

OPTION TO PURCHASE AGREEMENT

**THIS OPTION TO PURCHASE AGREEMENT** (this "*Agreement*") is executed as of this 10 day of March, 2017 (the "*Effective Date*"), by and between Heyward Gainey (the "*Owner*"), and the City of Hartsville, South Carolina, a body politic and corporate, and a political subdivision of the State of South Carolina (the "*City*"), each a *Party* and together the *Parties*.

**WHEREAS**, the Owner is the owner of that certain property (the "*Property*") described as follows:

Address: 316 Resevior Street Hartsville, South Carolina

Tax Map No: 056-07-01-065

**WHEREAS**, the City is presently contemplating the purchase of the Property and desires to purchase an exclusive option to purchase the Property and the Owner desires to grant such an option; and

**NOW THEREFORE**, in consideration of the sum of Two Thousand and 00/100 Dollars (\$2,000.00) and other valuable consideration, the receipt and sufficiency of which as consideration are hereby acknowledged, the Parties hereby covenant, agree and contract as follows:

1. OPTION TO PURCHASE; PURCHASE PRICE. The Owner hereby bargains, grants, sells and conveys to the City an exclusive option to purchase the Property (the "*Option*") subject to the terms and conditions contained in this Agreement. During the Option Term (as defined herein) the City shall have the exclusive right to purchase the Property, subject to the provisions of this Agreement, for the purchase price of sixty five thousand dollars

(\$ 65,000 .00) (the "*Purchase Price*").

2. CONSIDERATION FOR OPTION. In consideration for the grant of the Option, in addition to the mutual covenants and promises contained in this Agreement, the City hereby agrees to pay the Owner the amount of two thousand dollars

(\$ 2000.00) (the "**Option Price**"). In the event that the City chooses to exercise the Option, the amount of the Option Price shall be applied to the Purchase Price. In the event that the City does not exercise the Option within the Option Term, the Owner shall retain the Option Price.

3. **TERM OF THE OPTION.** The Option term (the "**Option Term**") shall begin as of the Effective Date and shall automatically expire and terminate on February 27, 2018 (the "**Expiration Date**"), unless extended by mutual agreement of the Parties.

4. **EXCLUSIVITY.** The Owner agrees, warrants and represents that the Option granted and conveyed pursuant to this Agreement is and shall remain the only Option or contract to purchase granted by the Owner for the Property during the Option Term, and that the Owner shall not take any action, or fail to take any necessary action, that will result in the further encumbrance of the Property during the Option Term. The Owner agrees, warrants, and represents that during the Option Term it shall not lease or license the Property without the prior written approval of the City.

5. **EXERCISE OF OPTION.** The Option granted herein must be exercised by the City on or before the Expiration Date. The Owner acknowledges that the City may exercise the Option in its sole discretion and shall have no obligation to exercise the Option. In order to exercise the Option, the City shall deliver written notice (the "**Notice**") to the Owner by personal delivery or by certified mail. The Notice shall set forth the deadline for closing on the conveyance of the Property (the "**Closing Date**"), which shall not be less than 30 days, nor greater than 120 days, after the date upon which the Option is exercised. In the event that the City fails to exercise the Option within the Option Term, neither Party shall have any further liability or obligations under this Agreement.

6. **ACCESS TO PROPERTY; TESTS AND SURVEYS.** During the Option Term, the Owner shall permit the City's representatives to have full access to the Property for the purposes of conducting appraisals, surveys, soil and engineering studies, environmental surveys and other reasonable investigations (collectively, the "**Surveys**") of the suitability of the Property for the purposes contemplated by the City. The City shall bear the entire costs for any Surveys. In the event that any Survey requires the disturbance of the Property, the City shall restore the Property to its prior condition. The City shall provide the Owner with reasonable advance notice of any need to gain access to the Property, which shall not be less than 24 hours notice.

7. **COOPERATION.** The Owner agrees to cooperate fully with the City and its representatives, and to obtain the cooperation of anyone occupying the Property during the Option term, in the City's efforts relating to the Surveys. Furthermore, the Owner shall cooperate fully in any efforts of the City, or its representatives to (i) make any change in zoning of the Property, (ii) acquire

or apply for any permit, license, or other regulatory approval related to Property, or (iii) take any other administrative action required by City with respect to the Property.

