

Memorandum

To: Redevelopment Commission Chair and Members
From: Tom Wisemiller, Economic Development Project Coordinator
Date: August 28, 2014
Subject: August Redevelopment Commission Meeting

The Redevelopment Commission is scheduled to meet for a regular business meeting at 5:30 p.m. on Tuesday, September 2nd, 2014 at the Greenville City Hall.

Major topics of discussion at the August meeting will include:

- Casey Verburg, who manages the Small Business Plan Competition process, will present the recommendations for the summer 2014 application cycle;
- Mark Garner of Rivers & Associates will give a presentation on the final version of the West Fifth Streetscape construction plans;
- Carl Rees, the City's Economic Development Officer, will discuss the Reade to Cotanche Alley Elevator Agreement;
- Updates on Hodges Alley Improvements and the Imperial site brownfield cleanup Agreement (BFA).

A closed session will follow the Report from the Secretary.

We look forward to seeing you at the August meeting. If you have any questions or need additional information, please feel free to call me at 329-4514, or Betty Moseley at 329-4481.

Redevelopment Commission Meeting
Tuesday, September 2nd, 2014 ~ 5:30 PM

City Council Chambers ~ 200 West 5th Street

Agenda

- I. Welcome
- II. Roll Call
- III. Approval of Minutes – August 5, 2014
- IV. Consideration of Small Business Plan Competition Grant Awards
- V. West 5th Streetscape: Final Presentation
- VI. Public Comment Period
- VII. Reade to Cotanche Alley Elevator Agreement
- VIII. Update on Hodges Alley Improvements
- IX. Update on Imperial Brownfield Agreement
- X. Report from Secretary
 - a. Monthly Financial Report
- XI. Comments from Commission Members
- XII. Closed Session
- XIII. Adjournment

DRAFT OF MINUTES PROPOSED FOR ADOPTION
Greenville Redevelopment Commission
Meeting Minutes
Tuesday, August 5, 2014
Greenville, North Carolina

Present:

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

Absent:

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

Staff:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Merrill Flood | <input checked="" type="checkbox"/> Betty Moseley |
| <input checked="" type="checkbox"/> Carl Rees | <input checked="" type="checkbox"/> Jonathan Edwards |
| <input type="checkbox"/> Kandie Smith (City Council Liaison) | <input checked="" type="checkbox"/> Casey Verburg |
| <input checked="" type="checkbox"/> Niki Jones | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Tom Wisemiller | |
-

I. Welcome

II. Roll Call

III. Approval of Minutes – June 3, 2014

Ms. Dunn requested clarification on a comment by Mr. Rees on page 3, "...if we choose to go with one of these options we could be putting money into something that makes no sense."

Mr. Rees responded that the comment is in reference to repairs to the fly loft in the theater.

Motion was made by Mr. King and seconded by Ms. Marshall to approve the meeting minutes from June 3, 2014 as amended. Motion carried unanimously.

IV. Update on Live United Courtyard

Mr. Wisemiller introduced Ms. Bianca Shoneman, Executive Director of Uptown Greenville, to provide an update on Live United Courtyard.

Ms. Shoneman presented an overview of the Live United Courtyard process. In 2013, United Way asked to support the Live United Courtyard project "Born Learning Trail."

The BLT will offer: youth development, age appropriate activities, and outdoor, safe, and secure activities.

An overview of the budget for the Born Learning Trail:

Entity	Cash	In-Kind	Use
United Way	\$30,000		Construction, Courtyard
Redevelopment Commission	\$15,000		Construction, Courtyard
Uptown Greenville	\$2,000	\$8,000	Phase I site development, project management
Rivers and Associates		\$7,000	Design Services
Total project	\$47,000	\$15,000	\$62,000

Ms. Shoneman stated that Uptown Greenville is requesting \$15,000 from the RDC to close the funding gap.

Mr. Jim Cieslar, Executive Director of United Way, stated the mission of United Way and reiterated their support for the Born Learning Trail. He stated that the UW will be promoting the BLT to other businesses.

Mr. Woodson asked for a balance on the budget available.

Mr. Wisemiller replied that there was a general budget for alleyway improvements in the amount of \$49,000.

Ms. Marshall asked, since it was gated, how many people could be in there at one time.

Ms. Shoneman responded that currently there is not a capacity limit. As the project progresses, a capacity limit will be determined.

Mr. King asked if we could expect to get something like the preliminary picture for \$15,000 from the RDC.

Ms. Shoneman replied yes.

Ms. Marshall stated that the area does not look big enough for people to run around and play. It looks like it will only hold a small number of people.

Ms. Dunn asked what the size of the lot was.

Ms. Shoneman replied that she did not have the dimensions.

Mr. Rees stated that the Arts Council has been looking at this lot for some time. He introduced Ms. Holly Garriott to address the board concerning the space.

Ms. Garriott stated that their weekend programs have up to 30 children and the camps have up to 50 children. The park is ample space for them to play. This is not a typical park; it is a smaller, safer space. This will be much more family friendly, colorful, and fun.

Ms. Siguaw asked if there was a chance of using metal for the fence that makes music.

Ms. Garriott replied that she could make a request to Jim. He has already agreed to slice his fee in half.

Mr. Cieslar stated that the park was not the whole trail; it is the kick-off of the trail.

Ms. Marshall asked if the public can still come in when it is being used for programs.

Ms. Shoneman replied yes.

Mr. Woodson stated that he had a concern regarding the additional cost of allocating funds for the trails.

Ms. Siguaw asked why the shrubbery needed to come out. The committee had just paid for it and it seems that you would be able to reduce expenses by \$9,000 by leaving it where it is.

Ms. Shoneman replied that the shrubbery would not be removed. Uptown Greenville was already looking at ways to make reductions in the costs. They are committed to public art.

Mr. King stated that if we could get the paving, seating and everything presented for \$15,000 then he was supportive of it. However, he did not want anyone coming back to request more money.

Mr. Cieslar responded that the United Way was a fund raiser and that the project would get done. They would not be back to request more money.

Ms. Marshall stated that she would be in favor of the project after final cost was presented.

Ms. Dunn asked if the request was for a total of \$15,000 and that no one would come back to request more.

Ms. Shoneman replied that they were hoping to have all numbers after putting the item out for bid. They are hoping to have all of the finances lined up before going into contract for the project.

Ms. Siguaw asked how much the RDC had paid on the pocket park.

Mr. Wisemiller replied \$7,000.

Ms. Dunn asked who would be responsible for the park maintenance.

Ms. Shoneman replied that the park will be turned over to the Public Works Department.

Mr. Wisemiller stated that if the board would give some indication that they plan to support the idea, then they can come back with the request after they have precise numbers.

Motion was made by Mr. King and seconded by Ms. Marshall to commit appropriating \$5,000 with a contingent \$10,000 for the courtyard with receipt of final design. Motion carried unanimously.

