

TERM SHEET
PROPOSED GROUND LEASE BETWEEN THE CITY OF PENSACOLA AND
INSPIRED COMMUNITIES OF FLORIDA, LLC

January 31, 2022

This Term Sheet outlines the basis upon which the City of Pensacola (the “City”) would lease to Inspired Communities of Florida, LLC (“ICF”) certain real property owned by the City consisting of Lot 4 and Lot 5 of the Community Maritime Park in Pensacola, Florida as shown on Exhibit A attached hereto (the “Property”). The proposed transaction is subject to the negotiation, execution and delivery by the City and ICF of a mutually acceptable and legally binding definitive Option agreement and Lease consistent with the following provisions:

PROJECT:

ICF proposes to develop a mixed-use project consisting of up to 600 apartments across two phases, up to 50,000 square feet (but no less than 10,000 square feet) of ground floor retail, and approximately 900 parking spaces (the “Parking Garage”) to be constructed by ICF. City shall have input into the garage design. Upon completion and C.O. of the garage, ownership of the garage shall be retained by ICF. City shall be responsible for operating, managing, and maintaining the garage, subject to the rights of ICF as set forth in the Ground Lease. ICF shall have parking rights in the garage for approximately 350 exclusive parking spaces (locations near apartment entrances) and 200 shared parking spaces pursuant to the terms of the Ground Lease, and shall pay its pro rata share of garage expenses including all operating, maintenance, taxes and renewal and replacement costs. City parking rights in the Parking Garage shall be for 350 exclusive spaces, and 200 shared spaces. The design and construction costs of the Parking Garage shall be shared equally (50/50) between ICF and the City. Final determination of parking deck size, design, configuration, number of spaces, and allocation of exclusive and shared parking between ICF and City shall be determined within the first 180 days of the Option term, informed in a collaborative process with consultation and input from parking design professionals

The use of the Property will be broken down into three parts as follows:

- Phase 1a - The Parking Garage will have approx. 900 parking spaces that will be used jointly by the Project and the surrounding parcels. Parties acknowledge that the ultimate design may allow a portion of such Garage to be built along with Phase 1b, and the remaining portion to be built thereafter, such date to be defined in the Ground Lease. Whether this is possible will be based on the design,

as well as City determining if it can temporarily accept less than the total parking it will eventually need.

- Phase 1b will consist of approximately 250 - 300 apartment units and up to 50,000 square feet (but no less than 10,000 square feet) of retail space.
- Phase 2 will consist of approximately 250-300 apartment units.
- The City will guarantee a five-hundred and forty-seven (547) units of residential density. ICF will need to secure any addition density through existing land development code bonuses for green building, design excellence, and affordable housing or transfer available density between parcels under which ICF has residential density rights.
- The height of parking garage and apartment buildings shall conform to the height restrictions embodied in the Land Development Code for the WRD-1 District. Height requirements are a maximum of six stories. For apartment buildings, the height measurement begins with those floors consisting of habitable space and excludes ground level parking.

OPTION AGREEMENT:

The Parties will execute an Option agreement acceptable to ICF and the City whereby ICF will have the exclusive right to enter into a ground lease for the Property on terms and conditions set forth in the Ground Lease (as defined below) that will be attached to the Option Agreement for the duration of the Option Period (as defined below). In consideration for the Option Agreement, ICF will pay the City a non-refundable (but applicable as credit against building permit fees) option fee equal to \$3,480 per month, effective March 1, 2022, until the expiration of the Option Period (the “Option Payments”). ICF shall have the right to terminate the Option Agreement at any time prior to the expiration of the Option Period by giving the City not less than thirty (30) days prior written notice.

OPTION PERIOD:

The Option Period shall commence upon the date that the Parties execute the Option Agreement and shall expire on the date that is eighteen (18) months following the execution of the Option Agreement, which Option Period may be extended for an additional six (6) month period as more fully set forth in the Option Agreement, which Option period may be extended for an additional six (6) month period as more fully set forth in the Option Agreement.

ICF RIGHTS DURING OPTION PERIOD:

ICF, its agents, lenders, investors, and representatives designated by ICF, shall have the right to enter upon the Property for the purposes of appraising, inspecting the physical condition of,

performing an environmental assessment of, take measurements, do test borings, make inspections, make survey maps, order title commitments, and to conduct geotechnical, environmental, groundwater, wetland and other studies required by ICF in its sole discretion and to determine the adequacy and suitability of the Property for ICF's intended uses thereof ("Due Diligence Investigations"). However, ICF acknowledges that a portion of the Property is currently being utilized for parking, and this parking must be maintained during Due Diligence Investigations.

Additionally, ICF, at its sole expense shall, with the City's cooperation, use good faith commercially reasonable efforts to obtain all approvals and permits necessary (including, but not limited to, zoning, site plan approval, and permits) for the subdivision, development, use and operation of the Property to a classification for ICF's contemplated uses of the Property to include ICF's intended improvements and structures compatible with multifamily development designed to ICF's specifications, but subject to conformance with the West Main Master Plan ("Approvals").

