
REDEVELOPMENT



COMMISSION

MEMO

To: Redevelopment Commission Members
From: Tom Wisemiller, Economic Development Project Coordinator
Date: September 1st, 2016
SUBJECT: Redevelopment Commission Meeting

The Redevelopment Commission is scheduled to meet for a regular business meeting on Tuesday, September 6th, 2016 at the Greenville City Hall.

The main business item that will be addressed at the meeting:

- Acceptance of the CommunitySmith, LLC's offer to purchase the Uptown Theatre property for \$20,000; last month, the RDC authorized the plan to transfer the Uptown Theatre property to a prospective developer using a method that meets State of NC rules while furthering the RDC's and community's goals for this site.

Staff will also give updates on the remediation and stabilization of the Uptown Theatre and the Imperial brownfields cleanup.

We look forward to seeing you at the meeting. If you have any questions or need additional information, please call me at 329-4514.

Redevelopment Commission Meeting
Tuesday, September 6th, 2016 ~ 5:30 PM

City Hall Conference Room 337 ~ 200 West 5th Street

Amended Agenda

- I. Welcome
- II. Roll Call
- III. Approval of Minutes – August 2nd, 2016
- IV. Update on the Uptown Theatre Remediation and Building Stabilization Project
- V. Acceptance of CommunitySmith, LLC's Offer to Purchase the Uptown Theatre Property and Approve the Contract
- VI. Update on the Imperial Site Brownfields Cleanup Project
- VII. Public Comment Period
- VIII. Report from Secretary
 - a. Monthly Financial Report
- IX. Comments from Commission Members
- X. Adjournment

DRAFT OF MINUTES PROPOSED FOR ADOPTION
Redevelopment Commission
Meeting Minutes
Tuesday, August 2, 2016
Greenville, North Carolina
Conference Room 337 – Meeting not televised

Present:

- | | | |
|---|---|---|
| <input type="checkbox"/> Angela Marshall | <input type="checkbox"/> Tracie Gardner | <input checked="" type="checkbox"/> Sharif Hatoum |
| <input checked="" type="checkbox"/> Jeremy King | <input checked="" type="checkbox"/> Patricia Dunn | |
| <input checked="" type="checkbox"/> Judy Siguaw | <input type="checkbox"/> Richard Patterson | |

Absent:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Angela Marshall | <input checked="" type="checkbox"/> Tracie Gardner | <input type="checkbox"/> Sharif Hatoum |
| <input type="checkbox"/> Jeremy King | <input type="checkbox"/> Patricia Dunn | |
| <input type="checkbox"/> Judy Siguaw | <input checked="" type="checkbox"/> Richard Patterson | |

Staff:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Merrill Flood | <input type="checkbox"/> Christian Lockamy |
| <input type="checkbox"/> McClean Godley (City Council Liaison) | <input checked="" type="checkbox"/> Betty Moseley |
| <input type="checkbox"/> Roger Johnson | <input checked="" type="checkbox"/> David Holec |
| <input checked="" type="checkbox"/> Tom Wisemiller | <input checked="" type="checkbox"/> Ben Griffith |
-

I. Welcome

II. Roll Call

III. Approval of Minutes – June 7, 2016

Ms. Dunn stated that on page 5, the reference to parking spaces states 1.7, should that be 0.7.

Mr. Flood replied that it should read 0.7.

Motion was made by Ms. Siguaw and seconded by Mr. Hatoum to approve the amended June 7, 2016 meeting minutes. Motion carried unanimously.

IV. Consideration of Small Business Plan Competition Grant Applications

Ms. Siguaw stated that the Small Business Plan Competition received 10 Qualifying applications. Several had issues with the financial data. Seven were in the Center City designation and three were in West Greenville.

The SBP committee recommends Melt, Inc. for West Greenville and Blackbeard Coffee for Center City. They recommended \$15,000 each.

Mr. Wisemiller stated that usually two businesses are recommended for each designation. This fiscal year, only \$40,000 was approved for funding.

Staff recommends that the Redevelopment Commission make awards in conformance with the program guidelines.

Motion by the Small Business Plan Committee and seconded by Mr. King to approve \$15,000 for Melt, Inc. for West Greenville and \$15,000 for Blackbeard Coffee for Center City. Motion carried unanimously.

V. Update on Uptown Theatre Remediation and Building Stabilization Project

Mr. Wisemiller stated that in February the PWD selected IMEC Group, LLC as the low bidder after completing all necessary reviews. Remediation work began in April. The demolition and roof repair has been completed. Environmental remediation is mostly completed. There have been two change orders for ceiling removal. Once work on the roof began, IMEC found additional deterioration of structural elements.

The project budget was initially \$290,000. \$125,000 of the budget is a sub-grant from the Revolving Loan Fund. \$165,000 is from Center City bond funds.

Based strictly on the bid for the known work items (\$168,200), we originally anticipated that approximately \$80,000 in Center City Bond funds would still be available after remediation and stabilization. RDC approved the staff request to apply \$12,500 in Center City bond funds toward the Merchant's Parking Lot Study. Any additional Center City bond funds could go for lot final design and construction improvements.