V. Consideration of Agreement with Pitt County Arts Council

Mr. Rees stated that the request for a \$50,000 grant to support the arts gateway was not approved. However, staff will resubmit a request next year. The Arts Council is still planning to move forward with artist residence. If a grant comes through in the future it will be an expansion of that program.

There is an artwork component for the Evans Street Gateway that needs to be completed. The rest of the Gateway project is near completion. The Department of Transportation will be written a check. A RFP will be issued and a public meeting held to gauge what kind of local interest and artist interest there is. Proposals will be narrowed down to three artists. RDC and the Arts Council will review the proposals and select a finalist. There is a \$50,000 cap for this project. Staff recommends approval for this project.

Mr. King asked if the \$50,000 match for the Gateway project was coming back to the budget.

Mr. Rees replied yes.

Motion was made by Mr. Patterson and seconded by Mr. King to approve the agreement with the Pitt County Arts Council. Motion carried unanimously.

VI. Presentation on HUD Evaluation Report (CAPER)

Mr. Jones gave the presentation on the HUD Consolidated Annual Performance Evaluation Report (CAPER). The CAPER is a requirement of HUD and it details the Housing Division accounts.

The allocation of funds:

Proposed Activity	HOME	CDBG
Administration/Planning	\$35,797.60	\$170,289.60
Rehabilitation	\$200,815	\$370,158.40
Downpayment Assistance	\$17,687	
Public Service		\$75,000
Acquisition/Clearance		\$84,000
Relocation		\$15,000
Economic Development		\$137,000
CHDO/New Construction	\$53,898.40	
New Construction	\$50,000	
Total	\$357,976	\$851,448

Summary of Accomplishments:

Activity	HOME
Rehabilitation	17 homes rehabbed 5 lead paint hazard removed
Downpayment Assistance	3 DPA deferred loans
Public Service	5 non-profits
Acquisition/Clearance	6 demotions 9 acquisitions
Public Facility	1 facility improvement
Relocation	1 displaced tenant
Economic Development	3 small business loans
New Construction	1 sold

Ms. Dunn asked if all Housing Division homes were sold now.

Mr. Jones replied yes.

Mr. King asked if the City plans to build more homes and if so, where.

Mr. Jones replied yes, in Lincoln Park.

Mr. King asked if there was a higher demand for rehabs this year.

Mr. Jones replied that there was an increased demand. Additionally, the City was beginning to rehab older, larger homes which were more expensive.

Mr. Jones commented that the Housing Division does offer Financial Literacy Classes, Homeownership Workshops, and credit counseling; things that are hard to put a cost to for the CAPER, but do benefit the community.

VII. Public Comment Period

There were no public comments.

VIII. Update on the Small Business Plan Competition

Ms. Verburg gave the update on the Small Business Plan competition. Staff received eleven applications; normally there are five or six.

The Redevelopment Commission discussed the review of the applications and the overall competition.

Ms. Verburg informed the board that the eleven applications will be discussed and voted on during the board meeting in September.

Mr. King asked how many are already located in West Greenville and the Center City and how many are currently in business.

Ms. Verburg replied approximately nine applicants are currently in business and six or seven of those are in Uptown, and the remainder in West Greenville.

Ms. Dunn asked how much money had been allocated in the budget for the competition.

Mr. Woodson replied \$15,000 per applicant.

Ms. Verburg stated that there would be four awards.

Mr. King asked if the applicants can reapply if not selected.

Ms. Verburg replied that unless they withdraw their application before the voting period, they will have to wait a full year to reapply.

IX. Report from Secretary

a. Monthly Financial Report

Mr. Flood gave the monthly financial report. A hand out was distributed to the commission for review.

Mr. Woodson stated that on 423 Evans Street there was dirt piled up. He asked if there was a time frame for removing it.

Mr. Flood replied that it was from digging out for park garage. It is a spoil site right now, but will be cleared at the finishing of the project.

X. Comments from Commission Members

Ms. Siguaw stated that she had fun at the small business competition.

XI. Closed Session

Mr. Rees read the purpose for closed session in to the record as follows: To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, said law rendering the information as privileged or confidential being the Open Meetings Law.

To establish or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisitions of real property by purchase, option, exchange, or lease.

Motion was made by Mr. Patterson and seconded by Mr. King to go into closed session. Motion carried unanimously.

XII. Adjournment

Motion was made by Mr. Patterson and seconded by Ms. Dunn to adjourn the RDC meeting. Motion carried unanimously.

Respectfully submitted,

Carl J. Rees, Economic Development Manager
The City of Greenville Community Development Department

Memo

To: Redevelopment Commission
From: Carl Rees
CC: Merrill Flood
Date: 8/28/2014
Re: Summer Cycle 2014 – Small Business Plan Competition

Agenda Item # 8

The amount of interest in the Small Business Plan Competition has drastically improved from the last cycle. The number of applicants increased from six (6) to eleven (11) this summer. On July 31st, the selection sub-committee, made up of Mr. Mark Woodson, Ms. Angela Marshall, and Ms. Judy Siguaw, met with all enthused business owners to discuss the scope and plan for success for each business. For a variety of reasons, some of the applicants withdrew to better prepare their application and expressed intention to resubmit in December. Remaining submissions are or plan to locate in the Center City Revitalization Area.

APPLICANTS:

1. **Campus Cookies** is late night and gift delivery service of warm baked to order gourmet cookies. Greenville will be the first location for campus cookies outside the state of Virginia. Business owner has leased space in the super block of Uptown Greenville. The business plan is eligible for \$15,000.
2. **Cory Kennedy State Farm** is insurance agency currently located outside the Uptown/West Greenville district. The business owner has bought the old East Coast Video location and has plans to develop and revamp the current building. Through the investment in the purchase of the building the business is eligible for \$30,000.
3. **Crossfit Greenville** is a strengthening and conditioning program and gym. The business just relocated from outside the district to right off Dickinson Avenue in West Greenville. The business plan is eligible for \$15,000.
4. **Dickinson Avenue Public House** is a new restaurant and pub that offers catering and a venue option for private events. The restaurant will locate at 703 Dickinson Avenue, and the business plan is eligible for \$15,000.

Following the informal interview process, in which all applicants showed significant potential to thrive in Greenville's Center City, the subcommittee recommended all four of the aforementioned businesses be awarded in the summer 2014 grant cycle.

STATE OF NORTH CAROLINA

COUNTY OF PITT

PUBLIC USE AGREEMENT

This Public Use Agreement ("Agreement") is entered into as of the ____ day of August, 2014, by and between Green Town Properties, Inc., ("GTP"), the Redevelopment Commission of Greenville ("Commission"), and No Quarter, LLC ("No Quarter") for the shared use of an elevator serving buildings having addresses of 207 East 5th Street, Greenville, North Carolina, which such elevator is more particularly described and shown on the diagram attached hereto, incorporated herein and labeled "Exhibit A" (the "Elevator"). GTP, Commission and No Quarter shall collectively be referred to in this Agreement as the "Parties".

