

# Attachment 3

## RESOLUTION

A RESOLUTION AUTHORIZING THE PURCHASE AND CONVEYANCE OF APPROXIMATELY 1.78 ACRES OF REAL PROPERTY IN BLUFFTON, SOUTH CAROLINA, COMMONLY KNOWN AS 1095 MAY RIVER ROAD, TMS NO. R610-039-000-0498-0000 FROM KGB 1935, LTD., CO., TO THE TOWN OF BLUFFTON, SOUTH CAROLINA, FOR THE PURCHASE PRICE OF \$263,000.00; AND, AUTHORIZING THE EXECUTION AND RECORDATION OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH

WHEREAS, KGB 1935, Ltd., Co., (the "**Owner**") is the record owner of that parcel of real property located in the Town of Bluffton, South Carolina, as more particularly described on Exhibit "**A**" attached hereto and fully incorporated herein (the "**Property**"); and,

WHEREAS, Owner desires to convey the Property to the Town of Bluffton, a South Carolina municipal corporation (the "**Town**"), and all improvements thereon, if any, to be owned by the Town and held for public purposes; and,

WHEREAS, the Town desires to purchase the Property in accordance with the terms and conditions of the Purchase and Sale Agreement and all exhibits thereto, attached hereto as Exhibit "**B**" (the "**Agreement**"), and Town Council has determined that it is in the public interest for the Town to ratify the Agreement and consummate the purchase of the Property; and,

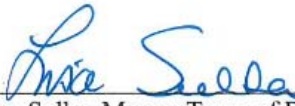
WHEREAS, Town Council desires to authorize the Town Manager to execute such documents and to expend such funds as are necessary to complete the purchase and conveyance of the Property to the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA, AS FOLLOWS:**

1. The Town Council hereby authorizes the purchase and conveyance of the Property from the Owner to the Town for the purchase price of \$263,000.00, and hereby confirms that the Town Manager is authorized to execute the Agreement, which is attached hereto as Exhibit "**B**", and does hereby confirm and ratify the actions of the Town Manager in negotiating the Agreement with Owner.

2. The Mayor, Town Manager, and Town Clerk are each hereby authorized to execute any and all documents necessary to consummate the purchase and conveyance of the Property to the Town, including, without limitation, the acceptance and recordation of any deed with the Office of the Register of Deeds for Beaufort County, South Carolina. The Town Manager is hereby authorized to pay such reasonable costs of the transaction as may be necessary.

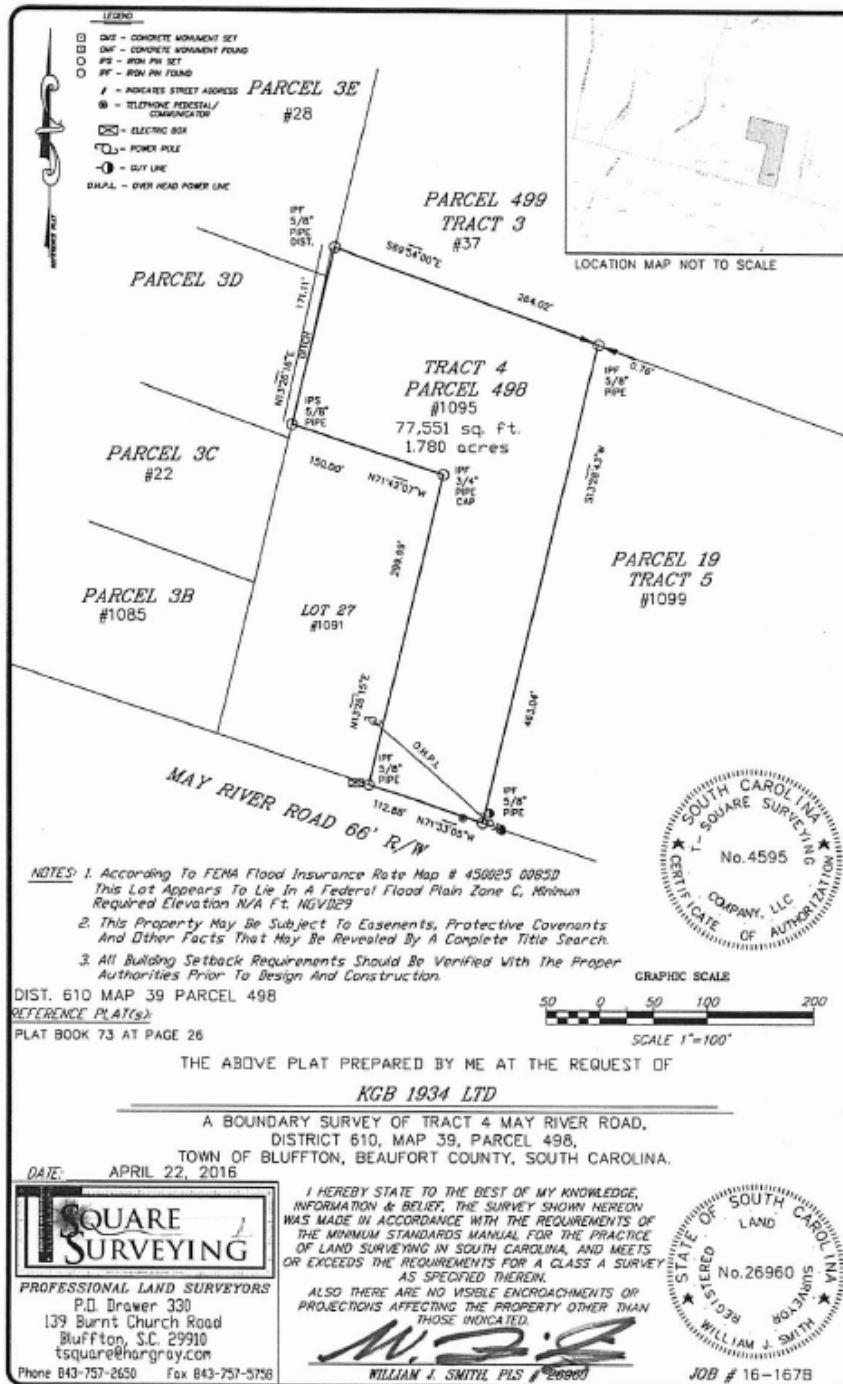
THIS RESOLUTION SHALL BE EFFECTIVE IMMEDIATELY UPON ADOPTION,  
SIGNED, SEALED AND DELIVERED AS OF THIS 10th DAY OF April,  
2018.

