

**Memorandum  
Community and Economic Development**



**To:** Thomas Thomas, City Manager  
**Subject:** B&H Real Estate Ventures (Pawn King)  
**Date:** April 6, 2016

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B & H Real Estate Ventures LLC (aka Pawn King) has entered into a contract to sell its current location at 3940 11<sup>th</sup> Street to Walmart.

In an effort to support Pawn King's purchase and rehab of a property at 2125 11<sup>th</sup> Street (former Salvation Army) the City has agreed, upon its acquisition, to donate two (2) lots known as 2101 11th Street, Parcel: 472-B (PIN: 1602312021) and 2117 11th Street, Parcel: 4864 (PIN 1602322001) to B & H Real Estate Ventures LLC (Pawn King). The City also has agreed to contribute \$20,000 of North 11<sup>th</sup> Street TIF funds for the rehab of the property.

**RECOMMENDATION:**

Council authorize the execution of the contract with B & H Real Estate LLC, subject to minor modification being implemented by the parties legal counsel prior to execution and authorize the City Manager to execute documents at his discretion.

**Submitted by:** Jeffery A. Eder, Assistant City Manager / CED Director  
Bret Gardella, Economic Development Manager

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**Approved by:** Thomas Thomas, City Manager

## CONTRACT TO PURCHASE VACANT REAL ESTATE

This Contract to Purchase Vacant Real Estate (“Contract”) is made this \_\_\_\_ day of \_\_\_\_\_, 2016 (“Effective Date”) by THE CITY OF ROCK ISLAND, ILLINOIS, an Illinois municipal corporation (hereinafter referred to as “Seller”), and B & H REAL ESTATE VENTURES, LLC, an Illinois limited liability company, or its assigns, (hereinafter referred to as “Purchaser”).

### RECITALS:

**WHEREFORE**, the Purchaser and its affiliates are engaged in the pawnbroker business throughout the State of Illinois and currently operate from 3940 11<sup>th</sup> Street, Rock Island, Illinois; and

**WHEREFORE**, the Seller has entered into certain incentivizing agreements with a third party for a large-scale commercial development on the property which includes the Purchaser’s current place of business within the City of Rock Island; and

**WHEREFORE**, the Seller has determined that it is in the best interests of the City of Rock Island that Purchaser relocate its business in order that the aforesaid commercial development may proceed; and

**WHEREFORE**, as inducement to and consideration for the Purchaser’s agreement to relocate its business, the Seller has agreed to the transfer of certain real property of the Seller, as well as additional consideration from the Seller as detailed further herein; and

**WHEREFORE**, the real property that is subject to this Contract was or will be obtained by the Seller prior to the Closing, which is further set forth and detailed herein, pursuant to Seller’s full legal authority; and

**WHEREFORE**, Purchaser has agreed to the relocation of its business and intends to develop the real property that is the subject of this Contract to support its business activities as a pawnbroker.

**NOW THEREFORE**, in consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

**1. CONVEYANCE.** Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, the real estate commonly known as 2101 11<sup>th</sup> Street (Parcel: 472-B; PIN: 1602312021) and 2117 11<sup>th</sup> Street (Parcel: 4864; PIN 1602322001), both of which are situated in the City of Rock Island, State of Illinois, together with all easements, rights and appurtenances thereto, all buildings and improvements now located thereon, and all of Seller’s rights, title and interest in all public ways adjoining the same (hereinafter, collectively called “Property”). Seller shall provide a complete legal description of the Property prior to Closing, which shall be attached hereto as **Exhibit A**.

**2. CONSIDERATION.** In exchange for Purchaser's agreement to relocate its place of business within the City of Rock Island, Seller shall convey, transfer, and set over to Purchaser: (a) the Property, subject to any additional terms or conditions on which are set forth herein, and (2) the amount of Twenty Thousand and 00/100 Dollars (\$20,000.00).