WHEREAS, there is currently no elevator serving the building located at 207 East 5th Street, Greenville, North Carolina; and

WHEREAS, the State of North Carolina, on behalf of East Carolina University (ECU), has entered into that certain Lease Agreement with No Quarter last dated July 23, 2013 (the "Lease"), whereby ECU will occupy all of the leasable space located in the building at 207 East 5th Street (the "207 Building"); and

WHEREAS, No Quarter will construct an elevator to serve the 207 Building; and

WHEREAS, the Commission desires to enter into a nonexclusive agreement with GTP and No Quarter allowing for the use by members of the general public of the Elevator.

NOW THEREFORE, in consideration of the premises and promises and covenants contained in the terms and conditions hereinafter set forth, the Parties hereby agree as follows:

1. **Term.** The term of this Agreement is for a period of ten years commencing on the 5th day of July, 2015, and terminating on the 4th day of July, 2024 (the "Term"). The Term may be extended in writing upon mutual written agreement of the Parties.

2. **Payments.** In consideration for the nonexclusive use by members of the general public of the Elevator during the Term and in accordance with the provisions of this Agreement, the Commission shall pay GTP the sum of One Hundred Thousand and 00/100ths Dollars (\$100,000.00) no later than July 30, 2015, and the Commission shall pay No Quarter the sum of One Dollar and 00/100ths Dollars (\$1.00) no later than July 30, 2015.

3. **Access.** During the Term, any and all persons shall have access to and use of the Elevator to access the 207 Building at any time during the operational hours, as hereinafter defined, of any of the offices, retail establishments, or other business or institutional establishments located in the portion of the 207 Building accessible by the Elevator. For the purpose of this Agreement, operational hours shall mean any time during which any of the offices, retail establishments, or other businesses or institutional establishments is open to members of the general public, actual or potential clientele, or other persons receiving or

inquiring about service from the office, retail establishment, or other business or institutional establishment.

4. Quiet Enjoyment. GTP and No Quarter agree that, upon the Commission making the payments required by Section 2 of this Agreement, members of the general public shall, in accordance with the provisions of this Agreement, at all times during the Term, peaceably and quietly have, hold, and enjoy nonexclusive access to and use of the Elevator free from the adverse claims of any person.

5. Utilities. GTP shall be responsible for procuring, providing and paying for any and all utilities related to, or necessary for the operation of, the Elevator at all times throughout the Term. The Commission shall not be responsible for any expense for utilities related to the Elevator.

6. Maintenance and Operation. No Quarter shall be responsible for all inspections, permits, maintenance and repairs of the Elevator. No Quarter warrants that, at all times during the term of this Agreement, it will exercise commercially reasonable efforts to keep the Elevator and that portion of the 207 Building serving the Elevator in good repair, operational and current with regard to all required inspections and permits; such that the Elevator shall, with the exceptions of reasonable down time caused by necessary repair, renovation inspection, *force majeure*, or as may otherwise may be reasonably required, provide continuous elevator service necessary for access to the 207 Building. The Commission shall not be responsible for any expense for inspections, permits, maintenance and repairs of the Elevator.

7. Janitorial Services. GTP shall be responsible for procuring and paying for any and all janitorial services necessary to keep the Elevator in a good, clean, neat, attractive, pleasant and sanitary condition at all times during the Term. The Commission shall not be responsible for any expense for janitorial services related to the Elevator.

8. Insurance. No Quarter shall at all times during the Term, at its own cost and expense, insure and keep in effect insurance on the Elevator against claims for personal injury or property damage under a policy of general liability insurance with a combined single limit of not less than \$1,000,000, with the Commission named as an additional named insured, written by an insurance company or companies authorized to do business in the State of North Carolina. No Quarter shall provide the Commission with a certificate of insurance evidencing said coverage. The Commission shall not be responsible for any expense for insurance related to the Elevator.

9. Indemnity. (a) To the extent permitted by law, No Quarter agrees to indemnify and hold harmless the Commission and its officers and employees from and against any and all claims and damages whether injury to person, loss of life, or damage to property arising from No Quarter's gross negligence or willful misconduct in the performance of this Agreement.

(b) To the extent permitted by law, the Commission agrees to indemnify and hold harmless No Quarter and its officers and employees from and against any and all claims and

damages whether injury to person, loss of life, or damage to property arising from the Commission's gross negligence or willful misconduct in the performance of this Agreement.

(c) To the extent permitted and limited by law, GTP agrees to indemnify and hold harmless the Commission and its officers and employees from and against any and all claims and damages whether injury to person, loss of life, or damage to property arising from the gross negligence or willful misconduct of GTP and its successors and assigns in the performance of this Agreement.

(d) To the extent permitted and limited by law, the Commission agrees to indemnify and hold harmless GTP and its officers and employees from and against any and all claims and damages whether injury to person, loss of life, or damage to property arising from the gross negligence or willful misconduct of the Commission and its successors and assigns in the performance of this Agreement.

10. Default and Remedies. (a) If the Commission shall fail to timely pay payments that the Commission is obligated to pay under the provisions of Section 2 of this Agreement for fifteen (15) days after written notice and demand, the right to use and access the Elevator in accordance with the provisions of this Agreement shall terminate.

(b) If at any time during the Term (i) the right to use and access the Elevator in accordance with the provisions of this Agreement is terminated, (ii) GTP shall fail to fully perform or observe any of the terms, covenants, conditions or agreements of this Agreement involving utilities, maintenance and operation, janitorial services, and insurance related to the Elevator for fifteen (15) days after written notice and demand, or (iii) No Quarter shall fail to fully perform or observe any of the terms, covenants, conditions, or agreements of this Agreement involving utilities, maintenance and operation, janitorial services, and insurance related to the Elevator for fifteen (15) days after written notice and demand, then, and in any such case, the Commission may by written notice to GTP and No Quarter demand reimbursement from GTP of a prorated portion of the payment made to GTP pursuant to Section 2 of this Agreement and GTP shall reimburse the Commission, within fifteen (15) days after receipt of such written notice, a portion of said payment made by the Commission pursuant to Section 2 of this Agreement by paying to the Commission a sum in the amount of \$10,000 for each year or portion of a year remaining on the Term.

11. No Gift. (a) North Carolina General Statute §133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any employee of the Commission of any gift from anyone with a contract with GTP, or from any person seeking to do business with GTP. By execution of this Agreement, the Commission attests, for its entire organization, including its employees or agents, that it is not aware that any such gift has been offered, accepted, or promised by any employees of its organization.

(b) North Carolina General Statute §133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any employee of No Quarter of any gift from anyone with a contract with GTP, or from any person seeking to do business with GTP. By execution of this Agreement, No Quarter attests, for its entire organization, including its employees or agents, that it is not aware that any such gift has been offered, accepted, or promised by any employees of its organization.

