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REVIEWED BY
PREPARED BY

[Signature]

[Signature]

CITY ATTORNEYS OFFICE

AN ORDINANCE TO PROVIDE FOR THE DISPOSITION BY SALE OF PROPERTY LOCATED NEAR SPRINGDALE ROAD, ROCK HILL, SOUTH CAROLINA BY THE CITY OF ROCK HILL TO ROSS DRESS FOR LESS, INC.

BE IT ORDAINED by the Governing Body of the City of Rock Hill, in Council assembled:

SECTION 1. That this Ordinance is being adopted in order to effect proper compliance with the provisions of the Home Rule Act of 1975, now South Carolina Code of Laws for 1976, Section 5-7-30, Section 5-7-40 and Section 5-7-260, and Section 2-48 and Section 2-96 of the Code of the City of Rock Hill.

SECTION 2. That the City of Rock Hill, South Carolina, is the owner of property containing approximately 3.29 acres located near Springdale Road, in the City of Rock Hill, York County, South Carolina; that Ross Dress for Less, Inc. has agreed to purchase from the City of Rock Hill such tract for a purchase price of Twenty-Six Thousand Three Hundred Twenty and No/100 Dollars (\$26,320.00).

SECTION 3. That sale of the above mentioned tract to Ross Dress for Less, Inc. for the consideration set forth above, all as is more fully set forth in a Purchase and Sale Agreement, a copy of which is attached hereto and incorporated herein, is hereby approved, authorized, directed, ratified and confirmed in all respects.

SECTION 4. That all ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 5. That this Ordinance shall be and become finally binding immediately after same shall have received first and final readings, given in manner required by law.

DONE AND RATIFIED in Council assembled on this the ____ day of _____, 2011.

A. Douglas Echols, Jr., Mayor

Susie B. Hinton, Mayor Pro Tempore

John A. Black, III, Councilmember

Kathy S. Pender, Councilmember

James C. Reno, Jr., Councilmember

Osbey Roddey, Councilmember

Kevin H. Sutton, Councilmember

ATTEST:

Anne H. Poag
Municipal Clerk

97739.1
October 3, 2011

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is executed and delivered as of the latest date of Buyer's or Seller's execution set forth on the signature page hereto (the "Effective Date"), by and between **CITY OF ROCK HILL, S.C.**, a South Carolina municipal corporation, with an address of 155 Johnston Street, Rock Hill, South Carolina 29731-1706, Attention: City Manager, Telephone: (803) 329-7090, Facsimile: (803) 329-7007 ("Seller"), and **ROSS DRESS FOR LESS, INC.**, a Virginia corporation, with an address of 4440 Rosewood Drive, Pleasanton, CA 94588-3050 ("Buyer") (Seller and Buyer may be referred to in this Agreement individually as a "Party" and collectively as the "Parties").

FOR AND IN CONSIDERATION OF the mutual agreements and undertakings herein set forth and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property described in Section 1 herein on the terms and conditions hereinafter set forth:

1. **Property.** Seller agrees to sell, and Buyer agrees to buy, a parcel of land located near Springdale Road in the City of Rock Hill, York County, South Carolina, being that part of tax parcel number 669-04-01-033 shown as 3.29 acres on **Exhibit A** attached hereto and incorporated herein by this reference (the "Property"). The Property will be more particularly described on the Survey (defined below in Section 6). The Parties acknowledge that the Survey will move the rear property line at least 50' away from the substation shown on **Exhibit A**, and that the acreage and shape of the Property may change accordingly.

2. **Purchase Price; Closing Costs.**

(a) **Purchase Price.** The purchase price for the Property (the "Purchase Price") shall be Twenty-Six Thousand Three Hundred Twenty and No/100 Dollars (\$26,320.00). Buyer shall pay the Purchase Price to Seller in cash or by other immediately available funds at Closing (defined in Section 6 below). If the Survey reveals that the Property contains more or less than 3.29 acres, the Purchase Price will be increased or decreased accordingly, on a pro-rata acreage basis (i.e., \$8,000.00 per gross acre).