  
\_\_\_\_\_  
Lisa Sulka, Mayor, Town of Bluffton, South Carolina

ATTEST:

  
\_\_\_\_\_  
Kimberly Chapman, Town Clerk, Town of Bluffton, South Carolina

# EXHIBIT "A" (The Property)



**EXHIBIT "B"**  
**(The Purchase and Sale Agreement)**

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**PURCHASE AND SALE AGREEMENT  
FOR THE SALE OF 1095 MAY RIVER ROAD  
BLUFFTON, SOUTH CAROLINA**

Dated and Effective as of this 25<sup>th</sup> day of April, 2018,

By and between

**KGB 1934 LTD. CO. a/k/a KGB 1934 LTD.**  
a Nevada limited liability company  
(SELLER)

and

**THE TOWN OF BLUFFTON,**  
a South Carolina municipal corporation,  
(BUYER)

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**PURCHASE AGREEMENT  
Summary Sheet**

Buyer: The Town of Bluffton

Seller: KGB 1934 Ltd. Co.

Effective Date: April 25<sup>th</sup>, 2018

Property Address: 1095 May River Road, Bluffton, South Carolina

Purchase Price: Two Hundred Sixty-Three Thousand and No/100 (\$263,000.00) Dollars

Closing Date: On or before \_\_\_\_\_, 2018

Notice Address  
of Seller: KGB 1934 Ltd. Co.  
2400 Mecklenbury Avenue  
Charlotte, NC 28205-3148

with a  
copy to: Hale & Hale, P.A.  
1533 Fording Island Road, Suite 294  
Hilton Head Island, South Carolina 29926  
Attention: Rebecca H. Hale, Esq.

Notice Address  
of Buyer: The Town of Bluffton  
Attn: Mr. Marc Orlando, Town Manager  
20 Bridge Street  
Bluffton, South Carolina 29910

with a  
copy to: Finger, Melnick & Brooks, P.A.  
Post Office Box 24005  
Hilton Head Island, South Carolina 29925-4005  
Attention: Terry A. Finger, Esq.

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT is entered into on this 25<sup>th</sup> day of April, 2018, (the "*Effective Date*") between KGB 1934 Ltd. Co. a/k/a KGB 1934 Ltd., a Nevada limited liability company (the "*Seller*"), and the Town of Bluffton, a South Carolina municipal corporation (the "*Buyer*").

### STATEMENT OF BACKGROUND INFORMATION

Seller intends to sell and Buyer intends to purchase "AS IS" approximately 1.780 acres, more or less, and all improvements thereon of that certain tract of land commonly known and identified as 1095 May River Road, Bluffton, South Carolina, Tax Map No. R610-039-000-0498-0000. The parcel of real property is more completely set forth on Exhibit "A" hereto (the "*Property*").

