

NORTH CAROLINA

ACQUISITION,
DEMOLITION, AND
DISPOSITION
AGREEMENT

GUILFORD COUNTY

CONTRACT VALUE

\$500,000

THIS AGREEMENT, made and entered into this the ____ day of August, 2009, by and between the East Market Street Development Corporation, a North Carolina non-profit corporation (hereinafter called "EMSDC") and the CITY OF GREENSBORO, NORTH CAROLINA (hereinafter called "CITY").

W I T N E S S E T H:

WHEREAS, the citizens of Greensboro voted to sell bonds for the purpose of creating improvements in the East Market Street community; and

WHEREAS, EMSDC was created to encourage investment and community development along and adjacent to the East Market Street corridor; and

WHEREAS, the CITY is partnering with EMSDC to improve neighborhoods along the corridor; and

WHEREAS, EMSDC wishes to acquire property for the purpose of removing blight, and dispose of property to builders for either new construction or rehabilitation in accordance with plans developed for the neighborhood; and

WHEREAS, EMSDC has prepared a Development Budget attached as appendix A; and

WHEREAS, the CITY will fund EMSDC, up to \$500,000 for acquisition of property and subsequent actions as described in this agreement;

NOW, THEREFORE, the CITY agrees to provide funds to EMSDC and to establish the mutual agreements and obligations of the parties, as follows:

ARTICLE I – Definitions

For the purposes of this Agreement each of the following terms shall have the meaning specified with respect thereto:

1.1 Jonesboro/Scott Park: All acquisitions under this agreement shall take place in the area defined by the map in Exhibit B, bounded on the south by East Market Street, on the west by US 29, on the north by the rear line of the residential lots on the north of Lutheran Street, and on the east by Raleigh Street.

1.2 City's Inspector: City's employee(s) who shall make inspections of the progress of construction of the Site Improvements.

1.3 Development Budget: That Budget for this Project attached as exhibit A.

ARTICLE II – Acquisition

2.1 Startup Fees: EMSDC will be reimbursed in an amount up to \$35,000 for initial pre-acquisition activities and operational expenses, such as property appraisals, surveys, legal expenses, and advertising and marketing costs in conjunction with property acquisition activities funded under this Agreement.

2.2 Acquisition of Lots and Cost of Site Improvements: The CITY shall not be required to pay more than \$500,000.00 to EMSDC for all activities under this contract.

2.3 Acquisition of Properties: EMSDC shall purchase individual or contiguous lots throughout the neighborhood, as they become available for the purpose of removing blight and nuisance properties and to increase the level of home ownership and private investment in the neighborhood.

- The lots to be purchased will either be identified as a priority on an acquisition map developed by the CITY and EMSDC, will be nuisance properties because of poor maintenance or criminal activities, or will be properties that are or have been consistently vacant or boarded-up buildings. Vacant lots may also be purchased if they can be developed to benefit the neighborhood.
- EMSDC shall regularly update HCD on the status of offers to purchase or of changes in acquisition strategy.
- Appraisal: All Lot purchase values must be substantiated by an independent appraisal conducted within 6 months preceding purchase date unless waived by HCD or the property is offered for sale at tax value or less. Purchase offers by EMSDC shall be within 10% of the appraised value unless approval is obtained from HCD for a higher offer amount.
- Cleared lots will be graded, reseeded and maintained and kept free of garbage. Reasonable expenses will be reimbursed upon receipt of signed invoices indicating that EMSDC has incurred the expense. Expenses will be reimbursed no more frequently than once per month.
- EMSDC will not transfer ownership of these properties until a disposition proposal is approved by the CITY as stated in Article IV.

2.4 Demolition: EMSDC shall demolish all structures on acquired lots within twelve (12) months of acquisition of the property or relocation of tenants, whichever is later, unless specific approval is given by the CITY to retain an existing structure. EMSDC will select a demolition contractor through a competitive bid process. All demolition activities must follow the City of Greensboro requirements for demolition. Cleared lots will be graded, reseeded, maintained and kept free of garbage. Demolition costs will be reimbursed upon receipt of signed invoices indicating that EMSDC has properly incurred the expense and upon CITY inspection and approval of the cleared site.

