

## REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement ("*Agreement*") dated the \_\_\_\_ day of October, 2009 (the "*Effective Date*"), by and between **LORENZO P. BAKER IV** residing at \_\_\_\_\_ (the "*Seller*"), and the **CITY OF COLUMBUS, OHIO**, a municipal corporation, with its principal office at 90 West Broad Street, Room 425, Columbus OH 43215, Mortgage Code 9000 ("*Buyer*").

### WITNESSETH:

**Background Information.** This Agreement is made under the following circumstances:

A. Pursuant to a certain quit-claim deed recorded at Volume 13746, Page A12, Official Records, Recorder's Office, Franklin County, Ohio, Seller is the owner of certain real property located in the State of Ohio, County of Franklin and City of Columbus more particularly described as follows (the "*Property*"), and is the holder of the lessor's interest and reversion in and to that certain Indenture of Lease dated August 10, 1939 originally between Lorenzo P. Baker, as lessor and George Hutchison, as lessee, recorded at Lease Volume 85, Page 436, Recorder's Office, Franklin County, Ohio (the "*Lease*") affecting the Property.

#### First Tract:

Situate in the County of Franklin in the State of Ohio and in the City of Columbus and bounded and described as follows:

Being the east one fourth part of Inlot Number Two Hundred Fourteen (214) in said City of Columbus as said Inlot is designated on the recorded plat of said city in Deed Book F, Page 332, in the Office of the Recorder of Franklin County, Ohio.

#### Second Tract:

Situate in the County of Franklin in the State of Ohio and in the City of Columbus and bounded and described as follows:

Part of said Inlot Number Two Hundred Fourteen (214) bounded and described as follows, to wit: Beginning at a point in the north line thereof Forty-seven (47) feet from the Northeast corner: thence west with the said north line Forty-five (45) feet; thence south on a line parallel with the east line of said Inlot No. 214, Sixty-two and one-half (62-1/2) feet; thence east with the south line of said Inlot Forty-five (45) feet; thence north on a line parallel with the east line of said Inlot No. 214, Sixty-two and one-half (62-1/2) feet to the place of beginning.

B. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Property, including without limitation the lessor's interest and reversion in and to the Lease, all on the terms set forth in this Agreement.

Now, therefore, in consideration of the agreements herein contained, the conveyance described herein, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties intending to be legally bound hereby agree as follows:

## PURCHASE AND SALE

1. **Purchase and Sale.** Seller hereby agrees to sell, convey and assign the Property to Buyer, and Buyer hereby agrees to purchase and accept and assume the Property from Seller, subject to the terms and conditions herein set forth, for a purchase price of Fifty Thousand and No/100 Dollars (\$50,000.00) (“*Purchase Price*”).

2. **Duration.** This offer is open for Seller’s acceptance until October 31, 2009.

3. **Title and Ownership.** Seller shall convey to Buyer title to the Property, free and clear of all encumbrances except: the Lease; taxes and assessments and other liens required by the Lease to be paid by the lessee thereunder; easements, covenants, conditions and restrictions of record including, without limitation, an easement to the City of Columbus as recorded in Miscellaneous Volume 2-93 and Miscellaneous Volume 2-96, Recorder’s Office, Franklin County, Ohio; and liens and encumbrances created or suffered by Buyer or its predecessors as lessee under the Lease (all of the foregoing, the “*Permitted Exceptions*”).

4. **Title.** Buyer has obtained, or within ten (10) days after the Effective Date shall obtain, a commitment for an owner’s policy of title insurance (the “*Commitment*”) issued by LandAmerica Lawyers Title Insurance Company, Commercial Division, through its Columbus, Ohio office (the “*Title Company*”), on the then current ALTA Form B. Buyer’s obligations hereunder are conditioned on the Commitment showing the Seller as the holder of good and marketable title to the Property, subject only to Permitted Exceptions. In the event that Seller’s title is not as required by this Agreement, Buyer shall promptly notify Seller. In the event of any defect or cloud on title Buyer shall have the option of either (i) notifying Seller that Buyer agrees to waive such defect and accept such title as Seller is able to convey, without reduction in the Purchase Price, or (ii) notifying Seller that Buyer elects to terminate this Agreement. At closing, Seller shall cooperate in securing from a title company at Buyer’s expense a policy of owner’s title insurance pursuant to the Commitment, in the amount of the Purchase Price, insuring good and marketable title to the Property in Buyer, subject only to Permitted Encumbrances.