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

### ARTICLE 1 DEFINITIONS; RULES OF CONSTRUCTION

1.1 **Definitions.** Capitalized terms not otherwise defined herein shall have the meanings set forth on the Summary Sheet. The following terms shall have the indicated meanings:

(a) "*Closing*" shall mean the time that each of the deliveries to be made by Seller (as provided in Section 6.2) and Buyer (as provided in Section 6.3) are made and each of the Closing conditions of Buyer and Seller in Sections 5.1 and 5.2, respectively, have been satisfied or waived.

(b) "*Deed*" shall mean a general warranty deed, in form and substance satisfactory to Buyer, conveying the title of Seller to the Property, with such grant or warranty covenants of title from Seller to Buyer as are customary in the State of South Carolina, subject only to Permitted Title Exceptions. If there is any difference between the description of the Property, as shown on Exhibit A attached hereto and the description of the Property as shown on the Survey, if any, the description of the Property to be contained in the Deed and the description of the Property set forth in the Owner's Title Policy (as defined herein) shall conform to the description shown on the Survey.

(c) "*Due Diligence Period*" shall mean the period commencing at 9:00 a.m., Eastern Standard Time, on the Effective Date, and continuing sixty (60) days after the Effective Date.

(d) "*Effective Date*" shall mean the date that this Agreement is executed by both Parties.

(e) "*Owner's Title Policy*" shall mean an American Land Title Association extended coverage owner's policy of title insurance issued to Buyer by the Title Company (e.g., First American Title Company), pursuant to which the Title Company insures Buyer's ownership of fee simple title to the Property (including the marketability thereof) subject only to Permitted Title Exceptions. The Owner's

Title Policy shall insure Buyer in the amount of the Purchase Price and shall be acceptable in form and substance to Buyer.

(f) "*Permitted Title Exceptions*" shall mean those exceptions to title to the Real Property that are satisfactory to Buyer as determined under this Agreement.

(g) "*Survey*" shall mean the survey, if any, prepared pursuant to Section 2.3(c).

(h) "*Title Objections*" shall have the meaning set forth in Section 2.3(d).

**1.2 Rules of Construction.** The following rules shall apply to the construction and interpretation of this Agreement:

(a) *Gender.* Singular words shall connote the plural number as well as the singular and vice versa, and the masculine shall include the feminine and the neuter.

(b) *Headings.* The headings contained herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

(c) *Construction.* Each party hereto and its counsel have reviewed and revised (or requested revisions of) this Agreement and have participated in the preparation of this Agreement, and therefore any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement or any exhibits hereto.

**1.3 Recitals and Summary.** The Recitals set forth above and the Summary Sheet attached to this Agreement are incorporated herein by reference as if set forth in their entirety herein.

## **ARTICLE 2 PURCHASE AND SALE; PAYMENT OF PURCHASE PRICE**

**2.1 Purchase and Sale.** Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price subject to the provisions below.

**2.2 Payment of Purchase Price.** The Purchase Price of Two Hundred Sixty Three Thousand and No/100 (\$263,000.00) U.S. Dollars (USD), with appropriate prorations and credits, shall be paid to Seller on the Closing Date. The Purchase Price, and any and all other sums payable to Seller hereunder, shall be paid by Buyer in immediately available collected funds.

**2.3 Due Diligence Period.**

(a) *Site Inspection.* Buyer shall have the right, during the Due Diligence Period, and thereafter if Buyer does not terminate this Agreement prior to the end of the Due Diligence Period, at a mutually agreeable time, to enter upon the Property and to perform, at Buyer's expense, such physical inspections, surveying, engineering, and environmental studies and investigations (including a Phase 1 and Phase 2, if Buyer deems it prudent to conduct such an investigation) as Buyer may deem appropriate. All such site inspections shall be conducted at reasonable times and should be conducted in such a manner as to limit interference with the enjoyable use of the Property by the Seller or the Seller's tenants.

(b) *Inspection of Documents.* Within ten (10) business days after the Effective Date, Seller shall provide to Buyer, for use by Buyer, its agents, auditors, engineers, attorneys and other designees,

copies of all existing surveys, environmental audits and reviews, plans, studies and reports affecting or relating to the Property which are in, or come into, Seller's possession or control, or which Seller may attain. During the Due Diligence Period, Buyer shall have the right to review all zoning, land use and other governmental regulations, laws, permits and approvals that apply to the Property.

(c) *Survey.* During the Due Diligence Period, Buyer, at Buyer's sole expense, may obtain an ALTA/ACSM survey of the Land and the Improvements, prepared by a surveyor licensed to practice as such in the State, certified to both Buyer, Seller and the Title Company (and any lender or other party designated by Buyer), showing the legal description of the Land, all dimensions thereof, and showing the location of Improvements on the Land, the setbacks thereof from the property line, as well as the setbacks required by applicable zoning laws or regulations or as otherwise required to meet ALTA/ACSM requirements (the "*Survey*"). The Survey shall locate all easements which serve and affect the Land. The Survey shall reflect that no buildings or improvements located on any other property encroach upon the Land and that the Improvements located upon the Land do not encroach upon any other property. The surveyor preparing the Survey shall certify that its work has been prepared in accordance with the Survey Requirements and such Certificate shall be included on the Survey.

