

**FORSYTH COUNTY**  
**BOARD OF COMMISSIONERS**

**BRIEFING  
DRAFT**

MEETING DATE: JUNE 12, 2017

AGENDA ITEM NUMBER: 17

**SUBJECT: RESOLUTION AUTHORIZING PUBLICATION OF AN OFFER TO PURCHASE  
COUNTY OWNED REAL PROPERTY BY NEGOTIATED OFFER, ADVERTISEMENT,  
AND UPSET BIDS PROCEDURE  
(537 N. SPRUCE STREET)**

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:**

**SUMMARY OF INFORMATION:**

ATTACHMENTS:  YES  NO

SIGNATURE: \_\_\_\_\_

COUNTY MANAGER

DATE: \_\_\_\_\_

**RESOLUTION AUTHORIZING PUBLICATION OF AN OFFER TO PURCHASE  
COUNTY OWNED REAL PROPERTY BY NEGOTIATED OFFER,  
ADVERTISEMENT, AND UPSET BIDS PROCEDURE  
(537 N. SPRUCE STREET)**

**WHEREAS**, Forsyth County currently owns property located on 537 N. Spruce Street, Winston-Salem, N.C. and further identified as Block 0084, Lot 269D, Parcel Identification Number 6835-17-0848.00, for which the County has no use and wishes to sell to the highest bidder; and

**WHEREAS**, on May 9, 2017, Forsyth County received an offer in the amount of \$650,000 from Spruce Development, LLC to purchase the above-described real property, subject to advertisement and increased/upset bids; and

**WHEREAS**, pursuant to the provisions of N.C.G.S. 160A-269, Forsyth County is required to publish a notice of the offer for increased/upset bids;

**NOW, THEREFORE, BE IT RESOLVED** by the Forsyth County Board of Commissioners, pursuant to the provisions of N.C.G.S. 153A-176 and 160A-269, that Forsyth County plans to sell the above-described real property by negotiated offer, advertisement, and upset bids procedure and has received an offer as described above and the Board proposes to accept the said offer or any qualifying increased/upset bid received as provided by law, and to sell the property to the highest bidder.

**BE IT FURTHER RESOLVED** that the Clerk to the Board is hereby authorized and required to collect a deposit of five percent (5%) of the bid amount of Spruce Development, LLC and any subsequent qualifying increased/upset bid.

**BE IT FURTHER RESOLVED** that the County Manager is hereby authorized to publish a notice of the said offer as required by N.C.G.S. 160A-269 and to re-advertise the offer at any qualifying increased/upset bid received until no further qualifying increased/upset bids are received, at which time the Board of Commissioners may accept the final offer and sell the property to the highest bidder.

**BE IT FURTHER RESOLVED** that Forsyth County may at any time reject any and all offers.

Adopted this the 12<sup>th</sup> day of June 2017.



AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between  
Spruce Development, LLC

a(n) North Carolina limited liability company ("Buyer"), and  
 (individual or State of formation and type of entity)

Forsyth County

a(n) political subdivision of the State of North Carolina ("Seller").  
 (individual or State of formation and type of entity)

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

**Section 1. Terms and Definitions:** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "**Property**": (Address) 537 N. Spruce St, Winston-Salem, NC

Plat Reference: Lot(s) 269D, Block or Section 0084, as shown on Plat Book or Slide  
at Page(s), Forsyth County, consisting of 0.32+/- acres.

If this box is checked, "Property" shall mean that property described on Exhibit A attached hereto and incorporated herewith by reference,

(For information purposes: (i) the tax parcel number of the Property is: 6835-17-0848.00; and, (ii) some or all of the Property, consisting of approximately 0.32+/- acres, is described in Deed Book 000641, Page No. 00324, Forsyth County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on Exhibit A.

\$ \$650,000.00 (b) "**Purchase Price**" shall mean the sum of Six Hundred Fifty Thousand Dollars,  
 payable on the following terms:

\$ 32,500.00 (i) "**Earnest Money**" shall mean Thirty-Two Thousand, Five Hundred Dollars or terms as follows: after the Forsyth County Board of Commissioners adopts a Resolution proposing to accept the Buyer's offer to purchase the above-described property and before the offer is published pursuant to the provisions of N.C.G.S. 160A-769, in accordance with the terms outlined in Section 10 of this Agreement

Upon this Agreement becoming a contract in accordance with Section 14, the Earnest Money shall be promptly deposited in escrow with the Forsyth County Chief Financial Officer through the Clerk to the Board (name of person/entity with whom deposited), to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein.



This form jointly approved by:  
 North Carolina Bar Association  
 North Carolina Association of REALTORS®, Inc.

Buyer Initials [Signature] Seller Initials \_\_\_\_\_

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ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND: (check only ONE box)

ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is: \_\_\_\_\_ )

ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

\$ \_\_\_\_\_ (ii) Proceeds of a new loan in the amount of \_\_\_\_\_ Dollars for a term of \_\_\_\_\_ years, with an amortization period not to exceed \_\_\_\_\_ years, at an interest rate not to exceed \_\_\_\_\_ % per annum with mortgage loan discount points not to exceed \_\_\_\_\_ % of the loan amount, or such other terms as may be set forth on Exhibit B. Buyer shall pay all costs associated with any such loan.