9. Notices. Any notice required by this Agreement shall be in writing (i) delivered personally, (ii) sent postage prepaid by certified mail or registered mail, return receipt requested, or (iii) sent by a nationally recognized overnight carrier that guarantees next day delivery directed to the party at the addresses listed below or such other parties or addresses as may be designated by the party by notice given from time to time in accordance with this Section. Any notice given in accordance with this Section shall be deemed received upon the earlier of (i) delivering it in person, (ii) three days after depositing it in an office of the United States Postal Service or any successor governmental agency, (iii) one day after giving it to a nationally recognized overnight carrier, (iv) email delivery confirmation, or (v) actual receipt.

If to GTP:
Green Town Properties, Inc.
Attn: President
2200 S. Charles Blvd.
Greenville, NC 27858

If to No Quarter:
No Quarter, LLC
Sullivan Shearin & Co
Attn: Tracey Allen
1100 Conference Drive
Greenville, NC 27858

With a copy to:
A. Scott Buck, Associate Vice
Chancellor for Business Services
East Carolina University
224 Ragsdale Building
Greenville, NC 27858-4353

With a copy to:
Holton Wilkerson
4040 Ed Drive, Suite 205
Raleigh, NC 27612

If to Commission:
Redevelopment Commission of Greenville
Attn: Secretary
PO Box 7207
Greenville, NC 27835

With a copy to:
City of Greenville
Attn: City Manager
P.O. Box 7207
Greenville, NC 27835

IN WITNESS WHEREOF, this Agreement has been executed and sealed by the Parties hereto intending to be bound hereby as of the date last written below.

Green Town Properties, Inc.

No Quarter, LLC

By: _____ (seal)

By: _____ (seal)

Title: _____

Title: _____

Date: _____

Date: _____

Redevelopment Commission of Greenville

By: _____ (seal)

Title: _____

Date: _____

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

Account Number _____

Project Code (if applicable) _____

EXHIBIT A

[Elevator Diagram]

EXHIBIT A

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF: City of Greenville

UNDER THE AUTHORITY OF THE)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT)	Imperial Tobacco Site
OF 1997, N.C.G.S. § 130A-310.30, <u>et seq.</u>)	710 Atlantic Avenue
Brownfields Project # 16056-12-074		Greenville, Pitt County

I. INTRODUCTION

This Brownfields Agreement (“Agreement”) is entered into by the North Carolina Department of Environment and Natural Resources (“DENR”) and the City of Greenville (collectively the "Parties") pursuant to the Brownfields Property Reuse Act of 1997, N.C.G.S. § 130A-310.30, et seq. (the “Act”).

The Prospective Developer, the City of Greenville is a municipality in eastern North Carolina with a population of about 85,000 people. The municipal offices are located at 200 West Fifth Street, Greenville, NC 27834 and its mailing address is P.O. Box 7207, Greenville, NC 27835-7207. The City of Greenville is managed by a six-member City Council, which has the final authority on municipal policy matters. Currently, Mr. Allen Thomas is the Mayor of Greenville and Ms. Barbara Lipscomb is the City Manager.

The property is located at 710 Atlantic Avenue in Greenville, Pitt County, and is the site of the former Imperial Tobacco Co. processing plant. Prospective Developer has committed itself to redevelopment as a mixed-use project excluding single-family housing and including the following potential uses: multi-unit residential housing; light industrial, commercial, office, retail and restaurant uses; educational facilities; medical or health uses; institutional or cultural uses; community facilities; private and public parking, transit, roadways; open space, parks or recreation uses, or storm water maintenance facilities. A map showing the location of the

property which is the subject of this Agreement is attached hereto as Exhibit 1.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Section VIII (Certification), Section IX (DENR's Covenant Not to Sue and Reservation of Rights) and Section X (Prospective Developer's Covenant Not to Sue), the potential liability of the City of Greenville for contaminants at the property which is the subject of this Agreement.

The Parties agree that the City of Greenville's entry into this Agreement, and the actions undertaken by the City of Greenville in accordance with the Agreement, do not constitute an admission of any liability by the City of Greenville.

The resolution of this potential liability, in exchange for the benefit the City of Greenville shall provide to DENR, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in the Act or elsewhere in N.C.G.S. 130A, Article 9 shall have the meaning assigned to them in those statutory provisions, including any amendments thereto.

1. "Property" shall mean the Brownfields Property which is the subject of this Agreement, and which is depicted in Exhibit 1 to the Agreement.
2. "Prospective Developer" shall mean the City of Greenville.

III. STATEMENT OF FACTS

3. The Property comprises four parcels totaling 7.05 acres (Parcel ID No. 11698 (Parcel 1), 16548 (Parcel 3), 22175 (Parcel 4), and 34561 (Parcel 2) Prospective Developer has committed

itself to redevelopment as a mixed-use project excluding single-family housing and including the following potential uses: multi-unit residential housing; light industrial, commercial, office, retail and restaurant uses; educational facilities; medical or health uses; institutional or cultural uses; community facilities; private and public parking, transit, roadways; open space, parks or recreation uses, or storm water maintenance facilities.

Redevelopment of the former Imperial Tobacco property is aligned with the City of Greenville's planned redevelopment along the Dickinson Avenue corridor as well as economic development and redevelopment plans for the remainder of the formative Dickinson Avenue Arts & Innovation district in West Greenville. The redevelopment of the Imperial site will aim to capitalize on the district's strategic assets and complement other planned public, private, and public-private investments in the district, including the recently completed federal bankruptcy courthouse, the Go Science Center (under construction), the 10th Street Connector Project, an East Carolina University millennial campus project, the Greenville Transportation Activity Center, major mixed-use redevelopment projects on/around Dickinson Avenue, a \$10 million roadway and streetscape improvements planned for the Dickinson Avenue corridor, and a proposed road realignment project intended to create market-friendly redevelopment sites. A market and urban design analysis of the Dickinson Avenue project area in which the Imperial site is located recommends that the Imperial site be anchored by makers (light industrial) and/or advanced manufacturing uses, along with compatible mixed-uses to include multi-unit residential, commercial, office, retail, restaurant uses. The site is also likely to accommodate public investments, including institutional or cultural uses, community facilities, public parking, transit, roadways, public open space, parks or recreation uses.

4. The Property is irregularly shaped and bordered to the north by either South Alley or Bonner Lane with a church and apartments beyond, to the east by Clark Street with a mix of residential and occupied and vacant commercial

development beyond, to the south by the intersection of Grande Avenue and Dickinson Avenue with church and occupied and vacant commercial properties beyond, and to the west by the CSX (formerly Atlantic Coast Line Railroad) Railroad with occupied and vacant commercial properties beyond.