Change order #1 was \$34,994.50 and was all Brownfields eligible to remove interior ceiling. Change order #2 was \$24,920.50 for additional abatement required as a result of the ceiling removal. The Brownfields eligible expenses exceeded \$125,000, therefore we are looking to amend (increase) RLF sub-grant award.

Mr. King asked how much was the Brownfields work to date.

Mr. Wisemiller replied that the total was around \$160,000. The Contractor identified additional deterioration of structural elements. This work is not brownfields eligible. Scope and magnitude of work has not yet been determined. Change orders 1 and 2 are Brownfields eligible. Change order 3 will not be Brownfields eligible. There is a possibility that there will be no remainder funds. RDC can ask for more brownfields funding. Overall, the project is still under budget, just not as much under budget as originally planned.

Original Project Budget = 290,000	
Sources	
RLF sub-grant	\$125,000
RLF sub-grant (amendment)	\$25,000
CC Bond	\$165,000
	<hr/>
	\$315,000
Expenses	
Project bid items	\$168,200
Change order #1	\$24,921
Change order #2	\$34,995
Merchant's Lot Parking Study	\$12,500
	<hr/>
	\$240,615
Total	<hr/> <hr/>
	\$74,385

VI. Update of Merchants Parking Lot

Mr. Wisemiller stated that part of the letter of intent included doing a parking lot study. Staff has contracted with the East Group for \$13,000, with \$12,500 coming from RDC. The Merchants Parking Lot will accommodate the Uptown Theatre’s operational functions (tour buses, trucks).

Ms. Dunn asked how many cars the lot would accommodate.

Mr. Flood replied about 20 spaces. 12 of these are available for lease.

Mr. King asked if the leased spaces were for the merchants and what are the lease terms.

Mr. Flood replied yes, they are for the merchants and the terms are \$48 annually.

Mr. Wisemiller continued the update. Goals of the study are to upgrade the sanitation/utility infrastructure and evaluate parking options as part of Uptown-wide parking plans. We also plan to make the lot more attractive, while supporting and complementing the adjacent business uses. This will build on existing improvements to the Merchant’s Alleyway.

East Group facilitated four stakeholder meetings in June. These meetings were very well attended. The Merchant’s Lot should be service-oriented first and foremost; however, make it attractive and possibly accommodate “flex” public space. The East Group presented two preliminary concepts last week to the project management team. They are currently refining those concepts based on input from the public meetings.

Concurrently, the City must move forward on plans to accommodate trailer/bus access for the Uptown Theatre. Staff would like to proceed immediately with “basic package” improvements. The RDC/City can consider implementing “premium package”

improvements as recommended by East Group in the future. Staff might request that RDC contribute funds left over from the theatre remediation toward some of these improvements “premium package” improvements.

Mr. Flood stated that first thing will be solving the immediate need of parking for the merchants. The Merchants Lot will be for buses only. We will start with small upgrades, and continue to seek money for modifications. A future study may provide public spaces.

Mr. Hatoum asked if the public parking spaces would be eliminated.

Mr. Flood replied yes, there would have to be towing of vehicles for buses. That would not send a good message. There also could be an area to accommodate the delivery services.

Mr. King asked what was taking place with the refuse collections.

Mr. Flood replied that some of the merchants were getting together to consolidate providers. Each merchants had a different provider, which caused a lot of the problem. We are still studying that situation to find a cost effective method of handling it.

Mr. King stated that Merchants ally was the first beatification project and was well received by the community.

VII. Consideration of Resolution Authorizing the Sale of Uptown Theatre Property

Mr. Holec gave a brief background of the Uptown Theatre project.

2008: RDC purchased the theatre property for \$281,000

2010: RDC authorized architectural study, reuse theatre as a multi-use performing arts venue

2013 RDC work plan explored a public/private partnership approach. A survey showed a strong market for Uptown performance venue

2013 Request for Interest (RFI)

2014: CommunitySmith/Lincoln Theater proposal

2/2/2016: RDC approved the Letter of Intent (LOI) between RDC and Community Smith, LLC. LOI states the following items will take place:

- CommunitySmith will renovate the theater to create a live performance venue
- CommunitySmith will spend a minimum of \$1,000,000 in private funds on renovation
- City/RDC will contribute about \$300,000 toward building stabilization and parking lot improvements
- RDC will recommend and sponsor Landmark designation
- CommunitySmith will purchase for \$20,000, but with restrictions

4/2016–now: building remediation & stabilization project

The next steps are to authorize sale of the property using negotiated offer, advertisement, upset bid method, in furtherance of a community redevelopment goal:

- RDC Secretary publishes a notice of offer in the amount of \$20,000.00 and request for upset bids
- Within ten (10) days of notice, any person may raise bid by not less than 10 percent of the first \$1,000 and five percent of the remainder
- Bidder deposits five percent of the increased bid (cash, cashier's check, or certified check)
- Once a qualifying higher bid has been received, it becomes the new offer
- Procedure repeated until no further qualifying upset bids are received, at which time RDC may accept the offer and sell the property to the highest bidder or decline to sell it altogether

Conveyance of the property is subject to covenants, conditions, and restrictions. The existing theatre structure must be preserved while construction improvements and renovations are made to the building. Upon completion of renovations, primary use of the property will be as a Live Performance Theater, as defined by 9-4-86(RR) of Greenville City Code. The Purchaser must spend a minimum of \$1,000,000.00 in private funds to renovate the State Theater so that it will be able to receive a certificate of occupancy for its use as a Live Performance Theatre.

