

STATE OF SOUTH CAROLINA)
)
COUNTY OF MCCORMICK)

ORDINANCE 20-09

FILED
GWENDOLYN D. CHILES
2021 FEB 23 A 11:43

AN ORDINANCE APPROVING AND AUTHORIZING THE SALE OF COUNTY
PROPERTY - BEING THE NORTHERNMOST 20 ACRES OF TAX MAP #187-00-00-008
TO WATER TOY STORAGE, LLC

WHEREAS, McCormick County owns 50.16 acres, more or less, located on SC Hwy. 28 and State Park Road identified by McCormick County Tax Map #187-00-00-008; and

WHEREAS, Water Toy Storage, LLC desires to purchase the northernmost 20 acres of the property referred to herein to be used for the construction of a boat storing facility and related development; and

WHEREAS, Water Toy Storage, LLC has offered to pay \$10,000 per acre for the property in accordance with the terms of the attached Real Estate Sales Contract and McCormick County Council approves of the sale of this property which will be a substantial economic development project generating tax revenues.

NOW, THEREFORE, BE IT ORDAINED by the County Council of McCormick County, South Carolina, that the northernmost 20 acres of the property owned by McCormick County located on SC Hwy. 28 and State Park Road identified by McCormick County Tax Map #187-00-00-008 be sold to Water Toy Storage, LLC. subject to the following terms and conditions:

1. The sale of the property will be in accordance with the Real Estate Sales Contract attached hereto which is incorporated herein by reference thereto.
2. The sale of the property is subject to final approval by McCormick County Council after three readings and a public hearing and approval of the plat of said property
3. The County Administrator is authorized to sign the Real Estate Sales Contract on behalf of the County.

This Ordinance shall become effective upon adoption after three (3) readings and any required public hearing.

APPROVED AND ADOPTED this 16th day of February, 2021.

MCCORMICK COUNTY COUNCIL

By: Charles Jennings
Charles Jennings, Chairman

ATTEST:

Crystal B. Barnes
Crystal B. Barnes, Clerk to Council

1st Reading:	November 17, 2020
2nd Reading:	January 19, 2021
3rd Reading:	February 16, 2021
Public Hearing:	February 16, 2021

REAL ESTATE SALES CONTRACT

State of South Carolina

County of McCormick

DATE: 2-19-21

This Agreement is made and entered into by and between **McCORMICK COUNTY, SOUTH CAROLINA** ("Seller") and **WATER TOY STORAGE, LLC** ("Purchaser").

In consideration of the premises and other good and valuable consideration, Seller and Purchaser agree as follows:

1. CONVEYANCE:

Subject to final approval by McCormick County Council after three readings and a public hearing and approval of the plat of said property, Seller agrees to sell and convey and Purchaser agrees to purchase the real estate located in McCormick County, South Carolina, and being the Northernmost 20 acres of Tax Map & Parcel No. 187-00-00-008, as more fully depicted on Exhibit A attached hereto (the "Property.") The "property" is shown as PROPOSED PARCEL - 10.0 ACRES and ADDITIONAL PARCEL - 10.0 ACRES on Exhibit A.

2. PAYMENT OF PURCHASE PRICE:

- a. The "Purchase Price" of Property shall be Two Hundred Thousand Dollars (\$200,000.00), payable to the Seller as follows: \$100,000.00 cash at closing to be applied on the purchase of the property shown as PROPOSED PARCEL - 10.0 ACRES on Exhibit A, and a \$100,000 Promissory note to be repaid in sixty (60) equal monthly installments of \$1,666.67 each on the property shown as ADDITIONAL PARCEL - 10.0 ACRES on Exhibit A. The Promissory Note shall be secured by a properly executed Mortgage on the ADDITIONAL PARCEL - 10.0 ACRES on Exhibit A.
- b. Upon execution of this contract by the Seller, the Purchaser shall deposit Two Thousand Dollars (\$2,000.00) Earnest Money with Trotter Jones, LLP as Escrow Agent. The Earnest Money is to be applied toward the Purchase Price due at Closing.