(b) **Closing Costs; Taxes.** Seller shall pay the cost of preparation of the Deed and the fees of Seller's attorney. Buyer shall pay all other closing costs, including, without limitation, documentary stamp taxes, the costs to have the Survey prepared and approved for recording, the costs of having title to the Property examined and obtaining title insurance, the costs of Buyer's Inspections (defined in Section 7 below), and the fees of Buyer's attorney. Ad valorem real property taxes, public assessments and private assessments for the year in which Closing occurs, if any, shall be prorated between the Parties as of the date of Closing.

3. Intentionally Deleted.

4. **Closing.** The closing ("Closing") of the purchase and sale of the Property shall occur no later than 10 days after the end of the Inspection Period, at a time and location in York County, South Carolina, mutually acceptable to Seller and Buyer.

5. **Delivery of Deed; Closing Documents.** At Closing, Seller shall deliver a limited warranty deed ("Deed") to Buyer, conveying fee simple title to the Property to Buyer free and clear of all liens, but subject to utility easements, rights-of-way for roads and streets, and other easements, restrictions, covenants, and other matters of record or apparent upon a reasonable inspection of the Property, and a reserved easement (the "Easement"), to be set forth in the Deed, similar in substance to the following:

"Grantor hereby reserves, for itself and its successors and assigns forever, a perpetual, exclusive easement twenty feet (20') in width shown and labeled "___" on plat of survey

prepared by ____ entitled “____” dated _____, 2011, and recorded _____, 2011, in Plat Book ____, Page ____, Office of the Clerk of Court for York County, South Carolina (the “Easement Area”), for purposes of construction, installation, replacement, reconstruction, operation, inspection, repair, and maintenance of one or more underground lines or pipes for the transmission of electricity, cable, internet, telecommunications, water, sanitary sewer, storm sewer, natural gas, and other utilities, and related aboveground or underground equipment, fixtures, poles and other improvements or infrastructure (collectively, “Infrastructure”), together with (a) the right to remove any trees, improvements or other obstructions (other than the paving and fencing referenced below) placed or located within the Easement Area and (b) the non-exclusive right of access, ingress and egress over and across the Premises for purposes of exercising Grantor’s reserved easement set forth herein. Grantee shall not install, place, erect or construct any buildings or other improvements within the Easement Area; provided, however, Grantor acknowledges that Grantee shall have the right to pave all or part of the Easement Area and may erect fencing within the Easement Area as long as the pavement or fencing does not damage the Infrastructure. Grantee must provide at least 90 days prior written notice to Grantor before installing any pavement or fences within the Easement Area to allow Grantor time to install any Infrastructure desired by Grantor. If Grantor damages any pavement or fence within the Easement Area as a result of the exercise of its easement rights, Grantor shall repair, patch and/or restore the damaged portion of the pavement or fence to a condition reasonably similar to that which existed prior to Grantor’s work. Grantee understands that the pavement and fencing may not be restored to its same prior condition but Grantor will make reasonable efforts to repair/patch Grantee’s pavement and fencing. If Grantee damages any Infrastructure within the Easement Area, Grantee shall immediately notify Grantor’s Utilities Director or City Manager of such damage, Grantor shall repair the damage, and Grantee shall reimburse Grantor for all expenses associated with the repairs resulting from damage caused by Grantee within 15 days of Grantor’s delivery of an invoice to Grantee. Grantor understands that a portion of the Easement Area is anticipated to be the main ingress and egress point for tractor trailers loading and unloading at Grantee’s facility and therefore Grantor agrees to diligently work in good faith with Grantee to avoid or minimize any disruption to this traffic caused by construction, installation, maintenance, repair and replacement of the Infrastructure or repair by Grantor of any damaged portion of the pavement or fence as referenced above. Grantee acknowledges and agrees that in emergency situations, Grantor may not be able to provide prior notice of closing of access across easement areas for purposes of repairs to Infrastructure. Grantor also agrees to make every reasonable effort to place any aboveground portions of the Infrastructure in places that will not conflict with Grantee’s use of the Property.”

The Easement Area will be shown on the Survey.

The Property shall be described in the Deed with reference to the Survey. At Closing, Seller shall also deliver the following closing documents to Buyer: (a) an I-295 South Carolina non-resident withholding tax affidavit; (b) a FIRPTA certificate; (c) standard title insurance owner’s affidavit and affidavit of possession required by Buyer’s title insurance company (but deleting any indemnification language); (d) a copy of the ordinance by which Seller’s governing body has approved the sale contemplated by this Agreement; (e) a transferor affidavit regarding tax liens.