5. **Closing.** The closing of this Agreement shall occur in escrow conducted by the Title Company, not later than November 30, 2009. At the closing under this Agreement:

5.1 **Seller Deliveries.** Seller shall execute and deliver to Buyer:

(a) a quit-claim deed in statutory form, with waiver of dower by Seller’s spouse if applicable, in the form attached hereto as Exhibit A;

(b) an affidavit of non-foreign status pursuant to Section 1445 of the U.S. Internal Revenue Code, in the form attached hereto as Exhibit B;

(c) an affidavit as to off-record title matters in accordance with community custom; and

(d) such evidence of authority as the Title Company may reasonably require, and such other documents as the Title Company may reasonably require for the purpose of issuing the policy of title insurance described above.

5.2 **Mutual Deliveries.** Buyer and Seller shall execute and deliver to each other a closing statement. There shall be no proration for taxes, assessments, utilities, or other costs that are lessee’s responsibility under the Lease. Buyer shall be responsible for all recording costs, other than costs of instruments necessary to correct any defect in Seller’s title other than the Permitted Exceptions. Buyer shall be responsible for any transfer tax. Rent for the month of closing shall be prorated on a daily basis.

5.3 **Funds.** Buyer shall deliver or cause to be delivered to the Title Company funds in the amount of the aggregate of (i) the Purchase Price, plus (ii) all other closing costs, pro-rations or other amounts that may be due from Buyer as shown on the closing statement.

6. **Seller's Warranties and Representations.** Seller warrants, covenants and represents to Buyer, as of the date hereof and as of closing, as follows. Seller has the authority, without the joinder of any other person or entity, to execute and deliver this Agreement and perform all duties and obligations imposed on Seller under this Agreement. Seller has full legal right, power and authority to enter into this Agreement and to consummate the transaction contemplated herein. Seller warrants that Seller has never been married.

7. **Interpretation and Miscellaneous.**

7.1 **Complete Agreement.** This Agreement is the entire Agreement between Buyer and Seller concerning the sale of the Property and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound.

7.2 **Severable Provisions.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof.

7.3 **Counterparts; Manual Signatures.** This Agreement may be executed in any number of counterparts, which together will constitute the agreement of the parties. Any acceptance, signature, execution or validation of this Agreement or any communication or notice required hereunder, shall be manually signed and delivered by hard copy, fax, or computer-generated printable facsimile such as TIF or PDF files. Except as set forth in the preceding sentence, no purported offer, acceptance, or contract, amendment, or binding agreement in connection with this transaction shall be made by automated agent, electronic agent, electronic mail, electronic signature, telephonic voice mail, sound recording, or other electronic means of any kind, all as such terms are defined in the Uniform Electronic Transactions Act ("*UETA*," Ohio Revised Code Chapter 1306), the Electronic Signatures in Global and National Commerce Act ("*ESIGN*," 15 U.S. Code Sections 7001 *et seq.*), or any similar state or federal legislation. This Section is intended as an express disclaimer of intent, and an express refusal, under UETA and ESIGN to conduct this transaction by electronic means. This Section cannot be waived except by manually signed, written consent of both parties.

7.4 **No Recordation.** In no event shall this Agreement or any memorandum hereof be recorded in the public records of the place in which the Property is situated, and any such recordation or attempted recordation shall constitute a breach of this Agreement by the party responsible for such recordation or attempted recordation.

