



## Legislation Text

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### Resolution to Approve Amendment No. 6 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 City Council on February 20, 2007 and was last amended on August 5, 2010. The last amendment (Amendment No. 5) extended the term of the Option to June 1, 2011, subject to the authority granted to the City Administrator to extend the timeline for a period of ninety days, which authority was exercised establishing a new termination date of August 30, 2011.

The City Administration, the City Attorney's office, and representatives of the Downtown Development Authority and Village Green Residential Properties, LLC have been meeting on a regular basis since the passage of Amendment No. 5 to the Option was approved by City Council. Significant progress has been made on the project since August 2010. During this period --

- Council authorized General obligation Bonds (Parking Facility Capital Improvement Bonds) in connection with the project (R-10-358)
- Council, the DDA, and Village Green negotiated, approved and executed the Amendment No. 2 to the Parking Agreement between the parties (R-11-053)
- Village Green provided the City with construction financing documentation (including binding commitments)
- Negotiation of the condominium documents and completion of the design/development plans for the project

A key issue for agreement was a mutual acceptance of the foundation design, specifically how it would handle the below ground water table. Since this project is in the Allen's Creek area the water table and flooding issues are of great importance to the City and the developer. The City, working with the DDA, desired a "bathtub" design for areas where the water table could rise to meet the deck's foundation. This design in essence prevents water from entering the structure and is similar to how the DDA designed the Fifth Avenue structure. Avoiding water in the structure reduces long-term maintenance and potentially extends the life of the structure. The alternative was a design that allowed water to enter the structure and then be pumped out, possibly into the City's storm water system.

Geotechnical experts were utilized to determine maximum ranges for the water table and the DDA's parking consultant advised the City on the appropriateness of the design of the foundation. The developer could have met its contractual obligations by designing a hybrid design with a "bathtub" foundation for the portion of the deck subject to water table combined with a less expensive design for the rest of the foundation that allows water to enter the deck and then be pumped.

However, adopting the hybrid design raised long-term issues for both parties, specifically the appropriateness of the City permitting on-going pumping of water into the storm water system due to its proximity to the Allen's Creek, and the considerations related to the location of the property in a

groundwater prohibition zone related the Gelman plume. If the hybrid design was adopted and the plume ever reached the site and pumping was required, the water would have to be treated on-site and then pumped to avoid impacting the plume. Although these concerns are remote, both parties desire to avoid them as much as possible since this is a very long-term investment. For these reasons Staff believes it's in the City's best interest to avoid the risk of on-going pumping by extending the "bathtub" design to encompass the entire foundation. This would provide additional assurance that pumping would not be required. [or "maximum coverage against water infiltration" from Option]

The added cost of this design change is approximately \$250,000. Since a portion of the foundation would have required the "bathtub" anyway, staff recommends the City contribute \$100,000 towards this design change which is over and above what would normally be required. The developer would be required to fund the remaining \$150,000. Staff further recommends this contribution be achieved by reducing the sales price from \$3,300,000 to \$3,200,000 in the Option to Purchase Agreement.

Staff recommends Council approve Amendment No. 6 reducing the purchase price to \$3,200,000 for the reasons stated above.

Prepared by: Mary Joan Fales, Senior Assistant City Attorney and Tom Crawford, Interim City Administrator

Approved by: Tom Crawford, Interim City Administrator

Whereas, On February 20, 2007, City Council approved an Option to Purchase Agreement with Village Green Residential Properties, LLC for the parcel of land located at the corner of First and Washington Streets which has subsequently been amended and extended to June 1, 2011, subject to the authority granted to the City Administrator to extend the timeline for a period of ninety days, which authority was exercised establishing a termination date of August 30, 2011.

Whereas, The City Administrator exercised his right to extend the timeline as a result of circumstances outside the control of Village Green or the City, specifically additional engineering and environmental design requirements associated with the parking structure exterior walls, current available water table information and the Gelman Prohibition Zone;

Whereas, Geotechnical experts were consulted in evaluating a foundation design in connection with water table and flooding risks as part of the negotiation between Village Green and City, and the parties, with the input of the DDA as the anticipated operator of the parking garage component of the project, have reached the conclusion that the "bathtub" design encompassing the entire foundation is the best solution to ensure that pumping would not be required; [can we really represent that pumping would not be required? Maybe use "maximize coverage" as mentioned above]

Whereas, The construction of the "bathtub" design encompassing the entire foundation will add unanticipated cost to the project for the developer;

Whereas, The Administration is recommending that a portion of the cost for the foundation design be borne by the City by reducing the purchase price by \$100,000;

Whereas, Village Green has continued to aggressively prosecute the goals and milestones set forth in Amendment No. 5, including the completion and approval by all parties of the Parking Amendment No 2 (approved by Council R-11-053) and negotiation of the required condominium documents;

**RESOLVED**, That City Council approve Amendment No. 6 to the Option to Purchase Agreement with

Village Green Residential Properties, LLC, which amendment, reduces the purchase price stated in the Option to \$3,200,000 for the reasons stated in this Resolution;

RESOLVED, That the Mayor and City Clerk are authorized and directed to execute Amendment No. 6 after approval as to substance by the City Administrator and approval as to form by the City Attorney; and

RESOLVED, That the City Administrator is authorized to take all necessary steps to implement this Resolution.