6. **Survey.** At least five (5) days prior to the expiration of the Inspection Period, Buyer, at its sole cost, shall have a survey of the Property (including the Easement) prepared in accordance with the Minimum Standards Manual for the Practice of Land Surveying in South Carolina for a Class A survey (the “Survey”) and deliver five copies to Seller for review. The Survey must be satisfactory to Buyer and

Seller. If Seller does not approve the Survey by delivering written notice to Buyer prior to Closing, Buyer and Seller shall each have the right to terminate this Agreement by delivering written notice to the other. Effective upon delivery of such notice, this Agreement shall terminate, and, except as expressly provided in this Agreement, Seller and Buyer shall have no further rights or obligations under this Agreement. The approved Survey shall be recorded at Closing.

7. Inspection Period.

(a) **Duration.** Buyer shall have an inspection period beginning on the Effective Date and continuing until 5:00 p.m. on the date that is forty-five (45) days thereafter (the "Inspection Period"). During the Inspection Period, Buyer shall have the right to enter the Property to perform, at its sole cost and expense, such inspections and tests (collectively, the "Inspections") as Buyer deems necessary; provided, however, none of the Inspections shall include invasive testing or result in any material change (i.e., removal of trees or brush, boring of holes, etc.) to the Property unless Buyer first obtains Seller's prior written consent. Seller hereby specifically agrees and consents to soil borings on the Property to test for load bearing capacity and potential PCB or other contamination as may be required by Buyer or by a Phase I environmental assessment. Furthermore, during the Inspection Period, Buyer shall also have the right to have title to the Property examined. Seller shall have no obligation to cure any title defects.

(b) **Termination Rights.** If Buyer, in its sole discretion, determines the Property is unacceptable for any reason, or if the results of Buyer's title examination reveal any matter which materially affects the marketability of title to the Property, Buyer may terminate this Agreement by delivering written notice of termination to Seller prior to the end of the Inspection Period.

(c) **Intentionally Deleted.**

(d) **Seller Documents.** No later than five business days after the Effective Date, Seller agrees to deliver to Buyer copies of all surveys, approved plats, engineering studies (i.e., soils and environmental reports), and title policies in Seller's possession relating to the Property (collectively, "Seller Documents"). If Buyer terminates this Agreement in accordance with this section 7, Buyer shall immediately return all Seller Documents to Seller. Buyer acknowledges that Seller makes no representation or warranty as to the accuracy of any of the Seller Documents. Furthermore, within five days after such termination, as a covenant which shall survive termination of this Agreement, Buyer shall also deliver to Seller copies of all due diligence materials obtained by Buyer with respect to the Property, including, without limitation, inspections, title insurance commitments or title reports, surveys, plats, drawings, renderings, blue prints, site plans, and environmental or soils reports (the "Buyer Documents"). Seller acknowledges that Buyer makes no representation or warranty as to the accuracy of any of the Buyer Documents. Buyer's obligations under this section will survive termination of this Agreement.

(e) **Indemnification.** Buyer shall indemnify and hold harmless Seller, and Seller's officers, employees and agents (collectively, "Indemnified Parties"), from and against any and all claims, actions, lawsuits, damages, costs and expenses (including, without limitation, reasonable attorneys' fees), asserted against or incurred by any one or more of the Indemnified Parties as a result of or in any way related to Buyer's Inspections or any entry upon the Property by Buyer or Buyer's agents, contractors, employees and any other person acting on Buyer's behalf. This indemnification obligation shall survive Closing or the termination of this Agreement for a period of three years.

8. **"As-Is" Sale; No Representations by Seller.** At Closing, Buyer shall be deemed to have accepted the Property "AS-IS" in its existing condition. Buyer acknowledges that it is relying solely upon the results of the Inspections to satisfy itself as to the condition of the Property and the Property's suitability for development, and that Seller makes no representations or warranties with respect thereto other than those in the Deed. In particular, Buyer agrees and acknowledges that neither Seller nor any

person or party on behalf of Seller has made any representation, warranty or covenant (express or implied) of any nature whatsoever (other than those in the Deed) upon which Buyer has relied in entering into this Agreement or upon which Buyer shall rely in consummating the transaction contemplated by this Agreement, including, without limitation, as to the Property's suitability for development or the compliance of the Property with any federal, state, or local statutes, laws, rules, regulations or ordinances, including those pertaining to construction, building and health codes, land use (or permits issued in connection therewith), zoning, or environmental matters.