5. Prospective Developer obtained or commissioned the following reports, referred to hereinafter as the “Environmental Reports,” regarding the Property:

Title	Author	Date
Phase I Environmental Site Report, Former Imperial Tobacco Facility	Duncklee & Dunham, PC	May 20, 2008
Revised Phase II Environmental Site Assessment, Former Imperial Tobacco Facility	Duncklee & Dunham, PC	October 6, 2009
Phase I Environmental Site Update, Former Imperial Tobacco Facility	Duncklee & Dunham, PC	November 12, 2009
Report of Phase I Environmental Site Assessment, Former Imperial Tobacco Site	Duncklee & Dunham, PC	July 5, 2012
Analysis of Brownfield Cleanup Alternatives (Draft)	CTC Public Benefit Corporation	November 15, 2012

6. For purposes of this Agreement, DENR relies on the following representations by Prospective Developer as to use and ownership of the Property:

a. The Property was undeveloped until about 1900. The Imperial Tobacco Company constructed the original plant building on the property in 1913, which was expanded in 1920 and 1955 to include an area of approximately 200,000 square feet. Historic site processes included drying, fumigation, packing, and storage of tobacco until about 1978, when Imperial Tobacco sold the Property. At this time, site use changed to a storage facility for paper, plastic and other miscellaneous recycling materials. Petroleum hydrocarbons, presumably No. 6 fuel oil and gasoline, were stored at the facility.

b. The main manufacturing building was located along the west side of Atlantic

Avenue. Two fires occurring in April 2008 and April 2009 destroyed the manufacturing building. Building debris from the fire remains, partially covering the concrete foundation on which the building formerly stood. Two underground storage tanks (25,000-gallon No. 6 fuel oil), a sump adjacent to the boilers containing No. 6 fuel oil, and former boiler system piping located at this building remain beneath the building slab and debris. An above ground storage tank (AST) is located adjacent to a smokestack on this parcel as well.

c. The office and maintenance buildings on the east side of Atlantic Avenue are boarded up and vacant, except for parcel number 22175, which is occupied by a commercial tenant. An abandoned steel AST is located on the northern area of this parcel and a gasoline underground storage tank is located on the western side of the garage at this parcel. A water tower is also located on this eastern parcel.

d. The City of Greenville acquired the property from the prior owner, Mr. Earl Wilson, on November 15, 2012. Mr. Wilson acquired the four parcels of the property over a period of time. Parcels 1 and 2 of the property were previously owned by The Imperial Tobacco Company, which originally constructed the tobacco plant in 1913 with expansions in 1920 and 1955. The Imperial Tobacco Company sold Parcels 1 and 2 to another individual in 1977 and that individual sold the property to Mr. Wilson in 1985. Parcel 3 was previously owned by the Boys & Girls Club of Pitt County and was sold to Mr. Wilson in 1992. Parcel 4 was previously owned by individuals who sold to Mr. Wilson in 1987.

7. The most recent environmental sampling at the Property reported in the Environmental Reports occurred on May 28, 2008. The following tables set forth, for contaminants present at the Property above applicable standards or screening levels, the

concentration found at each sample location and the applicable standard or screening level.

Screening levels and standards are shown for reference only and are not set forth as cleanup levels for the purposes of this Agreement.

a. Groundwater contaminants in micrograms per liter (the equivalent of parts per billion), the standards for which are contained in Title 15A of the North Carolina Administrative Code, Subchapter 2L, Rule .0202(2L), (April 1, 2013 version) or the 2L Groundwater Interim Maximum Allowable Concentrations (IMACS), (April 1, 2013 version):

Groundwater Contaminant	Sample Location	Date of Sampling	Concentration Exceeding Standard (µg/L)	Standard (µg/L)
Arsenic	SB-15	5/28/2008	90.4	10
Manganese	SB-13	5/28/2008	65.4	50
	SB-15	5/28/2008	99.3	

b. Soil contaminants in milligrams per kilogram (the equivalent of parts per million), the screening levels for which are derived from the Preliminary Residential Health-Based Remediation Goals of the Inactive Hazardous Sites Branch of DENR's Superfund Section (January 2014 version):

Soil Contaminant	Sample Location	Depth (ft)	Date of Sampling	Concentration Exceeding Screening Level (mg/kg)	Residential Screening Level ¹ (mg/kg)
Arsenic	SB-1	0-1	5/27/2008	1.5	0.61
	SB-5	0-1	5/28/2008	32	
	SB-7	0-1	5/27/2008	1.2	
	SB-8	1-2	5/28/2008	59.8	
	SB-10	0-1	5/28/2008	2.3	

	SB-11	0-1	5/27/2008	2.1	
	SB-17	0-1	5/28/2008	8.8	
Lead	SB-17	0-1	5/28/2008	680	400
Oil & Grease	SB-1	0-1	5/27/2008	555	10 ³
Phenanthrene	SB-17	0-1	5/28/2008	0.801	NE ²
Total Petroleum Hydrocarbons – Diesel Range Organics	SB-1	0-1	5/27/2008	483	10 ³
	SB-6	0-1	5/28/2008	110	
	SB-16	10-11*	5/27/2008	377	
Total Petroleum Hydrocarbons – Gasoline Range Organics	SB-16	10-11*	5/27/2008	914	10 ³

¹Screening levels displayed for non-carcinogens are for hazard quotient equal to 0.2. Screening levels displayed for carcinogens are for 1.0E-6 lifetime incremental cancer risk target.

²No screening level established for this compound.

³DENR UST Section action level

8. For purposes of this Agreement DENR relies on Prospective Developer's representations that Prospective Developer's involvement with the Property has been limited to obtaining or commissioning the Environmental Reports, preparing and submitting to DENR a Brownfields Property Application dated November 8, 2012, and the following:

- a. On November 15, 2008, Prospective Developer purchased the Property;
- b. In 2012, successfully applied for United States Environmental Protection Agency (EPA) Brownfields Cleanup Grant funds to be applied at the Property; cleanup grant funds from EPA were awarded in the Spring of 2013 to the City of Greenville.

9. Prospective Developer has provided DENR with information, or sworn certifications regarding that information on which DENR relies for purposes of this Agreement, sufficient to demonstrate that:

a. Prospective Developer and any parent, subsidiary, or other affiliate has substantially complied with federal and state laws, regulations and rules for protection of the environment, and with the other agreements and requirements cited at N.C.G.S. § 130A-310.32(a)(1);

b. As a result of the implementation of this Agreement, the Property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment;

c. Prospective Developer's reuse of the Property will produce a public benefit commensurate with the liability protection provided Prospective Developer hereunder;

d. Prospective Developer has or can obtain the financial, managerial and technical means to fully implement this Agreement and assure the safe use of the Property; and

e. Prospective Developer has complied with all applicable procedural requirements.

10. Prospective Developer has paid to DENR the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1), and shall make a payment to DENR of \$6,000 at the time Prospective Developer and DENR enter into this Agreement, defined for this purpose as occurring no later than the last day of the public comment period related to this Agreement. The Parties agree that such fees will suffice as the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1), and, within the meaning of N.C.G.S. § 130A-310.39(a)(2), the full cost to DENR and the North Carolina Department of Justice of all activities related to this Agreement, unless a change is sought to a Brownfield document after it is in effect, in which case there shall be an additional fee of at least \$1,000.