2.5 Maintenance of lots: All lots and properties owned by EMSDC under this agreement will be properly maintained by EMSDC. This includes mowing and other lawn maintenance, and ensuring that any structures are properly secured and maintained. Maintenance expenses will be reimbursed upon receipt of signed invoices indicating that EMSDC has incurred the expense. Expenses will be reimbursed no more frequently than once per month.

2.6 Relocation: EMSDC shall comply with the relocation policy attached as Exhibit C.

ARTICLE III – Closing

1. Performance of obligations and conditions prior to closing: Prior to each closing, all of the following terms, provisions and obligations must be completed and satisfied:
 - A. Completion and approval of survey of Property, title work and title insurance policy to the mutual acceptance of CITY and EMSDC;
 - B. Submission and approval to the CITY showing that all documents will be in compliance with all applicable governmental laws whether local, state or federal.

3.2 Promissory Note: EMSDC will execute a Promissory Note, upon presentation to EMSDC by City, payable to the CITY to provide for repayment of funds advanced by the CITY for a particular acquisition in the event of default of the terms of this Agreement pertinent to that property.

3.3 Deed of Trust: EMSDC will execute, upon presentation by the CITY, a Deed of Trust in favor of the CITY of Greensboro to secure the full and faithful performance of all obligations of EMSDC contained in this Agreement for each property acquisition. The Deed of Trust shall be substantially in the form of the Deed of Trust attached as Exhibit D and shall secure the amounts paid to EMSDC for the costs associated with the purchase of the land which will be provided under this Agreement.

3.4 Title Insurance: EMSDC will provide the CITY with a copy of a title insurance policy in form and content acceptable to the CITY issued by a company approved by the CITY.

3.5 Payment for Acquisition Costs: Payment of EMSDC's acquisition cost shall be paid into the closing attorney's trust account by the City to be distributed by the attorney at the closing. At least ten (10) days prior to closing, EMSDC shall provide a draft Closing Statement to the CITY for review and approval. EMSDC shall be in compliance with all other provisions of this Agreement through the date of the payment.

The CITY retains the right to recover from EMSDC any unsubstantiated costs or overpayments to EMSDC.

ARTICLE IV – Disposition

4.1 Disposition options: EMSDC shall exercise one of two options in disposing of property. The first is the selling of lots to qualified developers for new construction or rehabilitation under a development agreement as described in 4.2 and 4.3; the second is by partnering with a qualified developer that will be paid a development fee, as described in 4.9. All disposition agreements between EMSDC and other parties are subject to approval by the CITY prior to any agreement taking place. All developments are subject to the terms of this agreement.

4.2 Qualifications of Builders: EMSDC will dispose of lots to qualified developers who will provide the following information as evidence of their qualifications:

- A. Location, description and photographs of housing units under construction or completed in the last three years;
- B. The ability to secure and manage project financing, including evidence in the form of a commitment letter from a bank of construction financing for 100% of development costs and disclosure and explanation of any default, litigation or tax delinquency that has occurred in the last two (2) years;
- C. The capacity to market and sell new and/or rehabilitated housing units.

4.3 Lot Sales Transactions:

- A. Before commencement of disposition or any construction, a development agreement must be executed between EMSDC and

purchaser/builder and approved in its entirety by the CITY of Greensboro.

- B. All new construction plans shall be approved by the CITY Housing and Community Development Department prior to EMSDC authorization to the Builder to proceed with submittal of plans for building permits and construction. Such development plans shall be in accordance with the goals of the neighborhood plan and single family homes shall be built according to the development standards attached as Exhibit E;
- C. If a structure is to be preserved and rehabilitated, all such rehabilitation plans and finished work shall be approved by the Department of Housing and Community Development of the CITY of Greensboro in accordance with the CITY of Greensboro's Standards for Rehabilitation Work, attached and amended as Exhibit F, and by Building Inspections personnel;
- D. EMSDC may place deed restrictions that run with the land on any new or rehabilitated properties.