For upset bids to be considered qualifying bids by the RDC, bidder must provide information sufficient to demonstrate, to the satisfaction of the RDC that the bidder will comply with the covenants, conditions, and restrictions as outlined above.

Mr. King stated that another provision was that all the work would be completed by 2018. RDC has requested and the City added new city code for this project. This has been a capital investment with over \$600,000 in project.

Mr. King asked if they were still interested in Landmark designation.

Mr. Flood replied that they were still interested in landmark designation.

Mr. King asked how soon after we convey the property will they try to get landmark designation.

Mr. Flood replied that it will be reviewed probably in the next couple months.

Motion was made by Ms. Siguaw and seconded by Mr. Hatoum to adopt the Resolution Authorizing the Sale of the Property by the negotiated offer, advertisement, and upset bid method. Motion carried unanimously.

VIII. Update on the Imperial Site Brownfields Cleanup Project

Mr. Wisemiller stated that a lot is going on with the Imperial Site. We have been using a \$400,000 Brownfields clean-up grant to remove contaminants and get the site ready.

Cardno/Dunklee & Dunham has been the managing consultant for this grant. They hired HEPACO to facilitate the onsite clean-up work using heavy equipment. The clean-up has included removal of several large fuel tanks, contaminated soil, and pipes. They found another underground storage tank which has added an extra cost. They also removed some residual fuel. The finishing touches are being finalized now. All funds need to be spent by September. The project is still under budget.

Mr. King asked when the no further action letter is expected.

Mr. Wisemiller replied at end of the year. The state will come out to do inspection.

IX. Public Comment Period

No comments were received.

X. Report from Secretary

a. Monthly Financial Report

Mr. Flood stated that there were no new expenses to report. He introduced the new Community Development Director Ben Griffith.

XI. Comments from Commission Members

No comments were received.

XII. Adjournment

Motion was made by Ms. Dunn and seconded by Mr. Hatoum to adjourn the RDC meeting at 6:30 pm. Motion carried unanimously.

Respectfully submitted,

Signature on file

Thomas G. Wisemiller,
The Economic Development Project Coordinator
City of Greenville Community Development Department

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF GREENVILLE
AUTHORIZING THE SALE OF PROPERTY BY THE NEGOTIATED OFFER,
ADVERTISEMENT, AND UPSET BID METHOD

WHEREAS, an offer has been made to acquire property owned by the Redevelopment Commission of Greenville located at 110 E. Fifth Street;

WHEREAS, North Carolina General Statute 160A-514(c) authorizes the Redevelopment Commission of Greenville to sell real property with covenants, conditions, and restrictions following the procedure set out in North Carolina General Statute 160A-269 for the sale of property by the negotiated offer, advertisement, and upset bid method; and

WHEREAS, the Redevelopment Commission of Greenville does hereby determine that the sale of the property will not be prejudicial to the sale of other property in the Center City area nor in any other way be prejudicial to the realization of the Center City Revitalization Plan approved by the City Council of the City of Greenville and that the project to be implemented on the property being sold is likely to have a significant effect on the revitalization of the Center City area;

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Commission of Greenville as follows:

- 1) That it proposes to accept the offer by Community Smith, LLC, to acquire the hereindescribed property and that it authorizes the sale of the hereindescribed property by the negotiated offer, advertisement, and upset bid method.
- 2) That the property to be sold is described as follows:

Being the property located in the City of Greenville, North Carolina, consisting of approximately 0.15 acres located on the north side of E. Fifth Street at 110 E. Fifth Street, and being Tax Parcel #07085
- 3) That the offer of Community Smith, LLC, is to pay TWENTY THOUSAND AND no/100ths DOLLARS (\$20,000.00).
- 4) That Community Smith, LLC, shall deposit with the Secretary of the Redevelopment Commission of Greenville five percent of the value of the offer in the form of cash, cashiers check, or certified check, said deposit will be forfeited if there are no qualifying offers at the conclusion of the upset bid procedure, the Redevelopment Commission of Greenville accepts the offer, and the terms of the offer are not fulfilled.
- 5) That the Secretary of the Redevelopment Commission of Greenville shall publish a notice of offer in the amount of TWENTY THOUSAND AND no/100ths DOLLARS (\$20,000.00) and request for upset bids. Within ten (10) days of publication of the notice, any person may raise the bid for the purchase of the property by not less than ten percent of the first one thousand dollars and five percent of the remainder. When the bid is raised, the bidder shall deposit five percent of the increased bid in the form of cash, cashiers check, or certified check. The deposit will be forfeited if the bidder withdraws the offer or if the bidder has the highest qualifying offer at the conclusion of the upset bid procedure, the Redevelopment Commission of Greenville accepts the offer, and the terms of the offer are not fulfilled. Once a qualifying higher bid has

been received, that bid will become the new offer. The procedure shall be repeated until no further qualifying upset bids are received, at which time the Redevelopment Commission of Greenville may accept the offer and sell the property to the highest bidder.