9. **Condemnation.** If any material portion of the Property is taken by condemnation, eminent domain or other governmental acquisition proceedings (collectively, "Taking") prior to Closing, then either Party may, within 15 days of the date such Party obtained knowledge of the Taking, terminate this Agreement and Seller and Buyer shall have no further rights or obligations hereunder, except as otherwise provided herein. If neither Party terminates this Agreement within such 15 day period, the Parties agree the condemnation proceeds or other award received by Seller on account of such Taking shall be paid to Buyer.

10. **Conditions Precedent.** Buyer's and Seller's obligations under this Agreement are conditioned upon satisfaction of the conditions listed below as of Closing:

(a) Rock Hill City Council must have approved this Agreement and sale of the Property in accordance with applicable law; and

(b) The Survey must be satisfactory to Buyer and Seller and must have been approved for recording by the City of Rock Hill planning department in accordance with applicable law.

If any condition is not satisfied at Closing, Buyer and Seller may terminate this Agreement by delivering written notice to the other at, or no more than 24 hours before, Closing. Upon any such termination, the Parties will have no further rights or obligations under this Agreement, except for those covenants that expressly survive termination.

11. **Brokerage.** Buyer and Seller represent and warrant to the other that each has not dealt with any broker in connection with this transaction.

12. **Notices.** All notices, requests, demands or other communications given hereunder shall be delivered either (a) by hand, (b) by certified United States Mail, return receipt requested, (c) by facsimile with confirmation of receipt, or (d) by commercial overnight delivery service, in any event with postage, fees and delivery charges prepaid. Such notice shall be deemed to have been delivered on the earliest of the following: (i) the day that delivery is attempted by any means and refused or returned; (ii) the day mailed by commercial overnight delivery service or United States mail; or (iii) the date of delivery as set forth on the facsimile confirmation, the return receipt or affidavit of service. All notices shall be mailed or delivered to the Parties at their respective addresses set forth on the first page of this Agreement.

Each Party may change the address to which notice is to be delivered to it by notifying the other Party of the new address in the manner provided herein for giving notice, and each such change or address shall be effective 15 days after such notice of change is given. Notices may be given to or on behalf of the Parties by their respective attorneys.

13. **Default; Remedies.**

(a) If Seller fails to perform any term of this Agreement and does not cure such failure to perform within 10 days after receipt of written notice from Buyer, Seller shall be deemed in default under this Agreement, and Buyer shall have all rights and remedies available at law or in equity including,

without limitation, the right to (i) terminate this Agreement by delivering written notice to Seller, upon which this Agreement shall be void, except for Seller's obligations under this Agreement which expressly survive termination, and/or (ii) sue Seller for specific performance and/or damages.

(b) If Buyer defaults and does not cure such failure to perform within 10 days after receipt of written notice from Seller, Buyer shall be deemed in default under this Agreement, and Seller shall have all rights and remedies available at law or in equity including, without limitation, the right to (i) terminate this Agreement by delivering written notice to Buyer, upon which this Agreement shall be void, except for Buyer's obligations under this Agreement which expressly survive termination, and/or (ii) sue Buyer for damages, which damages Seller agrees shall in no event exceed the Purchase Price (but excluding from such cap on damages any claim related to Buyer's indemnification covenant under Section 7 of this Agreement).

(c) The prevailing party in a lawsuit shall have the right to collect its reasonable attorneys' fees and court costs incurred in enforcing or interpreting this Agreement.

14. Acknowledgements by Buyer.

(a) Employees or agents of Rock Hill Economic Development Corporation ("RHEDC") may be providing certain real estate, incentives availability, architectural, information technology, and other services (excluding any which require licensure) to Buyer without charge. RHEDC is providing such services in order to further its corporate purpose of encouraging economic growth and development in Rock Hill, South Carolina. RHEDC does not represent Buyer with regard to any transaction involving the Property, and no RHEDC officer, director, employee or agent has any special, heightened or fiduciary duty to Buyer.

(b) None of the officers, directors, employees or agents of RHEDC is a licensed real estate broker or real estate agent. No officer, director, employee or agent of RHEDC is governed by any federal, state or local law with regards to the responsibilities and liabilities of real estate professionals.

