

RESOLUTION NO.: R-2003-050

*Authorizing Interim City Manager to execute an Agreement
with Holmes Smith Dispensary, LLC - Publix Project*

BE IT RESOLVED that the Interim City Manager is authorized to execute the attached Agreement with Holmes Smith Dispensary, LLC in support of the South Carolina Dispensary Warehouse - Publix Project.

Approved this 16th day of July, 2003.

Requested by:

Approved by:

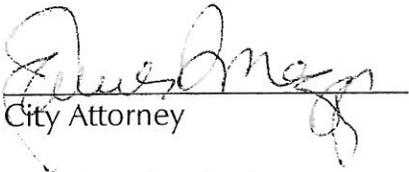


Interim City Manager



Mayor Pro Tempore

Approved as to form:



City Attorney

ATTEST:



Acting City Clerk

Introduced: 7/16/2003
Final Reading: 7/16/2003

ORIGINAL
STAMPED IN RED

AGREEMENT

AGREEMENT made as of July ___, 2003, between the CITY OF COLUMBIA ("City") and HOLMES SMITH DISPENSARY, LLC ("HSD").

DEFINITIONS: As used herein the following terms shall have the following meanings:

- A. Budgeted Cost - Seven Million Two Hundred Eight-eight Thousand Five Hundred Dollars (\$7,288,500.00).
- B. Contingency Grant - Up to Six Hundred Thousand Dollars (\$600,000.00) as hereinafter provided.
- C. Fixed Grant - Seven Hundred Thousand Dollars (\$700,000.00).
- D. Pre-Closing Plat - Plat prepared for Holmes Smith Developments, Inc. by Hussey, Gay, Bell & DeYoung, Inc. dated June 11, 2003, a reduced copy of which is attached hereto as **Exhibit "A"**.
- E. Project - The proposed grocery store and Residential Component generally shown on the Site Plan.
- F. Publix Component - The portion of the Project to be located on Tract 2-A and Tract 3.
- G. Residential Component - Tract 1-A and Tract 4.
- H. Site Plan - The site plan attached hereto as **Exhibit "B"**.
- I. Subdivision Plat - Plat prepared for Holmes Smith Developments, Inc. by Hussey, Gay, Bell & DeYoung, Inc. dated June 12, 2003, a reduced copy of which is attached hereto as **Exhibit "C"**.
- J. Tract 1 - The parcel of land commonly known as the Dispensary Warehouse shown as Tract 1 on the Pre-Closing Plat.
- K. Tract 1-A - A portion of Tract 1 being designated on the Subdivision Plat as Tract 1-A.
- L. Tract 2 - The parcel of land owned by the City on the northern side of Tract 1 designated as Tract 2 on the Pre-Closing Plat.
- M. Tract 2-A - The property shown and designated on the Subdivision Plat as Tract 2-A.

N. Tract 3 - The parcel of land owned by the City designated as Tract 3 on both the Pre-Closing Plat and the Subdivision Plat.

O. Tract 4 - The parcel of land owned by the City designated as Tract 4 on both the Pre-Closing Plat and the Subdivision Plat.

RECITAL: HSD intends to develop a Publix grocery store facility on Tract 2-A and, at some time in the future, a seven (7) unit residential facility on Tract 1-A, all as generally shown on the Site Plan. The City recognizes the need for and importance of bringing a grocery store into the Vista as well as the need to renovate, restore, and preserve the building known as the Dispensary Warehouse located on Tract 1. The City has agreed to provide a grant for certain improvements and costs and also to provide the Contingency Grant.

THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. The City shall convey and contribute Tract 2 to HSD for an agreed value of Six Hundred Twenty-five Thousand Dollars (\$625,000.00). The City, or its designee, shall receive a one-quarter percent (0.25%) membership interest in HSD with an initial capital account allocation of Six Hundred Twenty-five Thousand Dollars (\$625,000.00).
2. The City shall ground lease Tract 3 and Tract 4 to HSD (Tract 4 may be leased to a designee of HSD) for ninety-nine (99) year terms at a rental of One Dollar (\$1.00) per year, all as more particularly set forth in the ground leases attached hereto as Exhibits "D" and "E", respectively.
3. The City shall pay the Fixed Grant to HSD on the later of November 28, 2003, or the demolition of the building on Tract 2, which grant shall be a reimbursement for various expenditures made or to be made by HSD including, without limitation, demolition of the building on Tract 2 and improvements on or about Tracts 3 and 4.
4. The Budgeted Cost includes land acquisition, development and construction costs (including hard and soft costs). If the total actual cost (hard and soft) of the Project exceeds the Budgeted Cost the City shall pay the Contingency Grant to HSD equal to the lesser of Six Hundred Thousand Dollars (\$600,000.00) or the amount by which the actual cost exceeds the Budgeted Cost. Upon substantial completion of the Project HSD shall submit to the City an itemization of the costs of the Project with reasonable documentation thereof. The City shall pay the amount of Contingency Grant which is determined to be due based on the foregoing within three (3) weeks (twenty-one [21] days) following its receipt of such itemized statement. Upon payment of the Contingency Grant funds the City, or its designee, shall receive a membership interest in HSD, the percentage of which shall be determined by dividing the amount of Contingency Grant funds actually paid by the City (less any amounts paid by HSD for removal of the underground storage tank from Tract 2 and any environmental related expenses for studies, tests, legal fees, and cleanup) into the total final cost of the Project. The percentage

resulting therefrom shall be reduced by one-quarter percent (0.25%) but in no event shall be less than one-quarter percent (0.25%) after such reduction.

5. The City acknowledges that its ultimate ownership interest contemplated by this Agreement shall be the Publix Component and shall not include the Residential Component. The Residential Component shall ultimately be transferred to another entity in which the City, or its designee, shall have no interest.

6. The City acknowledges that HSD and its mortgage lender, Wachovia Bank, will be relying on this Agreement in proceeding with the land acquisition and development of the Project.

SIGNED, sealed, and delivered as of the date first above set forth.

WITNESSES:

Erika D. Moore
Valerie L. Aytes

CITY OF COLUMBIA

By: Jim Papader (SEAL)
Print Name: Jim Papader
Title: _____

HOLMES SMITH DISPENSARY, LLC

By: _____ (SEAL)
manager

By: _____ (SEAL)
manager