**3. EVIDENCE OF TITLE.** Seller shall, at its own expense, within ten (10) days of the Effective Date hereof, deliver to Purchaser (i) a current ALTA Commitment for Owner's Policy of Title Insurance (hereinafter referred to as the "Title Commitment") issued by a mutually agreeable title insurer (the "Title Company"), whereby Title Company commits to issue an Owner's Policy of Title Insurance ("Owner's Policy") in the amount not less than Twenty Thousand and 00/100 Dollars (\$20,000.00), and (ii) copies of all instruments shown as exceptions on the Title Commitment (the "Exception Documents"). The Title Commitment shall describe the Property, shall list Purchaser as the prospective named insured, and shall contain the commitment of the Title Company to insure Purchaser's fee simple interest in said Property upon the Closing. The Title Commitment shall show the status of the title of said Property and all exceptions that would appear in an Owner's Policy. Purchaser shall have a period of five (5) days from receipt of the last of the Title Commitment or Exception Documents in which to review such items and deliver to Seller, in writing, such objections as Purchaser may have to anything contained or set forth therein. Any items to which Purchaser does not object within the five (5) day review period shall be deemed to be approved by Purchaser and shall be "Permitted Exceptions" (herein so called) for purposes of this Contract. Seller shall use reasonable efforts to remedy or cure Purchaser's objections prior to Closing (the "Cure Period"). In the event Seller does not cure such objections prior to the Closing, in addition to other remedies permitted pursuant to this Contract, Purchaser shall have the right to: (i) terminate this Contract by written notice to Seller, in which event Purchaser shall receive a refund of the Earnest Money, if any or (ii) proceed to Closing hereunder. All title exceptions which are approved or deemed approved by Purchaser shall constitute Permitted Exceptions for purposes hereof, unless Purchaser objects to said exceptions within the review period defined in this paragraph; and all matters reflected on Schedule B-1 and/or C of the Title Commitment, liens, and items which are designated by the Title Company as matters to be satisfied prior to or at Closing shall not constitute Permitted Exceptions, provided Seller, at its elections, satisfies such matters prior to or at Closing.

In the event that at any time following delivery of the Title Commitment or Exception Documents, but prior to Closing, any changes (other than the deletion or elimination of any item as to which Purchaser has made an objection) shall occur in the Title Commitment or Exception Documents, Purchaser shall have the right to review and approve or disapprove of any such matters and to terminate this Contract in the event that Seller is unable to eliminate any such matters to the satisfaction of Purchaser. After Closing, Purchaser shall be responsible for having the title policy issued. The cost of any endorsements shall be paid by Purchaser. Seller shall pay all expenses relating to the title search, commitment for title insurance and premiums for the Owner's Policy which shall be credited to Purchaser at closing, which shall include a zoning endorsement insuring against loss for the inability of Purchaser to use the Property as a pawn shop that purchases and sells firearms, except that Seller shall not pay for fees for "Buyer's search" and the additional premium for any lender's or mortgagee's policy acquired for Purchaser's benefit, which shall be paid by Purchaser.

**4. CONDITIONS PRECEDENT AND DUE DILIGENCE.** Seller hereby acknowledges that this purchase, transfer, and sale is subject to and expressly contingent upon the following:

A. Environmental. Purchaser's obligation to close under this Contract is expressly contingent upon receipt by Seller and delivery to Purchaser of a "No Further Remediation" ("NFR") letter for the Property, issued by the Environmental Protection Agency.

B. Sale of Adjacent Property. Purchaser's obligation to close under this Contract is expressly contingent upon the Purchaser's closing of the sale of the property commonly known as 2125 11<sup>th</sup> Street, Rock Island, Illinois, which is adjacent to the Property subject to this Contract.

C. Inspection of Property. At any time prior to the receipt by Purchaser of the aforementioned NFR, Purchaser's obligation to close under this Contract is expressly contingent upon the Purchaser's determination, in its sole discretion, that the physical condition of the Property is satisfactory, including but not limited in regard to estimated costs and expenses in connection with Purchaser's anticipated improvement of the same. Said inspection may be conducted by it or an inspector hired by Purchaser performing an inspection. Seller hereby grants to Purchaser, its agents, inspectors and contractors the right to enter upon any part of the Property to conduct such inspection as Purchaser considers reasonably advisable to determine the foregoing matters. Purchaser shall pay all costs and expenses of the inspection and shall defend, indemnify and hold Seller and its agents, employees and contractors and the Property harmless from any and all loss, cost, damage, liability, settlement, cause of action or threat thereof or expense (including, without limitation, reasonable attorneys' fees and costs) arising from or relating to the inspection. If, in the Purchaser's sole discretion, any part of the Property shall be deemed unsatisfactory by Purchaser, then Purchaser shall notify Seller in writing, no later than Purchaser's receipt of the NFR, of its intent to terminate this Agreement.