(c) Except as expressly provided in this Agreement, neither RHEDC nor Seller makes any representations or warranties whatsoever with respect to the Property, and is under no obligation whatsoever to advise Buyer as to whether the Property is appropriate for Buyer's purposes. Neither RHEDC nor Seller is under any obligation whatsoever to perform or to suggest any tests, examinations or inspections with regards to the Property, including without limitation any environmental or soil testing, surveys, title examination, pest inspections or inspections to determine the condition of any improvements on the Property or the suitability of the Property for development. Buyer is solely responsible for deciding which examinations and tests are necessary to determine the suitability of the Property, for causing such tests and examination to be performed, and for interpreting the results of such tests and examinations.

(d) Neither RHEDC nor Seller is under any obligation to discover any conditions which may render the Property unsuitable for Buyer's purposes, including, without limitation any title defects, zoning or land use regulations, easements, rights of way, floodplains, soil conditions or wetlands. Without limiting the foregoing, RHEDC and Seller have (i) disclosed to Buyer the existence of floodplains, floodways, wetlands, and other riparian areas on or near the Property and (ii) made no representation or warranty to Buyer as to Buyer's ability to obtain federal, state or local permits for a bridge crossing or the feasibility of constructing a bridge crossing in or near any such areas.

(e) Neither Seller nor RHEDC makes any representation or warranty as to the availability of any federal, state or local financial or economic incentives that may be applicable to the Property or Buyer's proposed development (collectively, "Incentives"). Buyer acknowledges that (i)

availability of Incentives is subject to federal, state, and/or local laws, regulations, and requirements, as well as approvals by certain federal, state, and/or local agencies, and (ii) neither Seller nor RHEDC has made or makes any representation or warranty as to whether any such approvals will be obtained.

15. Miscellaneous.

(a) Assignment. This Agreement may be assigned by Buyer only with the prior written consent of Seller. Any permitted assignment hereunder shall not relieve Buyer from liability with respect to any breach of this Agreement by Buyer or its assignee.

(b) Time is of the Essence. Time is of the essence to all of the terms of this Agreement.

(c) Modification. No modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Parties.

(d) Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of South Carolina. The Parties consent to the jurisdiction of the courts of York County, South Carolina for resolution of any dispute under this Agreement.

(e) Severability. If any section or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid or waived through non-enforcement, this Agreement shall be otherwise unaffected by such determination and all of the provisions of this Agreement shall otherwise remain in full force and effect as though such section or provision or any part thereof so adjudicated to be invalid or waived through non-enforcement had not been adjudicated at all. In the event of any such invalidity, Seller and Buyer shall promptly negotiate in good faith valid new provisions to restore this Agreement to its original intent and effect. If either Seller or Buyer decides not to enforce a provision of this Agreement, such decision in favor of non-enforcement shall not constitute a complete and full waiver of the right of the non-enforcing party in the future to enforce that provision in the event of any subsequent breach or failure to comply in full with that provision of the Agreement.

(f) Captions. Paragraphs, titles, headings and captions contained in this Agreement are inserted only for convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

(g) Merger. This Agreement expresses the entire agreement between the Parties. All other agreements, oral or written, are merged herein.

(h) Interpretation. Buyer and Seller have the intent, capacity and authority to execute and enter into this Agreement, have carefully reviewed this Agreement, have had an opportunity to review and discuss the terms with counsel, and agree to each and every term willfully and voluntarily. Wherever appropriate, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular. Buyer and Seller agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of any provision hereof.

(i) Binding Effect; Counterparts. This Agreement shall be binding upon, and inure to the benefit of, Seller and Buyer, and their respective permitted successors and assigns, as may be applicable. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one instrument. Facsimile signatures shall be deemed originals.

IN WITNESS WHEREOF, Buyer and Seller, by and through their respective duly-authorized undersigned officers, have executed and delivered this Agreement as of the Effective Date.

CITY OF ROCK HILL, S.C.

By: Gerald P. Schapiro (Seal)

Name: Gerald P. Schapiro

Title: Assistant City Manager

Date: Sept 27, 2011

ROSS DRESS FOR LESS, INC.

By: _____ (Seal)

Name: _____

Title: _____

Date: _____, 2011

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Exhibit A

