



Legislation Details (With Text)

File #: 08-1074 **Version:** 1 **Name:** 12/1/08 Amendment No. 2 to Option Agreement with Village Green
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Title: Resolution to Approve Amendment No. 2 to the Option to Purchase Agreement with Village Green Residential Properties LLC (8 votes required)

Sponsors:

Indexes:

Code sections:

Attachments: 1. VillageGreenAmend2

Date	Ver.	Action By	Action	Result
12/1/2008	1	City Council	Approved	Pass

Resolution to Approve Amendment No. 2 to the Option to Purchase Agreement with Village Green Residential Properties LLC **(8 Votes Required)**

Village Green Residential Properties LLC has an Option to Purchase Agreement with the City to acquire and develop the City-owned site located at the corner of First and Washington. The Option Agreement was approved by Council on February 20, 2007 with an expiration of February 20, 2008 but was subsequently extended to expire on December 30, 2008.

The Agreement requires the developer to make reasonable progress towards developing the property in order to exercise the Option. Despite several unanticipated issues, such as higher than anticipated construction costs, which delayed the progress of this development, Village Green has worked through its issues, and on October 7, 2008, obtained a recommendation for site plan approval from the City's Planning Commission, which will be coming for Council consideration in December after a hearing for a zoning change to PUD is held. Should Council approve the zoning request and the site plan, the developer anticipates being able to execute on the Option Agreement in March 2009 and starting construction of the initial phase later in the spring of 2009.

In order to complete this project the Developer has requested a further extension of the term of the Option Agreement until March 31, 2009. plus authorization for two one-month extensions at the City Administrator's discretion.

In addition, Village Green is requesting that the sales price be capped at \$3,300,000.00. Under the current terms of the Option the sale price is established at \$3,190,000.00 with the provision that if additional units are added that the price will increase by \$20,000.00 per unit. The present site plan anticipates 156 units (then more than originally planned). Village Green's request to cap the sale price at \$3,300,000.00 (in lieu of \$3,390,000.00 under the current Option terms) is consistent with the appraised value in 2006 when the Agreement was originally negotiated. It is worth noting that the ten additional units were added without adding a floor to the building.

Finally, Village Green has asked the City to modify the Option Agreement so that the City would retain ownership of the condominium unit containing the parking garage during its construction, instead of Village Green owning the entire building until the parking structure is substantially completed. This request is premised on Village Green's desire to minimize tax liability on the project during construction. (City ownership of the condominium unit containing the garage will mean the garage may be tax-exempt during construction.) Under this modification, the Developer will still not receive any payment for the parking garage from the DDA until the garage is completed. Also, the modification requires that the Developer provide comprehensive indemnification and insurance for the City-owned condominium unit during the time of construction, and that the Developer be responsible for all costs of operation and maintenance .

In connection with this restructuring it is acknowledged that Village Green, as Developer, may transfer its option rights to the entity who will be ultimately be the condominium owner of the parcel above the to-be-built City parking garage.

The proposed modifications may require further revisions of the approved Parking Agreement between the Developer, the City and the DDA. The DDA Board will consider the matter at its regular meeting and if necessary, changes to the Parking Agreement will be presented to Council thereafter.

Staff recommends Council approve above modifications to the existing terms of the Agreement with Village Green Residential Properties LLC.

Prepared by:

Tom Crawford, CFO/Finance and Administrative Services Area Administrator

Mary Joan Fales, Senior Assistant City Administrator

Reviewed by: Tom Crawford, CFO/Finance and Administrative Services Area Administrator

Approved by: Roger W. Fraser, City Administrator

Whereas, On February 20, 2007, City Council approved an Option to Purchase Agreement with Village Green Properties LLC for the parcel of land located at the corner of First and Washington Streets in Ann Arbor;

Whereas, In October 2007 a Parking Agreement was approved by the City, DDA and Village Green for this project;

Whereas, On January 25, 2008 the DDA and Village Green agreed to amendments to the Parking Agreement originally approved in October 2007 that addressed issues related to design, durability and cost;

Whereas, Village Green Properties LLC initiated the City's development process by submitting for site plan approval on January 28, 2007;

Whereas, On February 4, 2008, Amendment No. 1 to the Option Agreement was approved by City Council which extend the term of the Option and approved other minor changes to the Agreement;

Whereas, The City and Developer recognize that this development project has and continues to require more time than is available under the existing Option Agreement; and

Whereas, The City and Developer have negotiated in good faith the further extension of the Option Agreement to allow for the completion of the Ann Arbor City Apartments project and the intended City

goal of the development of the Property for residential housing, including a multi-level parking garage, and convey the multi-level parking garage to the City as a condominium unit upon substantial completion of the garage;

RESOLVED, That City Council approve Amendment No. 2 of the Option Agreement extending the term of the Option to expire March 31, 2009, and authorize the City Administrator, if deemed necessary and in the best interest of the City, to further extend the term of the Option no more than twice by an additional thirty (30) days;

RESOLVED, That City Council approve the additional amendments to the terms and conditions of the Option Agreement in substantial form with the attached Amendment No. 2;

RESOLVED, That the Mayor and City Clerk be authorized and directed to execute Amendment No. 2 to the Option Agreement after approval as to substance by the City Administrator and approval as to form by the City Attorney; and

RESOLVED, That the City Administrator be authorized and directed to take all necessary actions to implement this Resolution.