



Legislation Text

File #: 10-0773, **Version:** 1

Resolution to Approve Amendment No. 5 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 has been extended by amendment until August 5, 2010.

During this time period Village Green submitted and received approval of its Development Agreement and site plan. A three-party Parking Agreement between Village Green, the Downtown Development Authority and the City was negotiated and approved by all parties related to development and construction of the parking structure. Village Green identified its intended financing partners and provided offers of financing commitments from those partners and aggressively pursued finalization of its construction financing plan.

On June 21, 2010, as a material inducement to the City's agreement to extend the term of the Option to August 5, 2010 and proceed with the transaction contemplated by the Option, Village Green was required to meet with and agree to certain Project Milestones and Project Goals determined by the City Administration as necessary for the consummation of development, construction and operation of the site as residential housing with designated affordable housing units and a multi-level parking garage.

The attached timeline has been reviewed by Finance, Planning, Building and the City Attorney's Office staff and agreed to by Village Green. In addition five specific Project Milestones have been identified which will provide performance measures for continued progress in completion of those Milestones and appropriate remedies for termination of the Option should Village Green fail to comply with the established timelines. These Milestones are:

1. The condominium subdivision plan must be substantially complete including the size, location, area, horizontal and vertical boundaries of each condominium unit, the nature, location and approximate size of the common elements, as well as all other requirements of the Condominium Act (PA 59 of 1978 as amended), including, but not limited to MCL 559.116. In this paragraph, substantially complete shall mean that all required elements shall be incorporated into the subdivision plan, with the exception of minor modifications and revisions required by the Project prior to Closing.
2. Village Green shall obtain and provide satisfactory written evidence (including binding commitments) to the City of all construction financing from every anticipated source or sources, and including financing for purchase of the Property on or before April 19, 2011.

3. Parking Amendment No. 2 must be completed, in accordance with the revised terms and conditions of development and construction of the turnkey parking structure and its ownership structure, and executed by all interested parties on or before November 21, 2010.
4. The parking structure operating agreement must be substantially complete including the terms of management of the structure in accordance with construction plans, condominium subdivision plan, Parking Agreement and related documentation, with the exception of minor modifications and revisions required by the Project prior to closing.
5. Closing must occur on or before June 1, 2011.

Approval of Amendment No. 5 of the Option Agreement is recommended by City Administration.

Prepared by: Mary Joan Fales, Senior Assistant City Attorney

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

Approved by: Roger W. Fraser, 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 in Ann Arbor which has been subsequently amended and extended to August 5, 2010;

Whereas, To date during the Option term, Village Green has (i) completed the site plan process for the property, (ii) City Council has approved the Development Plan for the project and (iii) City Council, DDA and Village Green have approved a Parking Agreement for the multi-level parking garage portion of the development;

Whereas, As directed by City Council, the Administration and Village Green have negotiated in good faith a comprehensive Amendment to the Option which includes project goals, timelines for each project goal and appropriate remedies for termination of the Option should Village Green fail to comply with the established timelines; and

Whereas, City Administration has reviewed the timeline and recommends the extension of the Option Agreement, subject to compliance with its identified project goals and the timelines for each project goal, to allow and direct Village Green to take or accomplish the steps to enter into certain agreements with regard to the transfer of title of the property and its development.

RESOLVED, That City Council approve Amendment No. 5 of the Option Agreement extending the term of the Option to June 1, 2011, subject to compliance with the Option's project goals and timelines for each project goals;

RESOLVED, That the Mayor and City Clerk be authorized and directed to execute Amendment No. 5 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.