4.4 Licensing and Permitting Requirements: Developers are responsible for ensuring that all contractors working on the project hold required licenses and permits.

4.5 Assignments: No purchasing developer may assign development rights to another developer or builder without prior approval by EMSDC and the Department of Housing and Community Development of the CITY of Greensboro.

4.6 Failure to Complete Construction: If the entity to whom the lots are conveyed stops construction, goes out of business, files bankruptcy or is liquidated, it shall without charge, appoint a Receiver and request the Receiver to convey to the EMSDC all Lots upon which a residence is not completed. EMSDC may then convey said Lot(s) to any other developer, which shall be required to comply with all of the requirements set forth herein with respect to the residences to be constructed.

4.7 Change Orders: EMSDC shall not, without the written consent of the CITY, agree to any Change Orders during the course of construction which would materially alter the Plans and Specifications, as provided to the CITY. The CITY will act upon any request for such consent within a reasonable time, and the CITY's consent will not be withheld unreasonably.

4.8 Lien Waivers: EMSDC may require a general contractor's lien waiver or in the alternative, a lien subordination in form satisfactory to it at any

time during the construction of the Site Improvements and when so required must be acceptable to the below referenced approved title insurance company for endorsement at such time.

4.9 Partnerships with other organizations: EMSDC may choose to work in partnership with a developer by retaining ownership of the lot and entering into development agreements with a private developer. All such development agreements shall be approved by the City, including any proposed use of City provided funds for development assistance. Any such partnerships will comply fully with all other elements of this agreement including 4.2 and 4.3.

4.10 Closing Statement: For each project, EMSDC shall submit to the CITY a written summary of revenues and expenses for that project, within 30 days after completion of all required site improvements by the developer. The Closing Statement will detail approved expenses along with a copy of the closing statement from sale of the Property to the developer.

4.11 Funds returned to the CITY: EMSDC shall be required to return to the CITY all net proceeds from the sale of properties under this Agreement. The determination of the amount of the net proceeds shall be established through an audited financial statement submitted for each development following completion of the development project. The net proceeds amount shall be determined as the amount of revenue received from the sale of the property by EMSDC, less (1) a development fee equal to \$.50 per square foot of disposed land; and (2) EMSDC's actual, incurred and direct costs of holding, marketing, developing and reselling the Property. Direct costs shall not include EMSDC's personnel costs. All direct costs shall be supported by vendor invoices.

No other expenses or fees shall be included in EMSDC's approved expenses to be deducted from gross proceeds of sale unless and until agreed upon by the CITY.

4.12 Use of Program Income: All program income returned to the City under 4.11 shall be retained by the City for future use within the East Market Street corridor area.

ARTICLE V – Compliance

5.1 EMSDC's Compliance: In connection with the acquisition of Lots and construction of the Site Improvements, EMSDC further undertakes and agrees as follows:

- A. EMSDC shall maintain financial records in accordance with generally accepted accounting principles and practices and shall

comply with the applicable requirements of OMB Circular No. A-122 "Cost Principles for Non-Profit Organizations and the applicable provisions of the Uniform Administrative Requirements of OMB Circular A-110 (implemented at 24 CFR §84). Accounts shall not be commingled to an extent that prevents the accounting and auditing of the funds provided hereunder for the purposes set out in this Agreement. Funds are provided hereunder expressly for the purposes of this Agreement and funds shall not be temporarily or permanently shifted for other purposes for any reason. Program income generated from or because of the use of funds provided hereunder shall be returned to the City under the terms and conditions of this Agreement as outlined in Sections 4.11 and 4.12. The CITY retains the right to recover any unsubstantiated costs or overpayments from EMSDC.