3. INSPECTION PERIOD:

Purchaser shall have the right to inspect the Property for a period of forty-five (45) days, to commence upon full execution of this sales contract to determine the feasibility of the Purchaser's intended use of the Property (Inspection Period). In the event Purchaser, in his sole discretion determines that the Property is unsuitable for any reason whatsoever, Purchaser shall give written notice to Escrow Agent of the Purchaser's election to terminate this Contract. Within five (5) business days after the Purchaser terminates this Contract, all Earnest Money shall be refunded to Purchaser and, thereafter, neither the Seller, the Purchaser shall have no further liability or responsibility to the other. If this Contract is not terminated by the Purchaser within the Inspection Period, the Purchaser shall be deemed to have accepted the property and, subject to the Purchaser's Closing Conditions in paragraph 10 of this Agreement, the transaction shall be closed on or before the date stated in paragraph 4 of this Contract.

4. CLOSING:

(a) Closing. Purchaser and Seller shall consummate the purchase and sale of the property contemplated by this Contract (the "Closing") within ten (10) business days after the transaction is approved by all appropriate governing authorities in McCormick County. The Closing shall be held at the offices of Trotter Jones, LLP at 3527 Walton Way Ext, Augusta, GA, but may be conducted via overnight courier service.

(b) Failure of Conditions. In the event one or more of Purchaser's Closing Conditions remain unsatisfied as of the Closing Date, then Purchaser shall have the right either to (i) waive the unsatisfied condition(s) and proceed to close in accordance with the terms of this Agreement, or (ii) terminate this Agreement. If Purchaser terminates this Agreement, the Earnest Money and all interest thereon shall be returned to the Purchaser and thereafter neither the Purchaser nor the Seller shall have any further rights, duties or obligations under this Contract.

(c) Closing Documents. At Closing, Seller agrees to deliver to Purchaser the following items:

(i) Limited Warranty Deed conveying good, insurable and indefeasible fee simple title to the Property, as required by this Agreement.

(ii) An Owner's Affidavit executed and sworn to by Seller, stating that no work has been performed on the Property during the ninety-five (95) days prior to Closing or if such work has been performed, that it has been paid in full, together with such other statements and instruments as may be required by the title insurance company insuring the title to the Property in order for the title insurance company to issue Purchaser's title insurance policy without exception to any liens, unfiled easements or other standard exceptions set forth in the standard title insurance policy form

(iii) A certification by the Seller complying with requirements of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended, that the Seller is not a foreign person within the meaning of such sections.

(iv) A written statement as of the Closing Date reaffirming that all of the warranties and representations of Seller made in this Contract are true and correct.

(v) All other customary documents necessary or appropriate to complete the transaction contemplated by this Agreement.

(d) At Closing, Purchaser shall pay to Seller the Purchase Price as adjusted pursuant to the terms hereof, all closing costs incurred by the Purchaser, and execute and deliver all documents necessary to complete the transaction contemplated by this Agreement.

5. TITLE:

Prior to Closing, Purchaser shall examine title to the Property and obtain a commitment for title insurance without a general survey exception on a standard ALTA form proposing to insure the interest of Purchaser as owner in the amount of the Purchase Price. The cost of the title examination and commitment shall be borne by Purchaser. Purchaser shall give Seller written notice of any liens, encumbrances, encroachments or title matters shown on said title commitment or the Survey (hereinafter collectively referred to as "Title Defects") which adversely affect the marketability of the title to the Property, within a reasonable time. Thereafter, Seller shall have a period of five (5) days within which to cure or correct all Title Defects at Seller's sole cost and expense. As to any existing monetary liens or deeds to secure debt which can be satisfied by the payment of money, Seller agrees to satisfy the same at Closing. If Seller fails to cure or correct any other valid Title Defects within such period, then on the Closing Date, Purchaser may either (i) terminate this Agreement and receive a refund of the Earnest Money less \$100.00, after which no party shall have any further right, duty, obligation, or liability hereunder to any other party hereto, or (ii) waive such Title Defects and elect to close the sale and purchase of the Property irrespective of such Title Defects. Purchaser shall be responsible for the cost of the policy of title insurance to be issued pursuant to the title insurance commitment.

6. SURVEY:

- a. Purchaser or his agents shall have access to the Property any time prior to closing to make surveys, soil tests, environmental assessments and general inspections of the improvements on the Property. The Purchaser agrees to indemnify and hold Seller harmless against any property damage or personal injury or claim of lien against the Property resulting from the activities permitted by this paragraph on Property.
- b. New surveys shall be performed by a South Carolina Registered and Licensed Surveyor selected by the Purchaser, at Purchaser's sole expense. Any recent surveys commissioned by Seller shall be made available to the Purchaser at no cost.
- c. This Real estate Sales Contract is subject to Seller's approval of the plat and/or survey of the "property".