IV. BENEFIT TO COMMUNITY

11. The redevelopment of the Property proposed herein would provide the following public benefits:

- a. a return to productive use of the Property and the elimination of the drawbacks of unoccupied property;
- b. a spur to additional community redevelopment, through improved neighborhood appearance and otherwise;
- c. the creation of **INSERT** jobs;
- d. an increase in tax revenue for affected jurisdictions;
- e. additional industrial, commercial, office, cultural, residential, parking, and open space for the community; and
- f. “smart growth” through use of land in an already developed area, which avoids development of land beyond the urban fringe (“greenfields”).

V. WORK TO BE PERFORMED

12. Prospective Developer will conduct remedial work at the Brownfield Property in accordance with a plan generated pursuant to the City of Greenville’s US EPA Cooperative Agreement No. BF-00D13213-0, and as approved in advance by the City of Greenville’s EPA Project Officer, and to DENR’s satisfaction. As part of the remedial activities, Prospective Developer will address environmental issues related to underground and above ground fuel storage tanks and surface soil contamination at the Property in accordance with applicable NC DENR UST Section and federal rules and regulations. Prospective Developer will provide DENR with a summary of the remediation methods to be employed at the Property, the location

of the remediation activities, a schedule of remediation activities, a summary of the applicable remediation standards, and a summary of the methods to be used to evaluate the performance of the remediation to DENR's written satisfaction.

13. Within 60 days after the effective date of this Agreement, Prospective Developer shall notify DENR that it is ready to effect the abandonment of all groundwater monitoring wells, injection wells, recovery wells, piezometers and other man-made points of groundwater access at the Property in accordance with Subchapter 2C of Title 15A of the North Carolina Administrative Code. Unless DENR notifies Prospective Developer within 10 days of receiving such notification to refrain from such abandonment, Prospective Developer shall, on a schedule acceptable to DENR, effect said abandonment and, within 30 days after doing so, provide DENR a report, subject to DENR approval, setting forth the procedures and results.

14. In redeveloping the Property, Prospective Developer shall make reasonable efforts to apply sustainability principles at the Property, using the nine (9) areas incorporated into the U.S. Green Building Council Leadership in Energy and Environmental Design certification program (Sustainable Sites, Water Efficiency, Energy & Atmosphere, Materials & Resources, Indoor Environmental Quality, Locations & Linkages, Awareness & Education, Innovation in Design and Regional Priority), or a similar program.

15. Based on the information in the Environmental Reports, and subject to imposition of and compliance with the land use restrictions set forth below, and subject to Section IX of this Agreement (DENR's Covenant Not to Sue and Reservation of Rights), DENR is not requiring Prospective Developer to perform any active remediation at the Property other than remediation that is required by paragraph 12 above, and those actions that are required pursuant to a DENR-

approved Environmental Management Plan (EMP) required by this Section.

16. By way of the Notice of Brownfields Property referenced below in paragraph 21, Prospective Developer shall impose the following land use restrictions under the Act, running with the land, to make the Property suitable for the uses specified in this Agreement while fully protecting public health and the environment. All references to DENR shall be understood to include any successor in function.

a. No use may be made of the Property other than as a mixed-use project excluding single-family housing and including the following potential uses: multi-unit residential housing; light industrial, commercial, office, retail and restaurant uses; educational facilities; medical or health uses; institutional or cultural uses; community facilities; private and public parking, transit, roadways; open space, parks or recreation uses, or storm water maintenance facilities.

For purposes of this restriction, the following definitions apply:

i. “Light industrial” means the assembly, fabrication or processing of goods and materials using processes that ordinarily do not create unreasonable noise, smoke, fumes, odors, glare, or health and safety hazards outside of the building or property where such assembly, fabrication or processing takes place;

ii. “Commercial office” means the provision of business services for a profit;

iii. “Retail” means the sale of goods, products, or merchandise directly to the consumer;

iv. “Restaurant” refers to a commercial business establishment that prepares and serves food and beverages to patrons.

v. “Cultural use” refers to those uses that incorporate the arts, civic,

historic, or scholarly pursuits.

vi. “Parking lots” means refers to the temporary accommodation of motor vehicles in an area designed for same;

vii. “Multi-unit residential housing” refers to a permanent dwelling such as a condominium, apartment, group home, dormitory or boarding house where residential units are attached to each other with common walls and any property outside the dwelling structure is common to the residents and not privately owned as part of an individual dwelling unit; and

viii. “Open space” refers to an area maintained in a natural or landscaped state and used for active or passive recreational purposes, natural resource protection, buffers, greenways and/or detention facilities for storm water.

b. Physical redevelopment of the Property may not occur other than in accord, as determined by DENR, with an Environmental Management Plan approved in writing by DENR in advance (and revised to DENR’s written satisfaction prior to each subsequent redevelopment phase) that is consistent with all the other land use restrictions and describes redevelopment activities at the Property, the timing of redevelopment phases, and addresses health, safety and environmental issues that may arise from use of the Property during construction or redevelopment in any other form, including without limitation:

i. soil and water management issues, including without limitation those resulting from contamination identified in the Environmental Reports;

ii. issues related to potential sources of contamination referenced in paragraph 7; and

iii. contingency plans for addressing newly discovered potential sources of environmental contamination (e.g., tanks, drums, septic drain fields).

c. After each one-year anniversary of the effective date of this Agreement for as long as physical redevelopment of the Property continues (except that the final deadline shall fall 90 days after the conclusion of physical redevelopment), the then owner of the Property shall provide DENR a report subject to written DENR approval on environment-related activities since the last report, with a summary and drawings, that describes:

i. actions taken in accordance with the plan required by subparagraph 16.b. above;

ii. soil grading and cut and fill actions;

iii. methodology(ies) employed for field screening, sampling and laboratory analysis of environmental media;

iv. stockpiling, containerizing, decontaminating, treating, handling, laboratory analysis and ultimate disposition of any soil, groundwater or other materials suspected or confirmed to be contaminated with regulated substances; and

v. removal of any contaminated soil, water or other contaminated materials (for example, concrete, demolition debris) from the Property (copies of all legally required manifests shall be included).

d. No activities that encounter, expose, remove or use groundwater (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) may occur on the Property unless and until DENR states in writing, in advance of the proposed activity, that said activity may

occur if carried out along with any measures DENR deems necessary to ensure the Property will be suitable for the uses specified in subparagraph 16.a. above while fully protecting public health and the environment.

e. After conclusion of the redevelopment period referenced in subparagraph 16.b. as determined by DENR, no activity that disturbs soil on the Property may occur unless and until DENR states in writing, in advance of the proposed activity, that said activity may occur if carried out along with any measures DENR deems necessary to ensure the Property will be suitable for the uses specified in subparagraph 16.a. above while fully protecting public health and the environment except: in connection with de minimis soil removals to depths not exceeding 18 inches, mowing and pruning of above-ground vegetation; and, for emergency repair of underground infrastructure, provided that DENR shall be given written notice (if only by email) of any such emergency repair no later than the next business day, and that any related assessment and remedial measures required by DENR shall be taken.

