

AMENDMENT NO. 1
OPTION AGREEMENT

THIS AMENDMENT NO. 1 TO THE OPTION AGREEMENT is made and executed as of the ____ day of _____, 2008, by and between the City of Ann Arbor, a Michigan municipal corporation ("City"), whose address is 100 N. Fifth Avenue, Ann Arbor, Michigan 48107 and Village Green Residential Properties LLC, a Michigan limited liability company, 30833 Northwestern Highway, Suite 300, Farmington Hills, Michigan 48334 ("Village Green") (City and Village Green are herein collectively referred to as the "Parties").

WHEREAS, the City and Village Green entered into an Option Agreement for the Purchase of Land, dated February 20, 2007 ("Original Option Agreement") whereby Village Green was given the exclusive option to purchase the City property for a limited period of time, subject to a series of terms and conditions set forth therein and subject to Village Green's continued prosecution of all elements necessary to the timely commencement and completion of the development of the City property in accordance with the Village Green's Response to RFP No. 621;

WHEREAS, the Option Agreement will expire by its terms on May 20, 2008, in accordance with City Resolution No. R-71-2-07, thus extinguishing Village Green's rights, if any, in and to the City property;

WHEREAS, Village Green has not defaulted on any of their obligations pursuant to City Resolution No. R-354-8-06, dated August 10, 2006, or Village Green's Response to RFP No. 621, and are still in active and good faith negotiations with the City as to the development agreement and other necessary supplemental agreements for management and operations development, and necessary municipal approvals remain outstanding;

WHEREAS, the City and Village Green have reached agreement on the basic business terms under which Village Green's efforts to purchase the City property may be permitted to proceed, and the City has required as a condition of continuing its exclusive option with Village Green as the potential developer of the City property that Village Green enter into and comply with the terms and conditions of this Amendment No. 1 to the Option Agreement.

NOW, THEREFORE, the Parties, for and in consideration of the foregoing, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and adequacy of which is acknowledged, agree as follows:

1. Term of Option. Subject to each and every one of the conditions set forth in this Amendment, the termination date of Village Green's exclusive right and option to purchase the City property for the purchase price set forth in

Section 5 of the Original Option is extended to September 30, 2008. The Option may be further extended for an additional period of not more than ninety days at the discretion of the City Administrator subject to Village Greens compliance with all requirements of the Original Option Agreement and this Amendment (collectively the "Agreement") and continued prosecution of all elements necessary to the timely commencement and completion of the development of the City property in accordance with the Village Green's Response to RFP No. 621. The Option may not be extended if Village Green is in default under this Agreement.

2. Exercise of Option. The Option to purchase may not be exercised until all of the Project Goals (as defined Section 3 below) have been fully satisfied by Village Green together with any and all other requirements for exercise of the Option stated in the provision or in the Original Option and may not be exercised if Village Green is in default under this Amendment.

3. Project Goals. This Agreement, the obligations of the City hereunder, Village Green's rights under this Agreement and continuation of Village Green's involvement in the development of the City property which is the subject of this Agreement and other agreements by and between the City and Village Green and the City, Ann Arbor DDA and Village Green, are subject to satisfaction of the scheduled goals as described below (the "Project Goals"). These Project Goals represent events and dates that are critical to the development of the City property in accordance with a schedule that is intended to assure that the City property is redeveloped in accordance with Village Green's Response to City RFP No. 621. Village Green acknowledges, agrees and represents to City that it has had full and adequate input in the determination of the Project Goals and dates set for each. It shall be an express condition to Village Green's rights under this Agreement and its exercise of the option granted herein that these Project Goals be met, subject to the provisions of this subsection; provided, however, that if and in the event an agreed upon date for a Project Goal is not satisfied, the parties shall immediately meet and discuss an alternative, mutually satisfactory date for meeting such Project Goal with a reasonable performance date based upon the facts and circumstances related to the uncompleted Project Goal but not less than fifteen (15) business days from the effective date of the notice, with the specific understanding that all Project Goals be met by the date of exercise of this Option and Village Green shall otherwise be required to comply with all the terms and conditions of this Agreement.
 - a. Village Green, the DDA, and the City are in the process of finalizing an Amendment to the Parking Agreement consistent with the terms stated in the approving resolution by the DDA, adopted January 25, 2008. Village Green, the DDA, and the City shall use their best

good faith efforts to finalize this document in executable form by March 31, 2008. The City shall submit the Amendment to the Parking Agreement to City Council promptly after finalization for consideration and approval in accordance with Council's rules for submission of agenda items.