Upon failure of any one or more of the above Conditions Precedent on or before the Closing or an earlier date if provided for above, Purchaser may, by written notice to Seller given prior to the Closing, terminate this Contract. With regard to the aforesaid Conditions Precedent, failure of Purchaser to give Seller notice of its election to terminate this Contract prior to the Closing, or the earlier date provided for herein, shall constitute a waiver by Purchaser of the Conditions Precedent. Purchaser shall have the right unilaterally to waive any Condition Precedent by written notice to Seller.

**5. TAXES AND SPECIAL ASSESSMENTS.** Seller represents and warrants that the Property is and will be until the date of Closing exempt from real estate taxes.

**6. CLOSING AND CONVEYANCE.** Closing shall be on or before the sixtieth (60<sup>th</sup>) day following the Effective Date hereof, unless the Conditions Precedent for Closing have not yet been met and Purchaser has not terminated this Contract in which case the Closing shall be automatically extended, and the Closing shall be on the earlier of the date of fourteen (14) days after such Conditions Precedent are met or upon approval by Purchaser of Seller's title as disclosed by the title commitment and provided for in Paragraph 3 hereof. Upon approval by Purchaser of Seller's title and fulfillment or waiver of the contingencies, the Seller shall thereupon execute and deliver to Purchaser a recordable warranty deed to the Property, with full release of homestead, if applicable. Seller shall pay for state, county and local transfer or other documentary stamps as may be required by law. Said deed shall be subject only to the exceptions set forth in Paragraph 3. Seller and Purchaser also agree to execute such documents as may be legally required by the Recorder of Deeds or other official or agency with respect to consideration and description of the Property.

**7. ESCROW.** If requested by a party, the Closing may take place through escrow. If so, an escrow shall be opened with a title company mutually agreeable. Such instructions as the escrow company may require, not inconsistent with the provisions of this Contract, shall be signed by the parties. Cost of the escrow will be split equally between Purchaser and Seller.

**8. RISK OF LOSS; MAINTENANCE; TRANSFER OF POSSESSION.**

A. Risk of Loss; Maintenance. Risk of loss or damage by fire or other casualty to the Property or any part of the Property prior to Closing shall be the risk of Seller. If, as of the Effective Date hereof, the Property is insured by Seller, then Seller shall keep the Property insured until Closing and title is passed to Purchaser. In the event of such loss or damage prior to Closing, Purchaser shall have the right to terminate this Agreement. If Purchaser does not terminate this Agreement, then Seller shall assign to Purchaser all rights under any insurance policy or policies applicable to the loss. If action is necessary to recover under any casualty policy, Seller shall grant permission to bring the action in Seller's name.

B. Possession. Possession of the Property shall be transferred at Closing.

**9. SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller represents and warrants to Purchaser as follows:

A. Legal Authority. Seller is or will be on the Closing Date, the fee simple owner of the Property to be conveyed and that its title thereof will be subject only to the Permitted Exceptions set forth above and that Seller had full legal authority to acquire the Property prior to its transfer to Purchaser. Seller warrants it has all power and authority to enter into and has full capacity and is competent to execute, deliver, and perform this Contract. This Contract and such other agreements are the legal, valid and binding agreements of Seller, enforceable according to their respective terms.

B. Contracts, Proceedings. There are no leases, legal contracts, or any other legal proceedings affecting the Property.

C. Status of Property. The Property is not currently or as of Closing Date is not in violation of any zoning, building code or other law, ordinances and/or regulation affecting the Property and that the Property is not currently classified as a “non-conforming” use pursuant to any local or state zoning regulation. Seller further warrants there are no current building code, zoning or other violations of any law concerning the Property.