6) That, for any upset bid which is accepted by the Redevelopment Commission of Greenville, the closing on the sale of the property shall occur no later than sixty (60) days after acceptance of the bid by the Redevelopment Commission of Greenville with full payment to be made at closing by cash, cashiers check, or certified check. Conveyance of the property will be by a Limited Warranty Deed for the property in fee simple, with the warranties limited to the term of the Redevelopment Commission of Greenville's ownership of the property, conveying title to the property subject to restrictive covenants, easements and rights-of-way of public record, noncompliance with local, county, state or federal governmental laws, ordinances, or regulations relative to zoning, subdivision, occupancy, use, construction or the development of the property, if any, and to all matters and things which a current accurate survey may reveal or disclose.

7) The conveyance of the property will be subject to covenants, conditions, and restrictions establishing that (a) the existing State Theatre structure on the property will be preserved and that construction improvements and renovations will be made to the building; (b) that upon completion of the building renovations, the primary use of the property will be as a Live Performance Theater, as defined by 9-4-86(RR) of the Greenville City Code and; (c) purchaser will spend a minimum of \$1,000,000.00 in private funds to renovate the State Theater so that it will be able to receive a certificate of occupancy for its use as a Live Performance Theatre no later than the earlier of three hundred and sixty five days following purchaser's receipt of all governmental permits and approvals necessary for the completion of the renovations or March 31, 2018; notwithstanding the foregoing, the date by which receipt of a certificate of occupancy is required to occur shall be extended in the event governmental permits and approvals necessary for the completion of the project have been withheld through no fault of the purchaser after proper application has been submitted, said extension shall be for the period of time that the approval has been withheld or a date mutually agreed upon by the purchaser and the Redevelopment Commission of Greenville.

8) For upset bids to be considered qualifying bids by the Redevelopment Commission of Greenville, the bidder must provide to the Redevelopment Commission of Greenville information sufficient to demonstrate, to the satisfaction of the Redevelopment Commission of Greenville, that the bidder will comply with the covenants, conditions, and restrictions set forth in section 7 above.

9) That Redevelopment Commission of Greenville may at any time reject any and all offers.

This 2nd day of August, 2016.

Jeremy King, Chair of the
Greenville Redevelopment Commission

ATTEST:

Merrill Flood, Secretary

**NORTH CAROLINA
PITT COUNTY**

**OFFER TO
PURCHASE AND CONTRACT**

THIS CONTRACT, made and entered into as of the _____ day of September, 2016, by and between CommunitySmith, LLC, a North Carolina limited liability company, Party of the First Part and hereinafter referred to as the "Buyer", and the Redevelopment Commission of Greenville, a body corporate and politic, organized and existing under the laws of the State of North Carolina, Party of the Second Part and hereinafter referred to as the "Commission".

WITNESSETH:

For and in consideration of the mutual covenants and agreements herein set forth, the Buyer hereby offers to purchase and the Commission, upon acceptance of said offer, agrees to sell to the Buyer all that certain real property being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, said real property being hereinafter referred to as the "Property".

THE TERMS AND CONDITIONS OF THIS OFFER TO PURCHASE AND CONTRACT ARE AS FOLLOWS:

1. **PURCHASE PRICE.** The purchase price of the Property is Twenty Thousand and no/100ths Dollars (\$20,000.00). The foregoing purchase price, subject to adjustments and prorations in accordance with paragraphs 2, 4, and 5, shall be paid to the Commission at closing. The Commission and the Buyer understand that the foregoing purchase price subject to the aforementioned adjustments and prorations shall be the entire amount which the Commission will receive from the Buyer for the sale of the Property.

2. **DEPOSIT.** The Buyer shall deposit One Thousand and no/100ths Dollars (\$1,000.00) (the "Deposit"), with the Secretary of the Commission as required by North Carolina General Statute 160A-269. The Deposit shall be in the form of cash, cashier's check, or certified check. In the event that any of the conditions of this contract are not satisfied or waived by the Buyer prior to closing, or in the event of a breach of this contract by the Commission, then the Deposit shall be returned to the Buyer. In the event the Buyer materially breaches this contract and fails to cure the breach within fifteen days after receiving written notice of the breach from the Commission, then the Deposit shall be forfeited to the Commission. Otherwise, the Deposit shall be paid to the Commission at the closing and applied against the purchase price.

3. **CLOSING.** Closing is defined as the date and time of the recordation of the deed. Closing of the purchase of the Property hereunder shall take place at the law office of The Graham, Nuckolls, Conner Law Firm, PLLC, Greenville, North Carolina (the "Settlement Agent"), and shall take place at 1 p.m. on the date designated by the Buyer in a written notice to the Commission, said date shall be no later than sixty (60) days after the Commission votes in the affirmative to accept the offer of the Buyer after no qualifying upset bid is submitted to the Secretary of the Commission in accordance with the requirements of North Carolina General Statute 160A-269, unless the

Commission and the Buyer agree on a later date. At the time of the closing, the purchase price shall be paid as herein provided, and possession of the Property shall be delivered to the Buyer. The Settlement Agent shall produce a settlement statement prior closing showing all receipts and disbursements required for the closing, collect and disburse all closing funds and coordinate with Buyer's counsel to ensure the prompt recording of the deed.

4. **ADJUSTMENTS.** The Property is not currently leased to any tenant and there are no rents for the Property.