- b. Village Green shall submit its site plan for approval on January 28, 2008 and diligently comply with all submission review requirements and meet all response deadlines for Citizens Planning Commission approval and final City Council approval and continue community notice required in connection with the site plan approval process. Village Green shall obtain final Citizen Planning Commission approval of the site plan no later than August 31, 2008.
 - c. Upon receipt of approval of the site plan by the Citizens Planning Commission, Village Green and the City agree to negotiate and finalize the necessary condominium documents (Master Deed, Condominium Bylaws, etc).
 - d. Village Green shall provide the City for review a staging plan for construction based on the approved site plan by September 30, 2008.
4. Closing. Closing, and the obligation of the City to sell, deliver and convey the City property to Village Green, shall be subject to satisfaction of the following conditions as of the Closing Date:
- a. Village Green shall have timely and duly exercised the Option.
 - b. Village Green shall not be in default, nor shall any event have occurred that, with the passage of time shall become a default unless cured, under any provision of this Agreement or any other document or instrument by or between Village Green and the City.
 - c. All prior conditions to Village Green's rights under the Option Agreement, as the same may be revised as provided herein, including but without limitation each and every Project Goals under Section 3, shall have been and shall remain satisfied.
 - d. The following additional condition is met:

Village Green and the City agree that if at any time after Ann Arbor Citizens Planning Commission approval the City requests the use of the property to mount an antenna for the purposes of wireless voice and data access (i.e. transmission and reception), which will not interfere with the

building's operations or with any commitments to other antenna or other vendor agreements in place at the time of the City request, then Village Green will use reasonable business efforts to grant the City's request at the City's own cost and expense to construct, install, operate, maintain, repair, replace, protect and secure such antenna and ancillary equipment, on a non-exclusive basis. Such a grant shall not interfere with the rights of any tenant of the Ann Arbor City Apartments to elect wireless voice and/or data services on the open market.

Said use by the City will be permitted without charge to the City in the nature of a fee or profit. Any costs for operation of the antennae or any other facilities associated with the installation and maintenance of this equipment will be the sole responsibility of the City. The City and Village Green agree to execute a license agreement which further specifies the nature of the relationship, it is understood by the City that this right (i) is non-exclusive and subject to available space and building operations or engineering requirements and (ii) does not include any opportunity or right to any revenue, profit or fee for the City. It is understood by and between the City and Village Green that they shall be the sole parties to any license agreement under the terms of this provision and Village Green shall not be bound by any licensing or other form of wireless voice or data agreement to which the City is a party. It is further understood that this Agreement or any license agreement executed by the City and Village Green will not confer any rights or remedies on any third-party in connection with the use of the property for installation of an antenna for the purposes of wireless voice and data access.

5. Representations and Warranties of Village Green. As a material inducement to the City's agreement to enter into this Amendment No. 1 to the Option Agreement and to proceed with the transaction contemplated, Village Green hereby warrants and represents to the City, as of the date of this instrument, that it has all requisite power and authority to execute and deliver this Amendment and perform its obligations hereunder.

All terms, conditions, and provisions of the original agreement between the parties executed February 20, 2007 unless specifically amended above, are to apply to this amendment and are made a part of this amendment as though expressly rewritten, incorporated, and included herein.

This amendment to the agreement between the parties shall be binding on the heirs, successors and assigns of the parties.

For Village Green Residential Properties, LLC

By _____

Its:

Approved as to form and content

Stephen K. Postema, City Attorney

For City of Ann Arbor

By _____
John Heiftje, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Roger W. Fraser, City Administrator

Tom Crawford, CFO/
Finance and Administrative Services
Administrator