- B. EMSDC will conduct and administer the activities performed by it in the construction of the Site Improvements in compliance with all federal, state and local statutes, rules and regulations.
- C. EMSDC shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the CITY.
- D. EMSDC covenants that it presently has no legal or financial interest and shall not acquire any legal or financial interest, direct or indirect, which would conflict in any manner or degree with the performance of the services to be performed by EMSDC hereunder, and that, in the performance of this Agreement, no person having any such interest shall be employed by EMSDC.
- E. The CITY or any of their duly authorized representatives shall have access to any books, documents, papers, and records of EMSDC which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions for seven years from the final payment under this Agreement. EMSDC agrees to cooperate with CITY in providing documents upon CITY's request. EMSDC will make reports available to CITY within 10 days of the request. Additionally, EMSDC agrees to allow on-site visits by representatives of the CITY's Internal Audit Division and will allow them to review EMSDC's records and to provide CITY with any reports deemed necessary by CITY. Failure to provide access to records/reports will cause the payments by the CITY to be suspended until such Audit has been performed by CITY's Internal Audit.

- F. EMSDC will not transfer any Lots, or any part thereof, or allow or suffer any change in the ownership or degree of ownership or the identity of the parties in control of EMSDC until a Certificate of Completion is issued by the CITY for all activities funded with City funds.

Reversion of Assets: Upon expiration of this Agreement, EMSDC shall transfer to the CITY any real property acquired or improved in whole or in part with CITY funds and remaining under EMSDC's control.

- G. Records and Reports: EMSDC agrees to maintain for a minimum of seven years, the following:
- (1) Accurate and complete records of all EMSDC financial transactions which occur during the term of this Agreement. These EMSDC financial records must specifically identify financial transactions which involve funds provided by the CITY under this Agreement; said financial records must be susceptible to easy retrieval for monitoring purposes by the CITY.
 - (2) A list of all tangible assets and their location if purchased, in whole or in part, with funds provided under terms of this Agreement.
 - (3) Other records (including, but not limited to, financial, personnel, and property) as are required by Federal, State and Local laws, regulations or ordinances, and which may be deemed necessary or advisable by the CITY, to insure proper record keeping for services performed and in the accounting for all funds.
 - (4) An annual Minority Business Enterprise Report (MBER) on all contract and subcontract activities. The MBER shall be received by the City's HCD Department no later than December 15th of each fiscal year during which this Agreement applies.

ARTICLE VI – EMSDC's Representations and Warranties

6.1 Validity of Loan Documents: This Agreement is in all respects legal, valid and binding in accordance with their terms.

6.2 Status and Authority: EMSDC warrants that: (a) it is a non-profit corporation duly organized, existing and in good standing under the laws of North Carolina; (b) its Articles of Incorporation and/or any certificates of assumed name or business name have been delivered to CITY and are in full force and effect and have not been amended or changed; (c) no proceeding is pending, planned or threatened for the dissolution, termination or annulment of it; (d) all Articles of Incorporation and certificates of assumed or business name or other documents

required to be filed have been duly filed in all places where such is required to be filed before the commencement of business, and it has complied with all other conditions prerequisite to its doing business in the state in which the Land is situated; (e) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by this Agreement, and (f) all necessary corporate actions of it have been duly taken to authorize the execution, delivery and performance of this agreement.

6.3 Taxes, Insurance and Other Assessments: EMSDC shall pay all taxes and assessments when due. All General Contractors shall maintain liability insurance. Coverage must be written showing the names of the insured to be EMSDC, CITY and General Contractor as their interests may appear. EMSDC shall provide evidence of such insurance to the CITY.