8. OWNER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS. The Owner hereby makes the following representations, warranties and covenants, each of which is limited to the knowledge of the Owner, without duty of the City to investigate the veracity thereof and each of which is material and is relied upon by City as consideration for the purchase of the Option, which are true and correct as of the Effective Date and which the Owner represents, warrants and covenants shall remain true and correct during the Option Term, and provided the Option is exercised by the City, through the Closing Date:

a. The Owner is the sole owner of good and marketable fee simple title to all of the Property, insurable subject only to those liens, claims, options, encumbrances, rights-of-way, easements, conditions, covenants and restrictions as may be reasonably acceptable to the City.

b. No options or other contracts have been granted or entered into which are still outstanding giving any other party a right to purchase any interest in the Property and no options or other contracts will be granted or entered into by the Owner giving any other party a right to purchase any interest in the Property. Except as listed on Exhibit A, there are no options, rights or other contracts giving any other party the right to lease, rent or otherwise occupy any interest in the Property, and no such options, rights or other contracts giving any other party the right to lease, rent or otherwise occupy any interest in the Property.

c. To the best of the Owner's knowledge, the Owner is not in violation of and, to the best of the Owner's knowledge, has not received notice of the violation of any applicable building, zoning or other ordinances, resolutions, statutes or regulations of any government or governmental agency in respect to operation, use, maintenance or condition of the Property or any part thereof or requiring any repairs or alterations.

d. To the best of the Owner's knowledge, there are no condemnation or eminent domain proceedings pending or contemplated against the Property or to the best of the Owner's knowledge pending or contemplated against the Property or any part thereof, and the Owner has not received a notice, oral or written, of any public authority or other entity to take or use the Property or any part thereof.

e. The Owner is current with all real and personal property taxes and the Property is free from special taxes or assessments. All roll back taxes accrued against the Property shall be paid by the Owner.

f. The Owner has the right, power and authority to enter into this Agreement and to convey the Property in accordance with the terms and conditions of this Agreement. This Agreement, when executed and delivered by the Owner, will be a valid and binding obligation of the Owner in accordance with its terms.

g. No payments for work, materials or improvements furnished to the Property will be due or owing upon the Closing Date, and the Owner shall execute standard mechanic's lien waiver forms as may be required by the City's title insurance company.

h. The Owner has not, and has no knowledge or reason to believe that any other party has, stored or disposed of any substance or materials on the Property that would be classified by federal, South Carolina, or local laws or regulations as toxic or hazardous wastes or substances ("*Hazardous Substances*"), and the Owner has no knowledge or reason to believe that the Property contains any substances or material that would be classified by federal, South Carolina or local laws or regulations as Hazardous Substances.

i. The Owner shall not cause or permit any action to be taken, or fail to take such action when necessary, which would cause any of the foregoing representations or warranties to be untrue as of the Effective Date through the Expiration Date, or in the event that City elects to exercise the Option, the Closing Date. The Owner agrees to immediately notify the City in writing of any event or condition to the Owner's knowledge which occurs prior to the Expiration Date, or in the event the City elects to exercise the Option, the Closing Date, which causes a change in the facts related to or the truth of any of the above representations. The Owner has disclosed to the City, and will continue to disclose to the City, any and all facts necessary to prevent the statements herein from being misleading.

j. On or before the Closing Date, the Owner will do, make, execute and deliver all such additional and further acts, deeds, instruments and documents as may be reasonably required by the City to completely vest in and assure to the City full rights in or to the Property.

9. CITY'S WARRANTIES, REPRESENTATIONS, AND COVENANTS. This Agreement, when executed and delivered by City, will be a valid and binding obligation of City in accordance with its terms. The undersigned representative of the City has the requisite power and authority to purchase the Option. In the event that the City elects to exercise the Option, the City will have taken such action necessary to authorize the purchase of the Property pursuant to the terms of this Agreement.

10. RISK OF LOSS. If the Property or any part thereof suffers any damage prior to Expiration Date, or in the event that the City elects to exercise the Option, the Closing Date, from fire or other casualty, which the Owner shall have no obligation to repair, the City may either (a) terminate

this Agreement and receive a refund of the Option Price, or (b) consummate the purchase of the Property, in which case, the proceeds of any insurance covering such damage, up to the amount of the Purchase Price, shall be assigned to the City at Closing.