7.5 **Time of the Essence.** The parties acknowledge and agree that time will be of the essence in the performance of their obligations under this Agreement.

8. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Ohio, other than laws of the State of Ohio that would require application of the laws of any other jurisdiction.

8.1 **Venue and Jurisdiction.** Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Ohio and of the United States of America located in the City of Columbus, Ohio for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby, and agrees not to commence any

action, suit or proceeding relating thereto except in such courts), and further agrees that service of any process, summons, notice or document by U.S. certified or registered mail, return receipt requested, to the address set forth in the notice provisions of this Agreement shall be effective service of process for any action, suit or proceeding brought against the party in any such court. Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement, or the transactions contemplated hereby, in the courts of the State of Ohio or the United States of America located in the City of Columbus, Ohio, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

9. **Assigns.** This Agreement shall inure to the benefit of and shall be binding on the parties hereto and their respective heirs, legal representatives, successors and assigns.

10. **Brokers' Commissions.** Buyer and Seller acknowledge that neither has been represented by a broker relative to this sale, and that there are no commissions due in connection with same.

11. **Disclaimer.** EXCEPT AS OTHERWISE SET FORTH HEREIN, BUYER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO ANY MATTER REGARDING THE PROPERTY OR THE TRANSACTION CONTEMPLATED HEREIN. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT ALL ASPECTS OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, ALL PHYSICAL AND FINANCIAL ASPECTS OF THE PROPERTY, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER. THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS, WHERE IS" CONDITION AND BASIS WITH ALL FAULTS AND DEFECTS, WHETHER LATENT OR PATENT. BUYER ACKNOWLEDGES THAT RIVERSOUTH HOLDINGS LLC AND ITS PREDECESSORS-IN-INTEREST AS LESSEE UNDER THE LEASE HAVE BEEN IN EXCLUSIVE POSSESSION OF THE PROPERTY SINCE INCEPTION OF THE LEASE.

12. **Notices.** Any notice required to be given under this Agreement shall be deemed to be made (i) upon hand delivery, (ii) three (3) business days after deposit in the U.S. Mail and sent Certified Mail, Return Receipt Requested, or (iii) the next business day after deposit with a nationally recognized overnight courier to the addresses set forth at the beginning of this Agreement. Copies of any notices to Buyer shall be sent simultaneously to its counsel, John C. Klein III, Columbus Real Estate Division, 109 N. Front Street, Columbus, Ohio 43215. Copies of any notices to Seller shall be sent simultaneously to its counsel, Richard L. Levine, 460 E. Main St., Columbus, Ohio 43215-5344. "*Business Day*" means any day other than a Saturday, Sunday or legal holiday.

13. **Contingencies.** This Agreement and Buyer's obligation to close the transaction described herein and to pay the Purchase Price are contingent upon the following: (a) approval by Columbus City Council of the terms and conditions of this Agreement on or before November 9, 2009; (b) approval by the Mayor of the City of Columbus of the terms and conditions of the ordinance authorizing and approving the terms and conditions of this Agreement on or before November 19, 2009; (c) the appropriation by Columbus City Council of funds sufficient to

pay the Purchase Price on or before November 9, 2009. If any one or all of the foregoing contingencies are not satisfied on or before the respective dates provided in connection with each of said contingencies, Seller may elect either (a) to require the Buyer to continue its efforts to obtain such approvals, or (b) to declare this Agreement terminated, upon which latter election each party shall be released from all of its respective obligations hereunder and all provisions of this Agreement shall be and become null and void. If Seller fails to make the election as aforesaid within ten (10) days after the respective dates provided above in respect of each of such contingencies, then the applicable contingency shall be deemed not to have been waived and this Agreement shall be deemed to be terminated in the manner aforesaid.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the Effective Date.