5. **CLOSING COSTS.** The Buyer and the Commission acknowledge and agree that the Buyer shall be responsible for the cost of its own title examination and title insurance premiums, any escrow fees or charges, the cost of its survey, and any recording charges on the deed and that the Commission shall be responsible for the cost of the preparation of the deed and all other documents necessary to perform the Commission's obligations pursuant to this contract and any and all excise tax (revenue stamps) required by law on the transaction. Each party shall be responsible for the cost of its own attorneys. The Commission will be responsible for all fees charged by the Settlement Agent.

6. **CONVEYANCE OF TITLE.** The Commission shall deliver to the Buyer at Closing a Limited Warranty Deed for the Property in fee simple, with warranties limited to the term of the Commission's ownership of the Property, conveying fee simple, insurable and marketable title to the Property, subject only to Permitted Exceptions, as hereinafter defined. "Permitted Exceptions" shall mean (a) noncompliance with local, county, state or federal governmental laws, ordinances, or regulations relative to zoning, subdivision, occupancy, use, construction or the development of the Property, if any, and to all matters and things which a current accurate survey may reveal or disclose; (b) the specific restrictions listed in paragraph 10 of this contract; and (c) any other matters which are not objected to by Buyer prior to closing. Commission shall be required to satisfy, at or prior to closing on the purchase and sale of the Property, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. The legal description on the deed is to be based on Buyer's new survey, if any, at Buyer's election.

In addition, the Commission shall furnish to the title company at closing a standard form affidavit and indemnification agreement showing that all labor and/or materials, if any, furnished to the property within one hundred twenty (120) days prior to the date of closing have been paid and by which the Commission agrees to indemnify a title insurance company pursuant to a standard form ALTA title affidavit against all loss, cost, claim and expense arising therefrom, including reasonable attorney's fees (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens). If requested by the Buyer, the Commission agrees to execute any documents required to effect a like kind tax free exchange as described in Internal Revenue Code Section 1031, for the benefit of the Buyer, with the condition that the Commission shall have no tax consequences arising from its execution of said documents and the Buyer shall indemnify and hold the Commission harmless from any liability associated with the Commission's participation in the exchange. The Buyer is responsible for the costs and expenses of any exchange documentation.

7. **STATUTORY REQUIREMENTS.** The Buyer understands and agrees that the Commission is required to comply with the requirements of North Carolina General Statute 160A-269 prior to conveying the Property. The Buyer shall deposit with the Secretary of the Commission the sum specified in Paragraph 2 of this contract in the form of cash, cashiers check, or certified check within ten (10) days after the Commission approves a resolution authorizing the sale of the property by the negotiated offer, advertisement and upset bid method. The Deposit shall be forfeited to the Commission, returned to the Buyer, or applied against the purchase price in accordance with the provisions of Paragraph 2. Both parties understand and agree that, notwithstanding anything to the contrary contained herein, the Commission's obligations pursuant to this contract are expressly conditioned upon (i) the Commission voting in the affirmative to accept the offer of the Buyer within sixty (60) days after no qualifying upset bid is submitted to the Secretary of the Commission in accordance with the requirements of North Carolina General Statute 160A-269 and (ii) the City Council of the City of Greenville voting in the affirmative to approve the sale of the Property to the Buyer in accordance with the offer of the Buyer. Upon such votes occurring, the Buyer may seek specific performance of this contract.

If the Commission and the Greenville City Council vote in the affirmative to accept the offer of Buyer as provided hereinabove, then upon so voting, the Commission will either provide written acknowledgement that Buyer has the authority to execute, an applications, permit requests, and other documents, reasonably requested by Buyer for the development of the Property prior to closing, or, in the alternative at the election of the Commission, execute the application, permit request, and other documents as a joint applicant with the Buyer.

8. **EXPIRATION OF OFFER.** The Buyer understands and agrees that the offer of the Buyer to purchase the Property in accordance with the terms and conditions of this contract is irrevocable. However, the offer of the Buyer shall expire if either (i) a qualifying upset bid with a deposit is submitted to the Secretary of the Commission in accordance with the requirements of North Carolina General Statute 160A-269, (ii) the Commission does not vote in the affirmative to accept the offer of the Buyer within sixty (60) days after no qualifying upset bid is submitted to the Secretary of the Commission in accordance with the requirements of North Carolina General Statute 160A-269, or (iii) the City Council of the City of Greenville does not vote in the affirmative to approve the sale of the Property to the Buyer in accordance with the offer of the Buyer, within sixty (60) days after the vote of the Commission to accept the offer of the Buyer.

9. **CONDITIONS.** Notwithstanding anything to the contrary contained herein, the Buyer's obligations pursuant to this contract are expressly conditioned upon the following conditions:

- a. All representations and warranties of the Commission specified herein are true and correct as of the closing date.
- b. Title to the Property is not subject to any exception other than the Permitted Exceptions, and the Commission has satisfied any and all encumbrances that may be satisfied by the payment of a fixed sum of money, including, but not limited to, all deeds of trust, liens and other charges against the Property. The Commission shall remain obligated to obtain any such

cancellations following closing.