D. Condition of Property. Seller shall disclose any actual knowledge that Seller has of any material adverse fact regarding the condition of the Property.

E. Operation of Property. Seller acknowledges that the Purchaser intends to develop the Property to support its business activities as a pawnbroker, including but not limited to the operation of a used vehicle dealership in association with the Purchaser’s pawnbroker business. Seller further acknowledges that notwithstanding anything herein to the contrary, Purchaser is a private business and is under no obligation, by this Contract or otherwise, to develop the Property according to any specific plan, schedule, layout, or design however provided that nothing herein shall be construed so as to excuse Purchaser from compliance with the City of Rock Island’s requirements for obtaining building permits or submission or appropriate drawings and designs to officials of the City of Rock Island pursuant to the City’s local code of ordinances. It is further expressly acknowledged by Seller that nothing herein shall be construed to require Purchaser to operate a pawnbroker business from the Property or the adjacent Property. Seller understands the Purchaser’s intended use of the Property and represents that should the Property require a change in its zoning classification in order to facilitate Purchaser’s intended use, the Seller shall cooperate fully in the effecting such change.

F. Liens or Encumbrances. At closing, there shall be no liens or encumbrances affecting the Property other than those shown in the title commitment obtained by Seller.

**10. REPRESENTATIONS AND WARRANTIES BY PURCHASER.** Purchaser represents and warrants to Seller that Purchaser is a limited liability company duly organized, validly existing, and in good standing under applicable law and has all necessary power and authority to conduct its business involving the Property now being conducted; the execution, delivery and performance of this Agreement have been duly authorized by its Members (to any extent necessary) and this Agreement and such other agreements are the legal, valid, and binding agreements of Purchaser, enforceable according to their respective terms.

**11. CONDITION OF PROPERTY.** Purchaser has had an opportunity to inspect the Property prior to execution of this Contract and is satisfied with the condition of the Property. Subject to the terms and conditions contained herein, the Property is being sold in its present “as is, where is” condition, including all defects, known or unknown.

**12. DELIVERIES.**

A. Seller's Deliveries at Closing. On the Closing Date, Seller shall deliver the following to Purchaser:

(i) a recordable Warranty Deed sufficient to vest merchantable title in fee simple in Purchaser with payment for all transfer and other documentary stamps;

(ii) the remaining unpaid balance, if any, of the Twenty Thousand and 00/100 Dollars (\$20,000.00) provided for in Paragraph 2 hereof;

(ii) an ALTA Statement, if any, in form required by the Title Insurer;

(iii) a Supplemental Representation Certificate, in form and content of the Supplemental Certificate attached hereto as **Exhibit B**, confirming that, as of the Closing Date, all representations and warranties made by Seller in this Contract continue to be true and correct;

(iv) such other documents, instruments, certifications and confirmations as may be reasonably required and designated by Purchaser and/or the title company insuring title to fully effect and consummate and insure title of the transactions contemplated hereby;

B. Purchaser's Deliveries at Closing. On the Closing Date, Purchaser shall deliver the following to Seller:

(i) an ALTA Statement, if any, in form required by the Title Insurer;

(iii) such other documents, instruments, certifications and confirmations as may be reasonably required and designated by Seller to fully effect and consummate the transaction contemplated hereby.

**13. INDEMNIFICATION.** Seller hereby agrees to fully defend, indemnify, and hold harmless the Purchaser and its respective successors in interest and assigns from and against any and all claims, losses, costs, expenses, damages and/or liabilities, including, but not limited to, court costs and reasonable attorneys' fees, incurred at any time by any of them arising out of, resulting from, or attributable to, any breach of a covenant, representation, or warranty contained herein.

**14. BROKER'S COMMISSION.** Seller and Purchaser acknowledge that no real estate broker has been engaged or shall be due any commission as a result of this Contract.