(d) *Due Diligence Objections.* Without waiving its rights pursuant to paragraph (e) of this Section 2.3, ten (10) days prior to the expiration of the Due Diligence Period, Buyer may, but shall not be obligated to, notify Seller of any objections concerning its due diligence inspection that Buyer is unwilling to accept which shall be designated as the "*Due Diligence Objections.*" Within five (5) days after such notification, Seller shall notify Buyer in writing whether Seller is willing to cure such defects. If Seller is willing to cure such defects, Seller shall act promptly and diligently to cure such defects at its expense. If any of such defects consist of mortgages, deeds of trust, construction or mechanics' liens, tax liens or other liens or charges in a fixed sum or capable of computation as a fixed sum, then, to that extent, and notwithstanding the foregoing, Seller may elect, in its sole discretion, to pay and discharge such defects at Closing. For such purposes, Seller may use all or a portion of the cash to close. If Seller is unable or unwilling to cure such defects prior to Closing, Buyer may elect (1) to waive such defects and proceed to Closing, or (2) to terminate this Agreement. After the date of this Agreement, Seller shall not subject the Property to any liens, encumbrances, leases, covenants, conditions, restrictions, easements or other title matters or seek any zoning changes or take any other action which may affect or modify the status of title without Buyer's prior written consent, which consent Buyer may withhold in its sole discretion for any reason or no reason. All title matters revealed by Buyer's title examination and not objected to by Buyer as provided above shall be deemed Permitted Title Exceptions. If Buyer shall fail to examine title and notify Seller of any such Title Objections by the end of the Due Diligence Period, all such title exceptions shall be deemed Permitted Title Exceptions.

(e) *Termination Without Cause.* Prior to the expiration of the Due Diligence Period, Buyer, in its sole and absolute discretion, shall have the right to terminate the Agreement for any reason or no reason, by notifying the Seller thereof. If Buyer terminates the Agreement during the Due Diligence Period, the Parties shall have no further obligations to each other by virtue of this Agreement or in any way related to this transaction. In lieu of an earnest money deposit, the Parties agree that in the event Buyer terminates the Agreement without cause, any non-privileged Due Diligence materials, including inspection reports, surveys, engineering reports and/or environmental studies and investigations related to the Property and prepared for the benefit of the Buyer shall be sold and transferred without warranty to the Seller for Five and No/100 (\$5.00) Dollars.

### ARTICLE 3 SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

To induce Buyer to enter into this Agreement and to purchase the Property, and to pay the Purchase Price, Seller hereby makes the following representations, warranties and covenants with respect to the Property which representations, warranties and covenants are true and correct as of the effective date and, except where specifically noted otherwise, will be true and correct, as of the Closing:

3.1 **Exclusive Period.** Seller agrees that during the Due Diligence Period, Seller will not offer to sell or negotiate to sell the property to any third party.

3.2 **Authorization and Execution.** This Agreement has been, and each of the agreements and certificates of Seller to be delivered to Buyer at Closing will be, duly authorized by all necessary action on the part of Seller, has been duly executed and delivered by Seller, constitutes the valid and binding agreement of Seller and is enforceable against Seller in accordance with its terms. All action required pursuant to this Agreement necessary to effectuate the transactions contemplated herein has been, or will at Closing be, taken promptly and in good faith by Seller.

3.3 **Noncontravention.** The execution and delivery of, and the performance by Seller of its obligations under, this Agreement do not and will not contravene, or constitute a default under, any provision of applicable law or regulation, or any agreement, judgment, injunction, order, decree or other instrument binding upon Seller, or result in the creation of any lien or other encumbrance on any asset of Seller, except as may be set forth in the Permitted Exceptions. There are no outstanding agreements (written or oral) pursuant to which Seller has agreed to contribute or has granted an option or right of first refusal to purchase the Property or any part thereof.

3.4 **Compliance with Existing Laws.** Seller has no knowledge, nor has it received notice, of any existing or threatened violation of any provision of any applicable building, zoning, subdivision, or other governmental ordinance, resolution, statute, rule, order or regulation with respect to the ownership, operation, use, maintenance or condition of the Property or any part thereof.

3.5 **Real Property.** To the best of Seller's knowledge and belief, (i) the Improvements (if any) conform in all material respects to all legal requirements including all zoning and land use laws, and (ii) all easements necessary or appropriate for the use or operation of the Property have been obtained. Seller has not received any written notice which is still in effect that there is, and, to the best of Seller's knowledge, there does not exist, any violation of a condition or agreement contained in any easement, restrictive covenant or any similar instrument or agreement affecting the Property, or any portion thereof.

