service, or the following business day if deposited with an overnight delivery service.

c. Benefit; Assignment. This Agreement shall be freely assignable by either party, provided notice is given to the other party within seven days of such assignment.

d. Successors And Assigns. The Buyer and Seller, for themselves, their heirs, successors, executors and administrators, hereby agree to the full performance of the promises, agreements, and covenants herein.

e. Controlling Law. This Agreement has been made and entered into under the laws of the State of South Carolina, and those laws shall control the interpretation of this Agreement.

f. Construction Of Terms. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa. Each party has had the opportunity to review this Agreement and to seek Legal Counsel with respect to the matters contained herein; therefore, if any term or provision is held to be ambiguous by a court of competent jurisdiction, such provision shall not be construed against the drafting party.

g. Captions. Titles and captions are inserted for convenience only and in no way define, limit, extend or describe the scope or intent of this Agreement or any of its provisions and in no way are to be construed to affect the meaning or construction of this Agreement or any of its provisions.

h. Severability. The invalidity or unenforceability of any part or parts of this Agreement shall not result in the termination of the entire Agreement nor shall such affect any

other part or parts, and this Agreement shall continue to be binding and effective with the invalid or unenforceable parts being stricken as if never written.

i. Waiver Of Breach. The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

j. Seller's Cooperation. Seller agrees to cooperate with Buyer by executing applications for governmental permits or approvals affecting the Property or adjacent land, including without limitation, zoning approvals, plat approvals and street realignments and street closings, as may be required for the Buyer's purposes.

k. Survival Of Representations And Warranties. All representations, warranties, covenants and agreements made herein by the parties, shall survive the closing and delivery of the deed or deeds contemplated hereby.

l. Entire Agreement, Amendments. This Agreement, together with the Exhibits attached hereto, if any, contains all of the terms agreed upon with respect to the subject matter hereof, and may be modified or amended only by a written agreement executed by all of the parties hereto.

m. Only Agreement, Release of Prior Contracts. Any and all prior options, contracts, or other agreements between the parties are hereby cancelled and released, and the parties hereby release each other from any obligations thereunder. This Agreement is the only Agreement between the parties as of the date hereof.

#### 15. BUYER PERSONAL PROPERTY

Sellers shall have 30 days following Closing to remove any items of tangible personal property from the old residence located on the property. Any items left after said 30 days will be deemed abandoned, and may be disposed of by the Buyer.

[SIGNATURE LINES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, on the dates indicated below, the parties have executed this Agreement, by and through their duly appointed officer, member, manager or representative.

SELLER:

Jo Ellen R. Johnson by her Agent,

Ben W. Benter (SEAL)

Jo Ellen R. Johnson

Robert Michael Gaddis (SEAL)

Robert Michael Gaddis

\_\_\_\_\_  
(SEAL)  
Elaine Gaddis Neff

\_\_\_\_\_  
(SEAL)  
Grayson Roberts Gaddis

BUYER:

Red Clay Development, SC, LLC

Frank M. Warlick

BY: \_\_\_\_\_ (SEAL)  
Frank M. Warlick, Manager

IN WITNESS WHEREOF, on the dates indicated below, the parties have executed this Agreement, by and through their duly appointed officer, member, manager or representative.

SELLER:

\_\_\_\_\_  
Jo Ellen R. Johnson (SEAL)

\_\_\_\_\_  
Robert Michael Gaddis (SEAL)

*Elaine G. Neff* 10-30-2020  
\_\_\_\_\_  
Elaine Gaddis Neff (SEAL)

\_\_\_\_\_  
Grayson Roberts Gaddis (SEAL)

BUYER:

Red Clay Development, SC, LLC

BY: \_\_\_\_\_ (SEAL)  
Frank M. Warlick, Manager

EXHIBIT "A"  
LEGAL DESCRIPTION

Being all of that certain piece, parcel or tract of land, with any improvements thereon, lying, being and situate in the County of Greenville, State of South Carolina, being shown and designated as **Lots 1, 2, 3, 4, 5, of Mountain Creek Park, Sheet 1**, as recorded 2/20/1997 in Plat Book 34-V, page 6 and **Lots 6, 7, and 8 of Mountain Creek Park, Sheet 2**, as recorded 2/20/1997 in Plat Book 34-V, page 7; said plats are incorporated herein by reference for a more complete metes and bounds description.

LESS and EXCEPT from LOT 1, that certain 0.58 acres (25,265 sq. feet), at the intersection of Mountain Creek Church Road and Stallings Road, conveyed to the Greenville Legislative Delegation Transportations Committee (now SC DOT), as shown in Deed Book 2104, page 260.

TAX PARCEL #s:

P023.00-03-001.00  
P023.00-03-001.01  
P023.00-03-002.00  
P023.00-03-003.00  
P023.00-03-004.00  
P023.00-03-005.00  
P023.00-03-006.00  
P023.00-03-007.00  
P023.00-03-008.00