CITY OF COLUMBUS, OHIO

SELLER

By: \_\_\_\_\_  
Richard C. Pfeiffer, Jr.  
Columbus City Attorney

\_\_\_\_\_  
Lorenzo P. Baker IV

## EXHIBIT A

### QUIT-CLAIM DEED

**LORENZO P. BAKER IV** (the "Grantor"), unmarried, , for good and valuable consideration, does hereby grant unto the **CITY OF COLUMBUS, OHIO** (the "Grantee") a municipal corporation whose tax-mailing address is 90 West Broad Street, Room 425, Columbus OH 43215, the following real property:

Situating in the State of Ohio, County of Franklin, and City of Columbus, and bounded and described as follows:

First Tract:

Situating in the County of Franklin in the State of Ohio and in the City of Columbus and bounded and described as follows:

Being the east one fourth part of Inlot Number Two Hundred Fourteen (214) in said City of Columbus as said Inlot is designated on the recorded plat of said city in Deed Book F, Page 332, in the Office of the Recorder of Franklin County, Ohio.

Second Tract:

Situating in the County of Franklin in the State of Ohio and in the City of Columbus and bounded and described as follows:

Part of said Inlot Number Two Hundred Fourteen (214) bounded and described as follows, to wit: Beginning at a point in the north line thereof Forty-seven (47) feet from the Northeast corner: thence west with the said north line Forty-five (45) feet; thence south on a line parallel with the east line of said Inlot No. 214, Sixty-two and one-half (62-1/2) feet; thence east with the south line of said Inlot Forty-five (45) feet; thence north on a line parallel with the east line of said Inlot No. 214, Sixty-two and one-half (62-1/2) feet to the place of beginning.

Auditor's Parcel Number 010-021387

Prior Instrument Reference: Volume 13746, Page A12 of the Official Records of Franklin County, Ohio.

The real property conveyed hereby is subject to the terms and conditions of that certain Indenture of Lease dated August 10, 1939 originally between Lorenzo P. Baker, as lessor and George Hutchison, as lessee, recorded at Lease Volume 85, Page 436, Recorder's Office, Franklin County, Ohio (the "*Lease*"), the lessee's interest therein having been assigned to Riversouth Holdings, LLC, by a certain Quit-Claim Deed and Assumption Agreement recorded July 2, 2004 as Instrument No. 200707020154124, Recorder's Office, Franklin County, Ohio.

Subject to easements, conditions, covenants and restrictions, if any, of record and further subject to taxes and assessments, if any, now a lien, and to the following matters:

1. Terms and conditions of that certain Assignment and Assumption of Agreement (Parking Agreement) by and between Rich's Department Stores, Inc., an Ohio corporation, successor by merger to Lazarus Real Estate, Inc. as Assignor and Riversouth Holdings, LLC, as Assignee, dated June 30, 2004.
2. Easement in favor of the City of Columbus of Record in Miscellaneous Volume 2-93, Recorder's Office, Franklin County, Ohio.

3. Easement in favor of the City of Columbus of Record in Miscellaneous Volume 2-96, Recorder's Office, Franklin County, Ohio; and liens and encumbrances created or suffered by Buyer or its predecessors as lessee under the Lease.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Lorenzo P. Baker IV

STATE OF \_\_\_\_\_,

COUNTY OF \_\_\_\_\_, ss:

The foregoing instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_, 2009,  
by **Lorenzo P. Baker IV**.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires on:

Prepared by: John C. Klein, III  
Chief Real Estate Attorney  
109 North Front Street  
Columbus, OH 43215

**EXHIBIT B**

**CERTIFICATE OF NON-FOREIGN STATUS**

**LORENZO P. BAKER IV**

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. To inform the transferee (buyer) that withholding of tax is not required upon my disposition of a U.S. real property interest, I, Lorenzo P. Baker IV, hereby certify the following:

1. I am not a nonresident alien for purposes of U.S. income taxation;
2. My U.S. taxpayer identifying number (Social Security number) is \_\_\_\_\_; and
3. My home address is \_\_\_\_\_.

I understand that this certificate may be disclosed to the Internal Revenue Service by the transferee and that any false statement I have made here could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Lorenzo P. Baker IV