- c. Commission and the Buyer are able to procure suitable financing for their respective components of the development of the Property.
- d. Confirmation that adequate utilities services are available within a reasonable distance from the Property.
- e. The Commission shall have successfully completed all of its obligations in paragraph 11 of this contract, or otherwise provided adequate written assurances to Buyer in the form of one or more post-closing agreements in a form satisfactory to Buyer that it will satisfy its obligations after closing.
- f. The Property is in substantially the same condition at closing as of the date of the offer, reasonable wear and tear excepted. If not, then the Buyer may (i) terminate this contract and receive a return of the Deposit or (ii) proceed to closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Commission's insurance proceeds payable on account of the damage or destruction applicable to the Property.

Failure of any of the foregoing conditions of this paragraph shall be evidenced and determined by written notice to the Commission from the Buyer or the attorney for the Buyer, which notice shall be given at least two (2) days prior to closing and shall be effective upon hand delivery or by placement in the United States Mail, postage prepaid, addressed to the Commission. Upon the Buyer's provision of such notice of failure, all sums paid by the Buyer hereunder shall be returned forthwith to the Buyer, and thereafter neither Buyer nor the Commission shall have any rights or liabilities hereunder. If notice of failure is not given at least two (2) days prior to closing, then the Buyer shall be deemed to have waived the satisfaction of the foregoing conditions of this paragraph.

10. RESTRICTIVE COVENANTS. The conveyance of the Property from the Commission to Buyer will be subject to the following restrictions, which such restrictions shall be in a form acceptable to the Commission, and shall be recorded in the Pitt County Registry of Deeds:

- a. The Property will be used only for a Live Performance Theatre use as defined by the provisions of the Zoning Ordinance for Greenville, North Carolina for a period of ten (10) years from the date of closing.
- b. The Property will in no event be used for sexually oriented businesses.
- c. The Property will be occupied and operated in accordance with all applicable laws and regulations.
- d. Any restrictive covenants, easements and rights-of-way of public record recorded as of April 20, 2016.

11. COMMISSION OBLIGATIONS.

- a. Commission will recommend and sponsor, no later than sixty (60) days after the closing, the submission of an application for Landmark status of the Property and allow the previously

completed architectural survey of the Property to be submitted with the necessary Landmark application.

- b. Commission provides a certificate, or other satisfactory evidence, to Buyer that is has successfully completed all work recommended in the existing Abatement Plan for the Property titled GENERAL DEMOLITION, ASBESTOS ABATEMENT, LEAD BASE PAINT SURFACE PREPARATION, AND ENVIRONMENTAL DECONTAMINATION PROJECT FOR OLD GREENVILLE THEATER-MARTIN LUTHER KING BLVD. GREENVILLE, NC. BY: CHILDRESS ENVIRONMENTAL CONSULTANT, INC. P.O. BOX 18208-RALEIGH, NC; DESIGNER: E. RAYMOND CHILDRESS-NC # 40191; NOVEMBER 21, 2013”.
- c. Commission and the City of Greenville will complete the following improvements to the City-owned parking lot (the “Parking Lot”) located on Parcel # 11436 (405 S. Washington Street) & Parcel # 05937 (0 S. Washington Street) no later than one hundred twenty (120) days after closing: (i) remove the triangle shaped concrete parking island currently located in the corner of the Parking Lot behind the Property; (ii) restripe the Parking Lot to include a single parking space 15 feet wide running with the property line of the Parking Lot for a length of 80 feet and being the area in red on Exhibit “B” attached hereto and incorporated herein (the “Performance Parking Area”); and (iii) erect signage sufficient to limit use of the Performance Parking Area to a maximum of 15 minutes (except for vehicles using the Performance Parking Area for purposes of performing or otherwise providing services to the Property which shall not be subject to the 15 minute limit) enforceable by towing should an unauthorized vehicle remain in the Performance Parking Area longer than the allotted time. The Performance Parking Area will be available to the Buyer on a priority basis.

12. **COMMITMENT TO RENOVATE THE STATE THEATRE.** It is understood and agreed that the Commission is conveying the Property to the Buyer in order to renovate the State Theatre. At or prior to closing, the Buyer will execute a document, in a form acceptable to the Commission, which will establish a covenant, condition or restriction that the Buyer will spend a minimum of \$1,000,000 in private funds to renovate the State Theater so that it will be able to receive a certificate of occupancy for its use as a Live Performance Theatre no later than the earlier of three hundred and sixty five days following Buyer’s receipt of all governmental permits and approvals necessary for the completion of the renovations or March 31, 2018; notwithstanding the foregoing, the date by which receipt of a certificate of occupancy is required to occur shall be extended in the event governmental permits and approvals necessary for the completion of the project have been withheld through no fault of the Buyer after proper application has been submitted, said extension shall be for the period of time that the approval has been withheld or a date mutually agreed upon by the Buyer and the Commission. The date established in the preceding sentence is referred to herein as the “Project Completion Date”.

13. **INSPECTIONS & REASONABLE ACCESS.** The Commission shall allow the Buyer’s agents, employees, and designees full and complete access to the property for the purpose of physically inspecting and investigating the property. All such inspections and investigations shall be conducted in such manner as to avoid unreasonable interference with the Commission’s present use,

operation, and occupation of the Property. Specifically, Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections. Upon Commission's request, Buyer shall provide to Commission evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Commission that relate directly to the operation and maintenance of the Property. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this paragraph and agrees to indemnify and hold the Commission harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Buyer shall have from the date the Commission votes to accept Buyer's offer to purchase through closing to perform the above inspections, examinations and testing (the "Examination Period"). IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO THE COMMISSION THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL FORFEIT THE DEPOSIT.