6.4 Environmental Tests: EMSDC agrees to do environmental testing on the property in accordance with CITY requirements. EMSDC certifies and warrants that it (1) neither knows of, nor has been advised of, any legal or administrative proceedings, claims, or alleged claims, violations or alleged violations, infractions or alleged infractions of any laws, rules or regulations relating to the environmental and ecological condition of the property; (2) it did not use, nor has been advised that any previous owner used the property for the treatment, storage, or disposal of any hazardous waste materials or toxic waste materials or substances and that it did not release or discharge, nor has been advised that any previous owner released or discharged any hazardous or toxic waste materials or substances or groundwater contamination from hazardous waste or other toxic or hazardous substances or contaminants upon the property; and (3) the project contains no substance known to be hazardous, including but not limited to asbestos, urea formaldehyde insulation and lead paint, except as disclosed to CITY. In addition, EMSDC agrees to indemnify and hold harmless the CITY from any and all liability against any breach of the aforesaid warranties.

6.5 Mitigation of Environmental Hazards: Upon acquisition of real property, if any environmental testing reveals the existence of hazardous materials, EMSDC shall take appropriate measures to remove or mitigate the hazard. Removal of any hazardous material shall be undertaken according to all local, state and federal laws and regulations. EMSDC shall provide copies of all test reports and all post abatement inspections and certification reports to the CITY.

6.6 Documents: EMSDC warrants and represents that all documents submitted will be complete and accurate and the Development Budget (attached as Exhibit A) is complete and accurate as of the execution of this document. Additionally, EMSDC warrants and represents that all contract documents submitted to the CITY will be valid, complete and accurate.

ARTICLE VII – Events of Default

The occurrence of any of the following events shall constitute an Event of Default under the terms of this Agreement:

7.1 Failure to Comply: If EMSDC is not in substantial compliance with its obligations under this agreement with respect to the acquisition of the Lots and construction of the Site Improvements, and if EMSDC fails to make a diligent effort to remedy such default within a period of sixty (60) days after written notice thereof from the CITY specifying the respects in which it is at fault so that EMSDC is again in substantial compliance with such obligations, the CITY may, at the end of such period, terminate this Agreement by giving written notice to EMSDC of such termination.

If this Agreement is terminated, the CITY shall have the rights accorded to it under its Deed of Trust on the Lot(s).

7.2 Pursuit of Remedies: The CITY may pursue any other remedy it may have against EMSDC by reason of any breach, prior to the termination of this Agreement, to the extent the damages incurred by the CITY are not cured by the provisions of this Section.

7.3 Default Under Agreement: Subject to any express grace period provided in this agreement during which EMSDC shall have the right to cure any default or event which with the passage of time would become a default, EMSDC's breach of any covenant, warranty, or fails to perform under the terms of this agreement constitutes a default. Any perceived or identified defaults of this agreement shall be made in writing to the offending party by the alleging party; all disagreements not resolved by the two parties involved will go to mediation.

7.4 Inaccurate Representations: Providing invalid or inaccurate material with regard to any warranty, representation or opinion in this Agreement is a default under this Agreement. Additionally, providing inaccurate or incomplete contracts or schedules is a default.

7.5 Deviation from Plans: Any material deviation from the Plans and Specifications in the methods or in the materials or the unreasonable delay in construction of the Site Improvements.

7.6 Easements or Encroachments on Survey: The appearance on any survey furnished hereunder of easements or encroachments which have occurred without the written approval of CITY and which are not corrected (in the sole judgment of CITY) or removed within ninety (90) business days after written notice thereof by CITY to EMSDC.

7.8 Claim of Lien. Any act or default by EMSDC that gives rise to a valid claim of lien against the Property, which lien EMSDC fails to have bonded off in accordance with statute or otherwise removed from the Property within thirty (30) days after receipt of notice of the lien by EMSDC.

ARTICLE VIII – CITY's Rights and Remedies

8.1 Possession by CITY: In the event of the occurrence of any Event of Default and following any applicable grace period, if any, the CITY shall, in addition to all other remedies as may be provided by law or by this agreement, be entitled to take sole possession of the Lots or at its option to have a receiver appointed, without regard to the value of the Lots and Site Improvements or to the solvency or insolvency of EMSDC. In such circumstances, CITY or such receiver, respectively, may complete the construction and all sums expended shall be deemed to be advances under this Agreement.