8. BROKERAGE COMMISSION:

None.

9. PURCHASER'S CLOSING CONDITIONS:

Purchaser's obligations under the Agreement are expressly subject to and conditioned upon satisfaction of the following conditions on or before Closing ("Purchaser's Closing Conditions"):

- (a) Seller's performance of its covenants under this Agreement
- (b) The continued truth and accuracy in all material respects of Seller's representations and warranties.
- (c) Purchaser shall have the ability to obtain an ALTA Form B Owners Title Insurance Policy containing only exceptions to the Permitted Title Exceptions, issued by Fidelity Title Insurance Company at standard national rates.
- (d) There shall be no material casualty or condemnation proceeding which affects the Property.
- (e) No material and adverse changes shall have occurred to the Property, its environmental condition and the development rights with respect to the Property. Purchaser shall have the ability to obtain a Phase I ESA Report from a qualified professional stating that the Property is has no Recognized Environmental Concerns.
- (f) The performance of the Seller's obligations under this Contract shall have been duly and effectively authorized by all necessary action of the Seller, and no other consent or approval except as specified herein shall be required in order for the Seller to consummate the transactions provided herein.
- (g) Seller has good and marketable title to the property and to the improvements thereon at the time of Closing, free and clear of all liens, encumbrances and restrictions, except for encumbrances and easements, existing on the Property and approved in writing by the Purchaser.

10. SELLER'S WARRANTIES AND REPRESENTATIONS:

- (a) Seller has received no written notice of any default or breach by Seller under any covenants, conditions, restrictions, rights-of-way of easements affecting the Property or any portion thereof, and no such default or breach now exists, nor has any event occurred which, with the giving of notice, the passage to time, or both, would constitute such a breach or default.

(b) Neither the whole nor any portion of the Property, including access thereto or any easement benefiting the Property, is subject to temporary requisition of use by any governmental authority, nor has any portion of the property been condemned, or taken in any proceeding similar to a condemnation proceeding, nor is there now pending any condemnation, expropriation, requisition or similar proceeding against the Property or any portion thereof. Seller has received no notice and does not have knowledge that any such proceeding is contemplated.

(c) To the best of Seller's knowledge, no portion of the Property is located in a flood plain.

(d) There is no litigation or to the knowledge of Seller, threatened against or relating to the Property and the Seller does not have reasonable grounds to know of the basis for any such action.

(e) No assessments have been made against the Property which are unpaid, at or prior to the Closing, except those ad valorem taxes, if any, for the current year which are not yet due and payable, whether or not they have become liens; and Seller is not aware of any assessments against the Property for public improvements not yet in place.

(f) To Seller's knowledge there are no archeological areas, burial grounds or cemeteries, or areas of historical significance, such as battlefields, located at or on the Property and there are no endangered species living on or in or nesting at the Property.

(g) The Property is being offered for sale in an "AS IS" condition. Seller makes no representations and/or warranties concerning the condition of the Property.

12. MISCELLANEOUS:

- a. This Agreement constitutes the entire agreement between the parties hereto and all prior negotiations undertakings and agreements heretofore and between these parties are merged herein. No representation, promise or inducement not included herein shall be binding upon any party hereto. The terms "Seller" and "Purchaser", shall be construed in the plural and the appropriate gender shall be read into all pronouns used herein to reference and of said parties whenever the sense of this Agreement so requires.
- b. This Agreement may not be changed orally, but only by an agreement in writing signed by Purchaser and Seller.
- c. Notices given pursuant to this Agreement shall be in writing, delivered in person or by overnight courier service or by certified mail, return receipt requested, addressed to the mailing address slated in this Agreement. The time of postmark shall be deemed the time of receipt of mailed notices.
- d. The provisions of this Agreement shall inure to the benefit of and shall be binding upon the parties and their heirs, successors and assigns and the legal representative of their estates, as the case may apply. Purchaser shall have the right to assign this contract to a limited liability company to be formed by the Purchaser.
- e. The Purchaser shall pay all closing costs.
- f. Seller and Purchaser agree that such papers as may be legally necessary to carry out the terms of this agreement shall be executed and delivered by such parties at closing.