14. **NOTICE.** All notices required by this contract shall be in writing and shall be given by either hand delivery to the parties hereto or by placement in the United States Mail, postage prepaid, addressed as follows:

To Commission:
Merrill Flood, Secretary
Redevelopment Commission of Greenville
P.O. Box 7207
Greenville, NC 27835

To Buyer:
William Holton Wilkerson, Jr., Manager
CommunitySmith, LLC
805 N. West Street
Raleigh, NC 27603

15. **SEVERABILITY.** In the event that any term or condition of this contract or the application thereof to any circumstance or situation shall be invalid or unenforceable in whole or in part, the remainder hereof and the application of said term or condition to any other circumstance or situation shall not be affected thereby, and each term and condition of this contract shall be valid and enforceable to the full extent permitted by law.

16. **FIRE AND OTHER CASUALTY.** The risk of loss or damage by fire or other

casualty prior to closing shall be upon the Commission.

17. **PARAGRAPH HEADINGS.** The paragraph headings used in this contract are for convenience of reference only and shall not be considered terms of this contract.

18. **GOVERNING LAW.** The Buyer and the Commission agree, that the laws of the State of North Carolina shall govern and control the validity, interpretation, performance and enforcement of this contract.

19. **OTHER DOCUMENTS.** The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the contract/agreement.

20. **ENTIRE AGREEMENT.** This contract contains the entire agreement and understanding between the Buyer and the Commission. There are no oral understandings, terms or conditions, and neither the Buyer nor the Commission has relied upon any representation, express or implied, not contained herein. All prior negotiations, understandings, terms and conditions are merged in this contract.

21. **MODIFICATION.** This contract may not be changed or modified orally, but only by an agreement in writing signed by the party against whom enforcement or waiver, change, modification or discharge is sought.

22. **DUPLICATE ORIGINALS.** This contract is executed in duplicate originals; and both the Buyer and the Commission acknowledge receipt of one such original, agree that the duplicate originals hereof are identical, and further agree that either original shall be admissible in any proceeding, legal, or otherwise, without the production of the other such original.

23. **BROKERS.** The Commission warrants, represents and certifies to the Buyer that it has not engaged or utilized the services of a broker in connection with this transaction. The Buyer shall be solely responsible for any broker's or finder's fees or commissions for any broker or realtor which it has utilized with this transaction. Each party agrees to defend, indemnify and hold harmless the other from and against any claim for broker's or finder's fees or commissions made by any party claiming to have dealt with them.

24. **ASSIGNMENT.** The Buyer shall not assign this contract, without the prior written consent of the Commission, except that the Buyer may assign this contract, without the prior written consent of the Commission, to a North Carolina limited liability company established by the managers or members of the Buyer for the purpose of renovating or operating the Property.

25. **REPRESENTATIONS & WARRANTIES.** Commission and Buyer each represent and warrant to the other to the best of their respective knowledge:

- a. Commission and the Buyer have all requisite power and authority to execute this contract, and any other instruments required to be delivered by Commission or the Buyer hereunder.

- b. Commission's and the Buyer's entry into this contract will not violate any private restriction or agreement or to the best of Commission's or the Buyer's knowledge without investigation or inquiry any applicable statute, ordinance, governmental restriction or regulation.
- c. The Commission has not entered into or record any instrument that affects the Property without the prior written consent of Buyer on or after April 20, 2016.
- d. There are no rights of first refusal, options to purchase, rights of reverter or other similar rights granted to any third party relating to the Property.
- e. There is no pending or threatened action, litigation, bankruptcy, condemnation, or other proceeding of any kind pending against Commission which materially adversely affects the Property.
- f. Commission has not received written notice of any violations of any laws, ordinances or similar rules and regulations relating and/or applicable to the ownership, use and operation of the Property as it is now operated, and/or other licenses or permits, which remain uncured.
- g. All ad valorem taxes for the Property have been paid in full through the closing, or the Property is exempt from taxation.
- h. No assessments or special assessments for public improvements or otherwise have been levied or are affecting the Property.
- i. To the best of Commission's present knowledge, the Property is not within an area determined to be flood-prone under the Federal Flood Protection Act of 1973.
- j. Except as identified in the Abatement Plan, Commission has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42

U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Commission has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

The Buyer and the Commission acknowledge and agree that, except as otherwise specifically set forth in this contract, the Commission has made no representations, warranties or statements to the Buyer as to any matter relating to or concerning the Property, the use thereof or the suitability of the Buyer's intended use thereof. In addition to any other remedies available to Buyer, Commission agrees to reimburse Buyer for fifty percent (50%) of its due diligence costs incurred related to its potential acquisition of the Property if Commission breaches any representation or warranty contained in this contract, but in no event to exceed a reimbursement of \$20,000. The Commission hereby represents and warrants to the Buyer that, to the best of the Commission's knowledge the property is not now in violation of any regulation, law, rule or order relating to hazardous substances or wastes and has not been used, and is not being used, as a sanitary landfill.