3.6 **Condemnation Proceedings; Roadways.** Seller has received no notice of any condemnation or eminent domain proceeding pending or threatened against the Property or any part thereof.

3.7 **Litigation.** There is no action, suit or proceeding pending or known to be threatened against or affecting Seller or any of its properties in any court, before any arbitrator or before or by any Governmental Body which (a) in any manner raises any question affecting the validity or enforceability of this Agreement, (b) could materially and adversely affect the ability of Seller to perform its obligations under this Agreement, or under any document to be delivered pursuant hereto, (c) could create a lien on the Property, any part thereof or any interest therein, or (d) could otherwise adversely materially affect the Property, any part thereof or any interest therein or the use, operation, condition or occupancy thereof. Seller shall indemnify and hold Buyer harmless from any and all claims relative to this subparagraph.

3.8 **Operation of Property.** Except as otherwise permitted hereby, from the Effective Date until Closing, Seller shall not take any action or fail to take action the result of which would have a material

adverse effect on the Property, or which would cause any of the representations and warranties contained in this Article III to be untrue as of Closing.

3.9 **Hazardous Substances.** Except as may be disclosed by a Phase I environmental assessment report for the Property, to the best of Seller's knowledge, there currently exist no facts or circumstances that could reasonably be expected to give rise to a material non-compliance with any Environmental Laws. The term "knowledge" as used herein shall mean the knowledge of the managing member of Seller. Seller is in compliance with any regulations concerning above or below ground storage tanks.

3.10 **Utilities.** All Utilities required for the operation of the Property (the "*Utilities*") either enter the Property through adjoining streets, or they pass through adjoining land and do so in accordance with valid public easements or private easements.

3.11 **Survival of Representations.** Each of the representations, warranties and covenants contained in this Article III are intended for the benefit of Buyer. No investigation, audit, inspection, review or the like conducted by or on behalf of Buyer shall be deemed to terminate the effect of any such representations, warranties and covenants, it being understood that Buyer has the right to rely thereon and that each such representation, warranty and covenant constitutes a material inducement to Buyer to execute this Agreement and to close the transaction contemplated hereby and to pay the Purchase Price to Seller.

#### ARTICLE 4 BUYER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

To induce Seller to enter into this Agreement and to sell the Property, Buyer hereby makes the following representations, warranties and covenants, upon each of which Buyer acknowledges and agrees that Seller is entitled to rely and has relied:

4.1 **Organization and Power.** Buyer is duly formed or organized, validly existing and in good standing under the laws of the state of its formation and has all governmental licenses, Authorizations, consents and approvals required to carry on its business as now conducted and to enter into and perform its obligations under this Agreement and any document or instrument required to be executed and delivered on behalf of Buyer under this Agreement.

4.2 **Noncontravention.** The execution and delivery of this Agreement and the performance by Buyer of its obligations hereunder do not and will not contravene, or constitute a default under, any provisions of applicable law or regulation, or any agreement, judgment, injunction, order, decree or other instrument binding upon Buyer or result in the creation of any lien or other encumbrance on any asset of Buyer.

4.3 **Litigation.** There is no action, suit or proceeding, pending or known to be threatened, against or affecting Buyer in any court or before any arbitrator or before any administrative panel or otherwise that (a) could materially and adversely affect the business, financial position or results of operations of Buyer, or (b) could materially and adversely affect the ability of Buyer to perform its obligations under this Agreement, or under any document to be delivered pursuant hereto.

4.4 **Bankruptcy.** No Act of Bankruptcy has occurred with respect to Buyer.

4.5 **Authorization and Execution.** This Agreement has been, and each of the agreements and certificates of Buyer to be delivered to Seller at Closing will be, duly authorized by all necessary action on the part of Buyer, has been duly executed and delivered by Buyer, constitutes the valid and binding agreement of Buyer and is enforceable against Buyer in accordance with its terms. All action required pursuant to this Agreement necessary to effectuate the transactions contemplated herein has been, or will at Closing be, taken promptly and in good faith by Buyer and its representatives and agents.

## ARTICLE 5 CONDITIONS AND ADDITIONAL COVENANTS

5.1 **As to Buyer' Obligations.** Buyer' obligations under this Agreement are subject to the satisfaction of the following conditions precedent and the compliance by Seller with the following covenants:

(a) *Seller's Deliveries.* Seller shall be ready, able and willing to deliver to or for the benefit of Buyer, on or before the Closing Date, all of the documents and other information required of Seller pursuant to this Agreement within the time frame(s) set forth herein, and within fifteen (15) days after the Effective Date, Seller shall deliver to Buyer the following documents:

(i) A copy of plans and specifications (if any) of the proposed Improvements and any other architectural, engineering, irrigation, and landscaping drawings, plans and specifications relating to the Property in Seller's possession or control.