**15. ADVICE OF COUNSEL.** Each party has had the opportunity to consult an attorney to review this Contract prior to its execution. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Contract. This Contract shall therefore be deemed to have been negotiated and prepared at the mutual request, direction, and instruction of the parties, at arm's length, with the advice and participation of counsel, and will be interpreted in accordance with their respective terms without favor to any party.

**16. DEFAULT.**

A. Seller Default. If Seller shall default in the performance of Seller's obligations under this Contract, then Purchaser shall have the right to pursue all rights and remedies available against Seller at law or equity, including but not limited to specific performance and the recovery of all attorney fees and expenses incurred by Purchaser as a result of such default.

B. Purchaser Default. If Purchaser shall default in the performance of Purchaser's obligations under this Contract, then Seller shall have the right to terminate this Contract upon notice to Purchaser, whereupon Purchaser shall be relieved of any further liability hereunder.

**17. INTERNAL REVENUE SERVICE FILING.** The Closing Agent, or if not Closing Agent, then Seller shall be responsible for filing Internal Revenue Service Form 1099 for this transaction under the Tax Reform Act of 1986 and Regulations thereunder.

**18. NOTICES.** Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally or sent by United States registered or certified mail, return receipt requested, or by overnight express courier, postage prepaid and addressed to the parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally or two (2) business days after deposit in the mails, if mailed, or deposited with an overnight express courier. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If to Seller:                      City of Rock Island  
   c/o City Clerk  
   1528 3<sup>rd</sup> Avenue  
   Rock Island, IL 61201

If to Purchaser:                B & H Real Estate Ventures, LLC  
   c/o Henry Miller  
   13002 Butler Crest Drive  
   St. Louis, MO 63128

With a copy to: Jeffrey T. Baker  
Sorling Northrup Attorneys  
1 North Old State Capitol Plaza, Suite 200  
P.O. Box 5131  
Springfield, IL 62705  
Email: jtbaker@sorlinglaw.com

**19. BINDING EFFECT OF CONTRACT.** This Contract and the covenants and agreements of it shall bind and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns. Unless the Contract otherwise requires, the covenants of this Contract shall survive the transfer of title.

**20. FACSIMILE SIGNATURES/COUNTERPARTS.** The parties agree that a facsimile signature and/or PDF copies shall have the same legal force and effect as an original signature. This Contract may be signed in one or more counterparts which when taken together shall constitute one full executed contract.

**21. NONMERGER.** The obligation regarding Taxes and any Representation and Warranties, Indemnification and other covenants given herein shall survive Closing and shall not be considered merged into the Deed.

IN WITNESS WHEREOF, the parties have executed this instrument at the place and on the date first above-specified.

**PURCHASER:**

**B & H REAL ESTATE VENTURES, LLC, an  
Illinois limited liability company**

By: \_\_\_\_\_  
Henry Miller, Authorized Representative Date

**SELLER:**

**THE CITY OF ROCK ISLAND, an Illinois municipal  
corporation**

By: \_\_\_\_\_  
Thomas Thomas, City Manager Date

ATTEST:

\_\_\_\_\_  
Aleisha Patchin, City Clerk

**EXHIBIT A**

**Legal Description**

**EXHIBIT B**

**SUPPLEMENTAL CERTIFICATE**

Pursuant to the provisions of that certain Contract to Purchase Vacant Real Estate, by and between THE CITY OF ROCK ISLAND, an Illinois municipal corporation (“Seller”), and B & H REAL ESTATE VENTURES, LLC or its assignee (“Purchaser”), dated effective \_\_\_\_\_, 2016 (“Contract”), Seller hereby certifies and affirms to Purchaser, as follows:

That each of the Seller’s representations and warranties as contained in the Contract were true and correct when made and by this certificate are reaffirmed by Seller as being true and correct on and as of the Closing Date, as defined in the Contract.

The foregoing certification and affirmation is made and given effective this \_\_\_ day of \_\_\_\_\_, 201\_\_.

**SELLER:**

**THE CITY OF ROCK ISLAND, an Illinois municipal corporation**

[EXHIBIT ONLY - NOT FOR SIGNATURE]

By: \_\_\_\_\_

Its:

\_\_\_\_\_

Date