26. **EXECUTION.** This offer shall become a binding contract when signed by both the Commission and the Buyer.

27. **SURVIVAL.** All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Commission shall, after the closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this contract.

28. **DEFAULT & REMEDY.** In the event Buyer does not close on the purchase of the Property as provided herein or otherwise defaults on its obligations hereunder prior to closing, Commission's sole and exclusive remedy shall be to retain, as full liquidated damages, the Deposit. Provided, however, following the closing, if Buyer fails to fulfill its commitment to renovate the theatre pursuant to Section 12 of this contract, then beginning on 120th day following the Project Completion Date, Buyer shall pay to the Commission \$100 per day, as liquidated damages, and not as a penalty, for each day Buyer is not in compliance with Section 12 of this contract. The daily liquidated damages payments shall continue for a period of 720 days unless or until Buyer is in compliance with its obligations pursuant to Section 12. If Buyer still has not fulfilled its obligations thereunder on or before the 840th day following the Project Completion Date, then Buyer will pay to the Commission Three Hundred Thousand and 00/100 Dollars (\$300,000.00) less any sums already paid in the form of liquidated damages as provided herein. It being the intent of the parties that the maximum liquidated damages paid to the Commission hereunder will not exceed Three Hundred Thousand and 00/100 Dollars (\$300,000.00).

[This space intentionally Left Blank-Signature Page follows]

IN TESTIMONY WHEREOF, the Buyer has caused this instrument to be executed under seal, and the Commission has caused this instrument to be executed in its corporate name by the

Chairman to the Commission.

COMMUNITYSMITH, LLC

By: _____(SEAL)
William Holton Wilkerson, Jr., Manager

REDEVELOPMENT COMMISSION OF GREENVILLE

By: _____(SEAL)
Jeremy King, Chairman

**NORTH CAROLINA
PITT COUNTY**

I, _____, Notary Public in and for the aforesaid County and State, do hereby certify that William Holton Wilkerson, Jr., Manager of CommunitySmith, LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

WITNESS my hand and official seal, this the ____ day of August, 2016.

Notary Public

My Commission Expires:_____

**NORTH CAROLINA
PITT COUNTY**

I, _____, Notary Public in and for the aforesaid County and State, do hereby certify that Jeremy King, Chairman, for the Redevelopment Commission of Greenville, personally appeared before me on this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and official seal, this the ____ day of _____, 2016.

Notary Public

My Commission Expires: _____

APPROVED AS TO FORM:

BY: _____
David A. Holec, City Attorney

PRE-AUDIT CERTIFICATION:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Bernita W. Demery, Director of Financial Services

Date _____

Account Number _____

Project Code (if applicable) _____

EXHIBIT A

Property Description

Description (n/s 5th between Evans & Washington, Greenville, #07085):
Being that certain lot or parcel of land situated in the City of Greenville, Greenville Township, Pitt County, North Carolina (Current Address: 110 West 5th Street, Greenville, North Carolina), which is more particularly described as follows:

Being the former Carmike Cinema / Essantee Theatre property, Pitt County Tax Parcel #07085, as conveyed by that 03/27/2008 Warranty Deed from Edgar B. Wall, Jr. and wife, Colleen K. Wall, to J2 Holdings, LLC, recorded 03/28/2008 in Book 2471, Page 88 of the Pitt County Registry (less and excepting a 15 foot area in the rear of the property adjoining a City Parking Lot which is being retained by the Grantor), all described in accordance to the below referenced Hall Survey Plat incorporated herein for a more complete and accurate description:

-1- Beginning at an "Engineers Tack" located in or adjacent to the northeastern intersection of Washington Street and W. Fifth Street, said "Tack" being further located in the southwestern corner of Pitt County Tax Parcel #77376; thence running from the said "Tack" South 78 deg. 32 min. 49 sec. East 88.57 ft. to the southwestern corner of this described Pitt County Tax Parcel #07085, the POINT OF BEGINNING; thence running from the said Point of Beginning North 11 deg. 39 min. 46 sec. East 142.74 ft. to a Point;

-2- thence running from the said Point South 78 deg. 32 min. 49 sec. East 43.2 ft. (this line running parallel to and 15 ft. from a "City of Greenville Parking Lot") to a Point in or adjacent to an Alley;

-3- thence running from the said Point South 11 deg. 39 min. 46 sec. West 142.74 ft. with or adjacent to an Alley to a Point designated as "Cor. Bldg.";

-4- thence running from the said Point North 78 deg. 32 mi. 49 sec. West 43.2 ft. with or adjacent to W. Fifth Street to the aforesaid Point of Beginning.

Also included herein as a non-warranty quitclaim conveyance to the Grantee is all of such right, title, interest or claim the Grantor has or may have in the alleyway which is located adjacent to and on the east side of this described parcel as described in that Deed recorded in Book 2471, Page 88 of the Pitt County Registry.

Referenced Survey Plat:

Reference should be made to that Plat by Willard R. Hall, entitled "Survey Plat, J2 Holdings, LLC", dated 09/16/2008. This Survey Plat is incorporated herein for a more detailed description.

EXHIBIT B

Performance Parking Area