f. No building may be constructed on the Property and no existing building, defined as those depicted on the plat component of the Notice of Brownfields Property referenced in paragraph 21 below, may be occupied until:

i. the building would be or is sufficiently distant from the Property's groundwater and/or soil contamination that the building's users, public health and the environment will be protected from risk from vapor intrusion related to said contamination; or

ii. vapor mitigation measures are installed or implemented to the satisfaction of a professional engineer licensed in North Carolina, as evidenced by said engineer's professional seal on a report that includes photographs and a description of the

installation and performance of said measures. All vapor mitigation measures shall be installed or implemented in accordance with a plan approved in writing by DENR in advance, including methodology(ies) for demonstrating performance of said measures.

g. None of the contaminants known to be present in the environmental media at the Property, including those appearing in paragraph 7 of this Agreement may be used or stored at the Property without the prior written approval of DENR, except in de minimis amounts for cleaning and other routine housekeeping activities.

h. The Property may not be used as a playground, or for child care centers or schools, except in areas where 12 inches of demonstrated clean compacted fill, or another cover approved in writing in advance by DENR, are installed to DENR's written satisfaction, delineated to DENR's written satisfaction as "Approved for "Playground," "Child Care Center" or "School" areas on the plat component of the Notice referenced below in paragraph 21, is maintained, and left undisturbed other than through normal playground, child care center or school use.

i. The owner of any portion of the Property where any existing, or subsequently installed, DENR-approved monitoring well is damaged shall be responsible for repair of any such wells to DENR's written satisfaction and within a time period acceptable to DENR, unless compliance with this Land Use Restriction is waived in writing by DENR in advance.

j. Neither DENR, nor any party conducting environmental assessment or remediation at the Property at the direction of, or pursuant to a permit, order or agreement issued or entered into by DENR, may be denied access to the Property for purposes of conducting such assessment or remediation, which is to be conducted using reasonable efforts to minimize

interference with authorized uses of the Property.

k. During January of each year after the year in which the Notice referenced below in paragraph 21 is recorded, the owner of any part of the Property as of January 1st of that year shall submit a notarized Land Use Restrictions Update (“LURU”) to DENR, and to the chief public health and environmental officials of Pitt County, certifying that, as of said January 1st, the Notice of Brownfields Property containing these land use restrictions remains recorded at the Pitt County Register of Deeds office and that the land use restrictions are being complied with, and stating:

i. the name, mailing address, telephone and facsimile numbers, and contact person’s e-mail address of the owner submitting the LURU if said owner acquired any part of the Property during the previous calendar year;

ii. the transferee’s name, mailing address, telephone and facsimile numbers, and contact person’s e-mail address, if said owner transferred any part of the Property during the previous calendar year; and

iii. whether any vapor barrier and/or mitigation systems installed pursuant to subparagraph 16.f.ii. above are performing as designed, and whether the uses of the ground floors of any buildings containing such vapor barrier and/or mitigation systems have changed, and, if so, how.

17. The desired result of the above-referenced remediation and land use restrictions is to make the Property suitable for the uses specified in the Agreement while fully protecting public health and the environment.

18. The guidelines, including parameters, principles and policies within which the

desired results are to be accomplished are, as to field procedures and laboratory testing, the Guidelines of the Inactive Hazardous Sites Branch of DENR's Superfund Section, as embodied in their most current version.

19. The consequence of achieving the desired results will be that the property will be suitable for the uses specified in the Agreement while fully protecting public health and the environment. The consequence of not achieving the desired results will be that modifications to land use restrictions and/or remediation in some form may be necessary to fully protect public health and/or the environment.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

20. In addition to providing access to the Property pursuant to subparagraph 16.j. above, Prospective Developer shall provide DENR, its authorized officers, employees, representatives, and all other persons performing response actions under DENR oversight, access at all reasonable times to other property controlled by Prospective Developer in connection with the performance or oversight of any response actions at the Property under applicable law. While Prospective Developer owns the Property, DENR shall provide reasonable notice to Prospective Developer of the timing of any response actions to be undertaken by or under the oversight of DENR at the Property. Except as may be set forth in the Agreement, DENR retains all of its authorities and rights, including enforcement authorities related thereto, under the Act and any other applicable statute or regulation, including any amendments thereto.

21. DENR has approved, pursuant to N.C.G.S. § 130A-310.35, a Notice of Brownfields Property for the Property containing, inter alia, the land use restrictions set forth in Section V (Work to Be Performed) of this Agreement and a survey plat of the Property. Pursuant to

N.C.G.S. § 130A-310.35(b), within 15 days of the effective date of this Agreement Prospective Developer shall file the Notice of Brownfields Property in the Pitt County, North Carolina, Register of Deeds' office. Within three (3) days thereafter, Prospective Developer shall furnish DENR a copy of the documentary component of the Notice containing a certification by the Register of Deeds as to the Book and Page numbers where both the documentary and plat components of the Notice are recorded, and a copy of the plat with notations indicating its recordation.

22. This Agreement shall be attached as Exhibit A to the Notice of Brownfields Property. Subsequent to recordation of said Notice, any deed or other instrument conveying an interest in the Property shall contain the following notice: "The property which is the subject of this instrument is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the Pitt County land records, Book ____, Page ____." A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions), though financial figures related to the conveyance may be redacted.

23. The Prospective Developer shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property within seven days of the effective date of this Agreement and shall ensure that, to the extent it can legally do so, any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section (Access/Notice To Successors In Interest), Section V (Work to be Performed) and Section XI (Parties Bound) of this Agreement.

VII. DUE CARE/COOPERATION

24. The Prospective Developer shall exercise due care at the Property with respect to the

manner in which regulated substances are handled at the Property and shall comply with all applicable local, State, and federal laws and regulations. The Prospective Developer agrees to cooperate fully with any remediation of the Property by DENR and further agrees not to interfere with any such remediation. In the event the Prospective Developer becomes aware of any action or occurrence which causes or threatens a release of contaminants at or from the Property, the Prospective Developer shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under N.C.G.S. 130A-310.1 and 143-215.85, and Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify DENR of such release or threatened release.

VIII. CERTIFICATION

25. By entering into this Agreement, the Prospective Developer certifies that, without DENR approval, it will make no use of the Property other than that committed to in the Brownfields Property Application dated November 8, 2012, by which it applied for this Agreement, and in subsequent correspondence to DENR on March 21, 2014. That use is as a mixed use project including light industrial, commercial offices, retail and restaurant uses, cultural uses, private and public parking space, multi-unit residential housing, and open space for storm water management. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DENR all information known to Prospective Developer and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any past use of regulated substances or known contaminants at the Property and to its qualification for this Agreement, including the

requirement that it not have caused or contributed to the contamination at the Property.