- g. Seller shall be responsible for all expenses, if any, incidental to Property through the date prior to Closing.
- h. All agreements herein which must, by implication or necessity, survive the closing, shall be deemed to so survive as the sense of this Agreement requires.
- j. Seller and Purchaser may each elect to buy or sell the Property as part of a like kind exchange ("Exchange Property") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, and each hereby agrees to cooperate with the other in effecting such changes.
- k. This contract to be construed in accordance with the laws of the State of South Carolina.
- l. If the date for performance to any action under this Contract shall fall on a Saturday, Sunday, or legal holiday, such action shall and may be performed on the next succeeding date which is not a Saturday, Sunday or legal holiday. Time is of the essence.
- m. Seller conveys the Property "as is" to the Purchaser.

13. REMEDIES OF THE SELLER:

If the purchase and sale of the Property is not consummated due to default of the Purchaser, the Seller shall, upon written notice to Purchaser specifying the default of Purchaser hereunder, be entitled to obtain and retain the Earnest Money as full liquidated damages. Under no circumstances shall Seller be authorized to seek any additional damages or seek specific performance of this contract, but shall be limited to the Earnest Money. Should Seller default, then Purchaser shall be entitled to obtain and retain the Earnest Money as full liquidated damages. Under no circumstances shall Purchaser be authorized to seek any additional damages or seek specific performance of this contract, but shall be limited to the Earnest Money.

14. RISK OF LOSS AND CONDEMNATION:

If prior to the Closing Date, all or any portion of the Projects shall be condemned or taken by power of eminent domain or the Projects be completely destroyed or damaged, Purchaser may elect to (i) terminate this Agreement by giving written notice to Seller, or (ii) consummate the purchase and of the Property pursuant to clause (ii), Seller shall, on the Closing Date, pay or cause to be paid to Purchaser all insurance proceeds theretofore actually received by Seller and all condemnation awards and other payments in connection with exercise of the power of eminent domain theretofore actually received by Seller, and, in addition, Seller shall transfer and assign or cause to be transferred or assigned to Purchaser all rights of Seller with respect to payments by or from and with respect to recovery again any party whosoever or damages or compensation on account of such destruction, take or threat of taking.

15. POSSESSION OF THE PROPERTY:

Possession of the Property shall be delivered to the Purchaser at Closing, subject to any existing written leases.

17. SPECIAL STIPULATIONS:

a. The Purchaser's obligations herein are contingent upon the Seller, and any other appropriate governing authority, approving the zoning and permitting necessary for the construction of self storage units on the Property.

b. The Purchaser shall construct a Stormwater Management Pond in the area generally located on Exhibit A (the "Pond"), at the Purchaser's sole cost and expense. The Pond shall be sufficiently sized to detain the stormwater from the Property, as well as the remaining thirty acres of property owned and retained by the Seller ("Adjacent Property") and the 2 acres identified as "2 ACRES FOR PARCEL A" as shown on Exhibit A retained by Seller. Until such time as the Seller's remaining property (or a portion thereof) is developed requiring the use of the Stormwater Management Pond, Purchaser shall be solely responsible for the maintenance of the Pond and shall be granted reasonable access to the Pond to maintain it. After the development of the Seller's retained property, the Purchaser and the Seller, or their successors in title, shall share in the ongoing maintenance of the Pond on a pro-rata basis determined by the number of developed acres. During the Inspection Period, the parties shall negotiate the terms of a Stormwater Maintenance Agreement to provide for such maintenance of the Pond and to be recorded in the RMC Office of McCormick County, South Carolina at Closing.

c. As a part of this sale, Purchaser shall provide a connection to its stormwater system for the runoff from Parcel A. The connection will be a concrete or block junction box to be located on the common property line of Parcel A and the purchaser's property. The Purchaser's stormwater system must be sized for the fully developed discharge from Parcel A.

18. DATE OF THIS AGREEMENT:

The "Effective Date" of this Agreement shall be the date on which the last party to execute this Agreement signs as evidenced by the date affixed by that party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 19 day of Feb. 2021.

SIGNATURE PAGE FOLLOWS

As to Purchaser

Date by Purchaser 2-19-21

WATER TOY STORAGE, LLC

By: 

As its: owner

As to Seller

Date by Seller 02/19/21

MCCORMICK COUNTY, SOUTH CAROLINA

By: Columbus M. Stegner

As its: County Administrator