ARTICLE IX– General Conditions

The following terms and conditions shall be applicable throughout the term of this Agreement:

9.1 Assignment: EMSDC shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the CITY.

9.2 Fees: EMSDC shall pay all of its closing costs and attorney's fees, which shall be subject to reimbursement by the CITY according to terms described previously in this Agreement and shall be paid within 30 days of submittal.

9.3 No Waiver: No waiver of any event of default or breach by EMSDC hereunder shall be implied from any delay or omission by CITY to take action on account of such default, and no express waiver shall affect any default other than the default specified in the waiver. Waivers of any covenant, term or condition contained herein must be in writing.

9.4 Governing Law: This Agreement and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of North Carolina except to the extent that such laws may be preempted by any law, regulation or rule of the United States or any agency thereof.

9.5 Severability: Invalidation of any one or more of the provisions of this Agreement shall in no way affect any of the other provisions thereof, which shall remain in full force and effect.

9.6 Captions: The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision hereof.

9.7 Notices: Any notice, demand, or other communication required, permitted or authorized by this agreement or under applicable law shall be in writing and shall be considered given or delivered if it is delivered personally to, or dispatched by regular or certified mail, postage prepaid, to:

A. In the case of the CITY:

CITY of Greensboro
Attn: Director, Housing and Community Development
Post Office Box 3136
Greensboro, NC 27402-3136

and

CITY Attorney
Post Office Box 3136
Greensboro, NC 27402-3136

B. In the case of EMSDC:

James Rufus Farrior Jr.
400 W. Fisher Ave.
Greensboro, NC 27401

or to such other persons and such other addresses as a party may designate in writing delivered to the other parties as provided above.

9.8 CITY's Agent's Authority: Except as otherwise required by law or regulation, the CITY's Director of Housing and Community Development is hereby designated to act on behalf of the CITY for the purposes of issuing to EMSDC all necessary or permitted notices and demands, issuing all necessary or permitted approvals and verifications, and granting extensions of time for the performance of any obligation contained in this agreement.

9.9 Indemnification: To the extent permitted by law, EMSDC agrees to indemnify and hold the CITY harmless for any claim or cause of action, and for reasonable attorney's fees incurred by the CITY in connection therewith, in which the liability of the CITY is arising out of, associated with, or in any way connected

to its ownership of the Property. EMSDC shall have the right to compromise and defend any such claim or cause of action and the CITY shall cooperate in the defense thereof to the extent reasonably requested by EMSDC.

9.10 Condition of Receipt of CITY Funds: As a condition for receipt of funds from the CITY of Greensboro Department of Housing and Community Development (HCD), EMSDC must comply with the HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT'S POLICY FOR AWARDED FUNDS AND FOR MONITORING AGENCIES RECEIVING CITY FUNDS attached to this contract as Exhibit I and made a part hereof.

9.11 CITY Conflict of Interest: In addition to conflict of interest requirements in OMB Circular A-110 and 24 CFR 85.36, no person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the CITY or any designated public agency, or sub-recipients; and (2) who exercises or has exercised any function or responsibilities with respect to assisted activities; or (3) who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter.

8.16 Independence of Parties: This Agreement is not intended to create and shall not create a principal and agency relationship, partnership or joint venture between the parties, and neither party is made the agent or representative of the other for any purpose or in any manner whatsoever.

IN TESTIMONY WHEREOF, the CITY and EMSDC have caused this instrument to be executed, in triplicate, in their respective names by their duly authorized officials and their seal hereunto affixed, all by authority duly given, as of the day and year first above written. CITY signatures to follow on separate page.

ATTEST:

EMSDC

By:_____

EMSDC Corporate Seal