(ii) A copy of any inspection, soils, engineering or architectural notices, studies or reports in Seller's possession or control which relate to the physical condition or operation of the Property or recommended improvements to the Property.

(iii) Any other documents and information reasonably requested by Buyer and relating to Seller's ownership or operation of the Property.

(b) *Representations, Warranties and Covenants.* All of Seller's representations and warranties made in this Agreement shall be true and correct as of the Effective Date and as of the Closing Date as if then made, there shall have occurred no material adverse change in the condition or financial results of the operation of the Property since the Effective Date.

(c) *Title Insurance.* The Title Company shall have delivered a Commitment for the Owner's Title Policy, subject only to the Permitted Title Exceptions. The Final Title Policy shall be issued within the customary timeframe for a transaction of this nature in this locale.

(d) *Title to Property.* Buyer shall have determined that Seller is the sole owner of good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, restrictions, conditions and agreements except for Permitted Title Exceptions. Seller shall not have taken any action or permitted or suffered any action to be taken by others from the Effective Date and through and including the Closing Date that would adversely affect the status of title to the Property.

(e) *Condition of Property.* The Property (including but not limited to the mechanical systems, plumbing, electrical wiring, appliances, fixtures, heating, air conditioning and ventilating equipment, elevators, boilers, equipment, roofs, structural members and furnaces) shall be in the same condition at Closing as they are as of the Effective Date, reasonable wear and tear excepted.

Each of the conditions and additional covenants contained in this Section are intended for the benefit of Buyer and may be waived in whole or in part by Buyer, but only by an instrument in writing signed by Buyer.

5.2 **As to Seller's Obligations.** Seller's obligations under this are subject to the satisfaction of the following conditions precedent and the compliance by Buyer with the following covenants:

(a) *Buyer's Deliveries.* Buyer shall be ready, able and willing to deliver to, or for the benefit of Seller, on or before the Closing Date, all of the documents and payments required of Buyer pursuant to this Agreement.

(b) *Representations, Warranties and Covenants.* All of Buyer's representations and warranties made in this Agreement shall be true and correct as of the Effective Date and as of the Closing Date as if then made and Buyer shall have performed all of its covenants and other obligations under this Agreement.

Each of the conditions and additional covenants contained in this Section are intended for the benefit of Seller and may be waived in whole or in part, by Seller, but only by an instrument in writing signed by Seller.

## ARTICLE 6 CLOSING

6.1 **Closing.** Closing shall be held thirty (30) days after expiration of the Due Diligence Period; provided, however, that the Closing Date may be extended for an additional fifteen (15) days by Buyer, at its sole discretion by providing written notice to Seller prior to three (3) days after expiration of the Due Diligence Period. If the Closing Date falls on a Saturday, Sunday, or other legal holiday, the Closing shall take place on the first following business day thereafter. Possession of the Property shall be delivered to Buyer at Closing, subject only to Permitted Title Exceptions.

6.2 **Seller's Deliveries.** At Closing, Seller shall deliver to Buyer all of the following instruments, each of which shall have been duly executed and, where applicable, acknowledged and/or sworn on behalf of Seller and shall be dated as of the Closing Date.

(a) *The Deed.*

(b) *Title Requirements.* Such agreements, affidavits or other documents as may be required by the Title Company to issue the Owner's Title Policy so that the Owner's Title Policy will be subject only to the Permitted Title Exceptions.

(c) *Miscellaneous.* Any other document or instrument reasonably requested by Buyer or the Title Company with respect to the Property or the transactions contemplated hereby.

6.3 **Buyer's Deliveries.** At Closing, Buyer shall pay or deliver to Seller the following:

(a) *Purchase Price.* The Purchase Price with appropriate pro-rations and credits, including but not limited to the Earnest Money Deposit, in immediately available federal funds of the United States of America.

(b) *Resolution.* A resolution of Town Council, certified by the Town Clerk, authorizing the execution on behalf of Buyer of this Agreement and the documents to be executed and delivered by Buyer prior to, at, or otherwise in connection with Closing.

(c) *Miscellaneous.* Any other document or instrument reasonably requested by Seller relating to the transaction contemplated hereby.

6.4 **Mutual Deliveries.** At Closing, Buyer or Operator, as applicable, and Seller shall mutually execute and deliver each to the other:

(a) *Closing Statements.* A closing statement for Seller and a closing statement for Buyer (collectively, the "**Closing Statements**") reflecting the Purchase Price and the adjustments and prorations required under this Agreement and the allocation of income and expenses required hereby.

(b) *Miscellaneous.* Such other and further documents, papers and instruments as may be reasonably required by the parties hereto or their respective counsel.