11. PRO-RATED ITEMS AND ADJUSTMENTS. The Owner shall pay for the cost of all deed stamps and transfer taxes and the City shall pay for the recording fees of this transaction. The Parties shall each pay their own legal fees related to the transaction contemplated hereby. The Owner shall be responsible for payment of all expenses applicable to the Property which are incurred prior to the Closing Date. The City shall be responsible for payment of all expenses applicable to the Property which are incurred from and after the Closing Date including, but not limited to, real estate taxes and assessments and fire, hazard, theft and liability insurance premiums. The adjustments and prorations required under this Agreement shall be computed as of the Closing Date and the Purchase Price paid to the Owner hereunder shall be adjusted to reflect such prorations. The Owner shall be responsible for any rollback taxes relating to the Property, which amounts shall be estimated and deducted from the proceeds paid to the Owner. The Owner shall be responsible for paying to the City any shortfall due on rollback taxes immediately upon receipt by the Owner of the actual tax or rollback tax bill.

12. DELIVERY OF CLOSING DOCUMENTS. In addition to other conditions precedent set forth elsewhere in this Agreement, the Owner shall deliver to the City at the closing all of the following documents, the delivery and accuracy of which shall further condition the City's obligations to consummate the purchase and sale herein contemplated:

a. A Limited Warranty Deed satisfactory in form and substance to counsel for the City, conveying good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, easements and restrictions of every nature and description, except those previously approved in writing by the City.

b. An Owner's Affidavit or lien waiver satisfactory for the purpose of removing any mechanic's lien exception from any title insurance policy to be issued in connection with the purchase.

c. An affidavit of the Owner providing the Owner's federal identification number and certifying that this transaction is not subject to withholding taxes in accordance with the laws of South Carolina.

d. Evidence the authority of the persons signing the Deed and other documents to be executed by the Owner at closing and the power and authority of the Owner to convey the Property to the City in accordance with this Agreement.

e. Such other documentation as may be reasonably required in the opinion of the City or its counsel to consummate and close the transaction contemplated herein pursuant to the terms and conditions of this Agreement.

13. POSSESSION. Possession of the Property shall be delivered to the City at the time of Closing and delivery of the limited warranty deed

14. ASSIGNMENT. The City may, in its sole discretion, assign the Option and all of its right, title and interest in this Agreement to such other person(s), firm, corporation, partnership or other entity as it may designate.

15. COMPLETENESS AND MODIFICATION. This Agreement constitutes the entire agreement between the Parties hereto with respect to the transactions contemplated herein and it supersedes all prior discussions, undertakings or agreements between the Parties. This Agreement shall not be modified except by a written agreement executed by the Parties.

16. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns.

17. COUNTERPARTS. To facilitate execution, this Agreement may be executed in as many counterparts as may be required.

18. INVALID PROVISIONS. In the event any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement; this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

19. TIME. Time is of the essence of this Agreement and the provisions hereof.

20. RECORDING. Either Party may record a memorandum of this Agreement in the Office of the Register of Deeds for the county where the Property is located.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

[Signature]  
Witness #1

[Signature]  
Witness #2

CITY OF HARTSVILLE, SOUTH CAROLINA

Natalie M. Zeigler  
Natalie Zeigler, City Manager

[Signature]  
Witness #1

Ann Hyatt  
Witness #2

\_\_\_\_\_  
Witness #1

\_\_\_\_\_  
Witness #2

PROPERTY OWNER(S)

Heyward Gainey  
Heyward Gainey

[Print Name]

\_\_\_\_\_  
[Print Name]

STATE OF SOUTH CAROLINA     )  
   )     ACKNOWLEDGMENT  
COUNTY OF DARLINGTON     )

I, the undersigned Notary Public for South Carolina, do hereby certify that the above representative of the City of Hartsville, Natalie Zeigler, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this 13 day of March, 2017.

Gina Tiller (SEAL)  
Print name: Gina Tiller  
Notary Public for S. C.  
My commission expires: May 27, 2021

STATE OF SOUTH CAROLINA     )  
   )     ACKNOWLEDGMENT  
COUNTY OF DARLINGTON     )

I, the undersigned Notary Public for South Carolina, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_(SEAL)  
Print name: \_\_\_\_\_  
Notary Public for S. C.  
My commission expires: \_\_\_\_\_



EXHIBIT A

**List of leases, licenses, and other known contractual rights with respect to the Property:**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_