IX. DENR'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

26. Unless any of the following apply, Prospective Developer shall not be liable to DENR, and DENR covenants not to sue Prospective Developer, for remediation of the Property except as specified in this Agreement:

a. The Prospective Developer fails to comply with this Agreement.

b. The activities conducted on the Property by or under the control or direction of the Prospective Developer increase the risk of harm to public health or the environment, in which case Prospective Developer shall be liable for remediation of the areas of the Property, remediation of which is required by this Agreement, to the extent necessary to eliminate such risk of harm to public health or the environment.

c. A land use restriction set out in the Notice of Brownfields Property required under N.C.G.S. 130A-310.35 is violated while the Prospective Developer owns the Property, in which case the Prospective Developer shall be responsible for remediation of the Property to unrestricted use standards.

d. The Prospective Developer knowingly or recklessly provided false information that formed a basis for this Agreement or knowingly or recklessly offers false information to demonstrate compliance with this Agreement or fails to disclose relevant information about contamination at the Property.

e. New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the Property that has not been remediated to unrestricted use standards, unless this Agreement is amended to include any

previously unreported contaminants and any additional areas of contamination. If this Agreement sets maximum concentrations for contaminants, and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by this Agreement.

f. The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the Property due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the Property or (ii) the failure of remediation to mitigate risks to the extent required to make the Property fully protective of public health and the environment as planned in this Agreement.

g. The Department obtains new information about a contaminant associated with the Property or exposures at or around the Property that raises the risk to public health or the environment associated with the Property beyond an acceptable range and in a manner or to a degree not anticipated in this Agreement.

h. The Prospective Developer fails to file a timely and proper Notice of Brownfields Property under N.C.G.S. 130A-310.35.

27. Except as may be provided herein, DENR reserves its rights against Prospective Developer as to liabilities beyond the scope of the Act.

28. This Agreement does not waive any applicable requirement to obtain a permit, license or certification, or to comply with any and all other applicable law, including the North

Carolina Environmental Policy Act, N.C.G.S. § 113A-1, et seq.

29. Consistent with N.C.G.S. § 130A-310.33, the liability protections provided herein, and any statutory limitations in paragraphs 26 through 28 above, apply to all of the persons listed in N.C.G.S. § 130A-310.33, including future owners of the property, to the same extent as Prospective Developer, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties.

X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

30. In consideration of DENR's Covenant Not To Sue in Section IX of this Agreement and in recognition of the absolute State immunity provided in N.C.G.S. § 130A-310.37(b), the Prospective Developer hereby covenants not to sue and not to assert any claims or causes of action against DENR, its authorized officers, employees, or representatives with respect to any action implementing the Act, including negotiating, entering, monitoring or enforcing this Agreement or the above-referenced Notice of Brownfields Property.

XI. PARTIES BOUND

31. This Agreement shall apply to and be binding upon DENR, and on the Prospective Developer, its officers, directors, employees, and agents. Each Party's signatory to this Agreement represents that she or he is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the Party for whom she or he signs.

XII. DISCLAIMER

32. This Agreement in no way constitutes a finding by DENR as to the risks to public health and the environment which may be posed by regulated substances at the Property, a representation by DENR that the Property is fit for any particular purpose, nor a waiver of

Prospective Developer's duty to seek applicable permits or of the provisions of N.C.G.S. § 130A-310.37.

33. Except for the Land Use Restrictions set forth in paragraph 16 above and N.C.G.S. § 130A-310.33(a)(1)-(5)'s provision of the Act's liability protection to certain persons to the same extent as to a prospective developer, no rights, benefits or obligations conferred or imposed upon Prospective Developer under this Agreement are conferred or imposed upon any other person.

XIII. DOCUMENT RETENTION

34. The Prospective Developer agrees to retain and make available to DENR all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for six (6) years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. At the end of six (6) years, the Prospective Developer shall notify DENR of the location of such documents and shall provide DENR with an opportunity to copy any documents at the expense of DENR. To the extent DENR retains any copies of such documents, Prospective Developer retains all rights it then may have to seek protection from disclosure of such documents as confidential business information.

XIV. PAYMENT OF ENFORCEMENT COSTS

35. If the Prospective Developer fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section V (Work to be Performed), it shall be liable for all litigation and other enforcement costs incurred by DENR to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

36. Unless otherwise required by DENR or a Party notifies the other Party in writing of a

change in contact information, all notices and submissions pursuant to this Agreement shall be sent by prepaid first class U.S. mail, as follows:

a. for DENR:

Sharon Poissant Eckard, PG (or successor in function)
N.C. Division of Waste Management
Brownfields Program
Mail Service Center 1646
Raleigh, NC 27699-1646

b. for Prospective Developer:

Tom Wisemiller (or successor in function)
Economic Development Project Coordinator
City of Greenville
P.O. Box 7207
Greenville, NC 27835-7207

Notices and submissions sent by prepaid first class U.S. mail shall be effective on the third day following postmarking. Notices and submissions sent by hand or by other means affording written evidence of date of receipt shall be effective on such date.

XVI. EFFECTIVE DATE

37. This Agreement shall become effective on the date the Prospective Developer signs it, after receiving it, signed, from DENR. Prospective Developer shall sign the Agreement within seven (7) days following such receipt.

XVII. TERMINATION OF CERTAIN PROVISIONS

38. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s)

in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

39. With regard to claims for contribution against Prospective Developer in relation to the subject matter of this Agreement, Prospective Developer is entitled to protection from such claims to the extent provided by N.C.G.S. § 130A-310.37(a)(5)-(6). The subject matter of this Agreement is all remediation taken or to be taken and response costs incurred or to be incurred by DENR or any other person in relation to the Property.

40. The Prospective Developer agrees that, with respect to any suit or claim for contribution brought by it in relation to the subject matter of this Agreement, it will notify DENR in writing no later than 60 days prior to the initiation of such suit or claim.

41. The Prospective Developer also agrees that, with respect to any suit or claim for contribution brought against it in relation to the subject matter of this Agreement, it will notify DENR in writing within 10 days of service of the complaint on it.

XIX. PUBLIC COMMENT

42. This Agreement shall be subject to a public comment period of at least 30 days starting the day after the last to occur of the following: publication of the approved summary of the Notice of Intent to Redevelop a Brownfields Property required by N.C.G.S. § 130A-310.34 in a newspaper of general circulation serving the area in which the Property is located, conspicuous posting of a copy of said summary at the Property, and mailing or delivery of a copy of the summary to each owner of property contiguous to the Property. After expiration of that period, or following a public meeting if DENR holds one pursuant to N.C.G.S. § 130A-

310.34(c), DENR may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
By:

Linda M. Culpepper
Director, Division of Waste Management

Date

IT IS SO AGREED:
City of Greenville
By:

Allen Thomas
Mayor

Date