6.5 **Closing Costs.** Except as is otherwise provided in this Agreement, each party hereto shall pay its own legal fees and expenses. Seller shall pay the cost of documentary tax stamps on the Deed, if any, and any and all transfer fees to any governmental authority or property owners association and any such other fees or expenses that are usually and customarily the responsibility of Sellers in the sale of real estate in Beaufort County. Buyer shall be solely responsible for the payment of (i) any and all other filing fees for the Deed and recording costs, (ii) the cost of any Owner's Title Policy and the cost of any endorsements to the Owner's Title Policy, (iii) the costs of any of the Buyer's Due Diligence materials, and (iv) any such other fees or expenses that are usually and customarily the responsibility of the Buyer in the sale of real estate in the area in which the Property is located in Beaufort County.

6.6 **Income and Expense Allocations.** All income and expenses with respect to the Property, and applicable to the period of time before and after Closing, determined in accordance with generally accepted accounting principles consistently applied, shall be allocated between Seller and Buyer. Seller shall be entitled to all income and shall be responsible for all expenses for the period of time up to but not including the Closing Date and Buyer shall be entitled to all income and shall be responsible for all expenses for the period of time from, after and including the Closing Date. Such adjustments shall be shown on the Closing Statements (with such supporting documentation as the parties hereto may require being attached as exhibits to the Closing Statements) and shall increase or decrease (as the case may be) the Purchase Price payable by Buyer. Without limiting the generality of the foregoing, the following items of income and expense shall be allocated as of the Closing Date as follows:

(a) *Taxes.* As the Buyer is a municipal corporation exempt from ad valorem real property taxes pursuant to S.C. Code Ann. § 12-37-222(A)(1), the Parties hereby acknowledge and agree that all real property ad valorem taxes (including rollback taxes, if any) applicable to the Property for the calendar year in which Closing occurs shall be the responsibility of the Seller.

(b) *Utilities.* Utility charges (including but not limited to charges for water, sewer and electricity).

(c) *Miscellaneous Prorations.* Such other items as are usually and customarily prorated between Buyer and Sellers of properties in the area in which the Property is located shall be prorated as of the Closing Date.

**ARTICLE 7  
GENERAL PROVISIONS**

7.1 **Condemnation.** In the event of any actual or threatened taking, pursuant to the power of eminent domain, of all or any portion of the Real Property, or any proposed sale in lieu thereof, Seller shall give written notice thereof to Buyer promptly after Seller learns or receives notice thereof. If all or any part of the Real Property is, or is to be, so condemned or sold, Seller and Buyer shall have the unilateral right to terminate this Agreement pursuant to Article VIII. If Buyer elects not to terminate this Agreement, all proceeds, awards and other payments arising out of such condemnation or sale (actual or threatened) shall be paid or assigned, as applicable, to Buyer at Closing. Seller will not settle or compromise any such proceeding without Buyer's prior written consent.

7.2 **Risk of Loss.** If, prior to the Closing, there is any damage to or destruction of any part of the Property, then Buyer may terminate this Agreement upon written notice to Seller, in which case neither party shall have any further rights or obligations under this Agreement.

7.3 **Real Estate Broker.** There are no real estate brokers involved with this transaction.

**ARTICLE 8  
LIABILITY OF BUYER; INDEMNIFICATION BY SELLER; TERMINATION RIGHTS**

8.1 **Liability of Buyer.** Except for any obligation expressly assumed or agreed to be assumed by Buyer under this Agreement, Buyer does not assume any obligation of Seller or any liability for claims arising out of any event, action, circumstance or occurrence prior to Closing.

8.2 **Seller's Indemnity of Buyer.** Seller shall indemnify, and hold Buyer (together with its officers, employees and agents, and successors, heirs and assigns) harmless from, against or in respect of the aggregate of all Indemnifiable Buyer's Damages. For this purpose, the term "Indemnifiable Buyer's Damages" means the aggregate of any and all damage, loss, deficiency, liability, expense (including, but not limited to, any reasonable attorney's fees, court costs and expenses), action, suit, proceedings, demand, assessment, or judgment to or against Buyer arising out of or in connection with (i) any debt, obligation or liability of Seller, which is not expressly assumed by Buyer pursuant to this Agreement, whether arising prior to, on, or after the Closing; and/or (ii) any inaccuracy, breach or violation of, or non-performance by, Seller or any of its representation, warranties, covenants or agreements contained in this Agreement or in any document, certificate or schedule required to be furnished pursuant to this Agreement; and/or (iii) the ownership, use, operation, maintenance and improvement of the Property prior to the Closing Date.