\$ \_\_\_\_\_ (iii) Delivery of a promissory note secured by a deed of trust, said promissory note in the amount of \_\_\_\_\_ Dollars being payable over a term of \_\_\_\_\_ years, with an amortization period of \_\_\_\_\_ years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum in the amount of \$ \_\_\_\_\_, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on Exhibit B. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$ \_\_\_\_\_ (iv) Assumption of that unpaid obligation of Seller secured by a deed of trust on the Property, such obligation having an outstanding principal balance of \$ \_\_\_\_\_ and evidenced by a note bearing interest at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum, and a current payment amount of \$ \_\_\_\_\_. The obligations of Buyer under this Agreement are conditioned upon Buyer being able to assume the existing loan described above. If such assumption requires the lender's approval, Buyer agrees to use its best efforts to secure such approval and to advise Seller immediately upon receipt of the lender's decision. Approval must be granted on or before \_\_\_\_\_. On or before this date, Buyer has the right to terminate this Agreement for failure to be able to assume the loan described above by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Unless provided otherwise in Section 3 hereof, Buyer shall pay all fees and costs associated with any such assumption, including any assumption fee charged by the lender. At or before Closing, Seller shall assign to Buyer all interest of Seller in any current reserves or escrows held by the lender, any property management company and/or Seller, including but not limited to any tenant improvement reserves, leasing commission reserves, security deposits and operating or capital reserves for which Seller shall be credited said amounts at Closing.

\$ 617,500.00 (v) Cash, balance of Purchase Price, at Closing in the amount of Six Hundred Seventeen Thousand, Five Hundred \_\_\_\_\_ Dollars.

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- (c) "Closing" shall mean the date and time of recording of the deed. Closing shall occur on or before 30 days following end of Examination Period.
- (d) "Contract Date" means the date this Agreement has been fully executed by both Buyer and Seller.
- (e) "Examination Period" shall mean the period beginning on the first day after the Contract Date and extending through 11:59 p.m. (based upon time at the locale of the Property) on that date which is 60 days from Contract Date.  
**TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.**
- (f) "Broker(s)" shall mean:

N/A ("Listing Agency"),  
 ("Listing Agent" - License # N/A      Acting as:  Seller's Agent;  Dual Agent  
 and The Meridian Realty Group ("Selling Agency"),  
Charlie Fulk ("Selling Agent" - License # 224709)  
 Acting as:  Buyer's Agent;       Seller's (Sub) Agent;  Dual Agent

(g) "Seller's Notice Address" shall be as follows:  
201 N Chestnut St.  
Winston-Salem, NC 27101  
 except as same may be changed pursuant to Section 12.

(h) "Buyer's Notice Address" shall be as follows:  
600 S. Main St.  
Winston-Salem, NC 27101  
 except as same may be changed pursuant to Section 12.

(i) If this block is marked, additional terms of this Agreement are set forth on Exhibit B attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)

**Section 2. Sale of Property and Payment of Purchase Price:** Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

**Section 3. Proration of Expenses and Payment of Costs:** Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached Exhibit B, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following: None

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following: None

Each party shall pay its own attorney's fees.

Buyer Initials MP      Seller Initials \_\_\_\_\_

**Section 4. Deliveries:** Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Contract Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

**Section 5. Evidence of Title:** Seller agrees to convey fee simple marketable and insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (if applicable) and (c) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on Exhibit A) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

**Section 6. Conditions:** This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(ii). Buyer must be able to obtain a firm commitment for this loan on or before N/A, effective through the date of Closing. Buyer agrees to use its best efforts to secure such commitment and to advise Seller immediately upon receipt of lender's decision. On or before the above date, Buyer has the right to terminate this Agreement for failure to obtain the loan referenced in Section 1(b)(ii) by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Notwithstanding the foregoing, after the above date, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

(b) **Qualification for Financing:** If Buyer is to assume any indebtedness in connection with payment of the Purchase Price, Buyer agrees to use its best efforts to qualify for the assumption. Should Buyer fail to qualify, Buyer shall notify Seller in writing immediately upon lender's decision, whereupon this Agreement shall terminate, and Buyer shall receive a return of Earnest Money.

(c) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(d) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

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(e) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, timber cruises and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to any tenants of any entry onto any tenant's portion of the Property for the purpose of conducting inspections. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(e) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY**

**Section 7. Leases (Check one of the following, as applicable):**

If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

If this box is checked, Seller discloses that there are one or more leases affecting the Property (oral or written, recorded or not - "Leases") and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit B**;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that as of the Contract Date there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date, and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease), and Seller agrees to use its best efforts to effect such assignment. Any assignment required under this Section 7 shall be required to be delivered at or before Closing by Seller in addition to those deliveries required under Section 11 of this Agreement.

(e) Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppel certificates and subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

**Section 8. Environmental:** Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the

Buyer Initials



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Seller Initials

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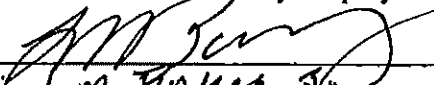
IN WITNESS WHEREOF each of the undersigned have caused this Agreement to be duly executed as of Date set forth below.

**BUYER:**

**SELLER:**

**Spruce Development, LLC**  
a North Carolina limited liability company

**Forsyth County,**  
a political subdivision of the State of North Carolina

By:   
Name: L.M. Fisher Jr.  
Title: Manager  
Date: 5/9/17

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Buyer Initials 

Seller Initials \_\_\_\_\_