8.3 **Termination by Buyer.** If any condition set forth herein for the benefit of Buyer cannot or will not be satisfied prior to Closing or upon the occurrence of any other event that would entitle Buyer to terminate this Agreement and its obligations under this Agreement, and Seller fails to cure any such matter within ten (10) business days after notice thereof from Buyer, Buyer, at its option, may elect either (a) to terminate this Agreement and all other rights and obligations of Seller and Buyer under this Agreement shall terminate immediately, or (b) to waive its right to terminate (but without waiving any breach or default on the part of Seller) and, instead, to proceed to Closing. If Buyer terminates this Agreement as a consequence of a misrepresentation or breach of a warranty or covenant by Seller, or a failure by Seller to perform its obligations under this Agreement, then Buyer shall retain all remedies accruing as a result thereof, including, without limitation, specific performance.

8.4 **Termination by Seller.** If any condition set forth herein and required to be satisfied by Buyer cannot or will not be satisfied prior to Closing, and Buyer fails to cure any such matter within ten (10) business days after notice thereof from Seller, Seller may, at its option, elect either (a) to terminate this Agreement, in which event the rights and obligations of Seller and Buyer hereunder shall terminate immediately, or (b) to waive its right to terminate, and instead, to proceed to Closing. If, prior to Closing, Buyer defaults in performing any of its obligations under this Agreement (including its obligation to purchase the Property), and Buyer fails to cure any such default within ten (10) business days after notice thereof from Seller, then Seller may terminate this Agreement and/or pursue any other remedy permitted by law.

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

9.1 **Completeness; Modification.** This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior discussions, understandings, agreements and negotiations between the parties hereto. This Agreement may be modified only by a written instrument duly executed by the parties hereto.

9.2 **Assignments.** Neither Seller nor Buyer may assign its rights under this Agreement without the prior written consent of the other party, which consent may be withheld in such party's sole and absolute discretion; provided however, that Buyer may assign all or a portion of its rights hereunder to an affiliate of Buyer without the consent of Seller.

9.3 **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

9.4 **Days.** If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the jurisdiction in which the action is required to be performed or in which is located the intended recipient of such notice, consent or other communication, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first business day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references herein to a "day" or "days" shall refer to calendar days and not business days. Time is of the essence of this Agreement.

9.5 **Governing Law.** This Agreement and all documents referred to herein shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina.

9.6 **Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of both parties hereto appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement.

9.7 **Severability.** If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to other persons or circumstances, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.8 **Costs.** Regardless of whether Closing occurs under this Agreement, and except as otherwise expressly provided in this Agreement, each party to this Agreement shall be responsible for its

own costs in connection with this Agreement and the transactions contemplated hereby, including without limitation, fees of attorneys, engineers and accountants.

9.9 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be delivered by hand, sent prepaid by Federal Express (or a comparable overnight delivery service) or sent by the United States mail, certified, postage prepaid, return receipt requested, at the addresses and with such copies as on the Summary Sheet or to such other address as the intended recipient may have specified in a notice to the other party. Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party and Escrow Agent in a manner described in this Section. Any notice, request, demand or other communication delivered or sent in the manner aforesaid shall be deemed given or made (as the case may be) when actually delivered to the intended recipient.

9.10 **Incorporation by Reference.** All of the exhibits attached hereto are by this reference incorporated herein and made a part hereof.

9.11 **Survival.** Except as expressly provided in Section 3, all of the representations, warranties, covenants and agreements of Seller and Buyer made in, or pursuant to, this Agreement shall survive Closing and shall not merge into the Deed or any other document or instrument executed and delivered in connection herewith.

9.12 **Further Assurances.** Seller and Buyer each covenant and agree to sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done or made, upon the written request of the other party, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably required by either party hereto for the purpose of or in connection with consummating the transactions described herein.

9.13 **No Partnership.** This Agreement does not and shall not be construed to create a partnership, joint venture or any other relationship between the parties hereto except the relationship of Seller and Buyer specifically established hereby.

9.14 **Tax-Deferred Exchange.** In the event that Buyer or Seller desires to affect a tax-deferred exchange in connection with the conveyance of the Property (or any portion thereof), Buyer and Seller agree to cooperate in affecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

9.15 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, then this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

*[Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibits to Follow.]*

IN WITNESS WHEREOF, Seller and Buyer have hereunder affixed their signatures to this Purchase and Sale Agreement, all as of the 25<sup>th</sup> day of April, 2018.

**SELLER:**

KGB 1934 LTD. CO., a Nevada limited liability company

By: 

Name: DANIEL L. WENTZ

Its: Manager

**BUYER:**

THE TOWN OF BLUFFTON, a South Carolina  
municipal corporation

By: 

Name: MARC ORLANDO

Its: TOWN MANAGER

**EXHIBIT A**

To be replaced by full property description once available.

F:\CLIENT\B\BLUFFTON\WENTZ (PURCHASE FROM KGB 1234 LTD.)\PURCHASE AND SALE AGREEMENT  
(4.20.2018)(FINAL.CLN).DOCX