Current zoning at Maritime Park allows for 60 residential units per acre. The Property is 4.76 acres, allowing for approximately 285 dwelling units. All Maritime Park private development parcels collectively are 12.06 acres, thus allowing approximately 723 residences on all of Maritime Park. Existing ground leases (Parcels 1 and 2) currently use 3 of these allowable units. City and ICF shall work collaboratively and within the rights of existing ground leases to effectuate density transfer within and between the Maritime Park parcels to increase the allowed density on the Property, while retaining market rate allowable density on the still undeveloped parcels. However, it is not anticipated that this density transfer will allow the 600 residences contemplated in this Term Sheet. Thus, City and ICF shall work collaboratively to effectuate additional residential density transfer from neighboring property, subject to applicable law and cooperation from neighboring property owners.

**MINIMUM
INVESTMENT:**

ICF shall spend no less than \$110mm on total hard costs of the project (Phases 1(b) and 2), including the portion of Phase 1(a) Parking Garage to be utilized by ICF. ICF shall spend no less than \$55mm on Phase 1(b) of the Project (including the ICF portion of Phase 1(a) Parking Garage)

TITLE MATTERS:

City warrants and agrees that the Property will be leased to ICF free and clear of all liens, claims and encumbrances except for: (i)

provisions of any general ordinance, municipal regulation, or public law; and (iii) such other matters of record as shown in a current title commitment (the "Title Commitment") that are acceptable to ICF. In the event the Title Commitment (or a current survey) discloses any matter adversely affecting title to the Property other than those enumerated above, ICF shall notify the City on or before the date that is thirty (30) days prior to the expiration of the Option Agreement. On the earlier to occur of thirty (30) days after receipt of ICF's Title Notice or the expiration of the Option Period, the City (a) shall use its best efforts to remove the matters objected to by ICF in the Title Notice; (b) shall remove any matter that relates to a monetary obligation of the City; and (c) shall use its best efforts to remove any matters which adversely affect title to the Property that arise from and after the issuance of the Title Commitment. In the event that despite the City's best efforts it is unable to provide for the removal of an objectionable matter, then ICF may either (x) terminate the Option Agreement or (y) extend the Option Agreement for such time as may be required for the City to cure such objection (in any event not to exceed 90 days). The City shall cooperate with ICF in all respects to obtain an ALTA leasehold policy of title insurance, with the standard printed exceptions removed, in the amount of the fair market value of the Property, insuring that a leasehold interest in the Property is vested in ICF, free and clear from all liens and encumbrances, except for those matters permitted in this paragraph.

Notwithstanding the foregoing, ICF shall have the right to object to any matters which appear on an updated Title Commitment or Survey following the delivery of the Title Notice within ten (10) days upon receipt of such updated Commitment or Survey ("Post Title Notice Exceptions"). Any matters raised by ICF as a result of any Post Title Notice Exceptions shall be governed by the paragraph above.

**GROUND LEASE
DOCUMENTS:**

The Ground Lease Agreement will be drafted using (i) the base form of ground sublease agreement typically used by the City for prior Maritime Park ground leases and (ii) that certain Master Lease Agreement, dated as of March 27, 2006 by and between the City as lessor and the City as lessee (the "Master Lease"), together with such changes that are agreeable to ICF and the City.

**MASTER LEASE
AGREEMENT:**

The City shall terminate the Master Lease prior to the Ground Lease Commencement Date.

**GROUND LEASE
COMMENCEMENT
DATE:**

The date that ICF exercises its right to enter into the Ground Lease pursuant to the terms and conditions of the Option Agreement.

**GROUND LEASE
TERM:**

The Ground Lease shall commence upon the Ground Lease Commencement Date and shall expire upon the date that is ninety-nine (99) years following the Option Exercise Date.

**GROUND LEASE
RENT:**

ICF shall pay base rent as follows during the Ground Lease Term:

1. Commencement Date through CO of Phase 1(b) (but no later than 12/31/24): \$0
2. CO of Phase 1(b) (but no later than 1/1/25) through CO of Phase 2 (but no later than 12/31/27): If Phase 1(b) is the northern half of the property - \$325,000/year – paid in monthly installments of \$27,083.33. If Phase 1(b) is the southern half of the property - \$275,000/year – paid in monthly installments of \$22,916.67
3. CO of Phase 2 (but no later than 1/1/28) through remainder of lease term: \$500,000/year, paid in monthly installments of \$41,666.67. This amount shall increase five percent (5%) every 5 years of the lease term.
4. Ground lease rent shall be paid starting on the calendar dates listed above regardless of the execution date of the ground lease or the exercise of the one-time extension of the option contract.

**REAL ESTATE TAXES
AND OPERATING
EXPENSES:**

Subject to the sharing of Parking Garage costs described above and the Area Reinvestment Agreement below, ICF shall be responsible for all real estate taxes, assessments, utilities and operating expenses associated with the Property during the term of the Ground Lease, including its pro-rata share of CAM expenses for Maritime Park.

**COMPLETION
DATES:**

ICF anticipates substantially completing the Project in accordance with the anticipated completion timeframes (the “Proposed Schedule”), which shall be extended automatically on a day-for day basis in the event of a force majeure event that prevents ICF from diligently completing the construction of the applicable portion of the Project (each a “Completion Date, and collectively, the “Completion Dates”). As used below, the term “Substantial Completion” shall mean the date upon which ICF receives a certificate of occupancy which permits it to use one hundred percent (100%) of the applicable portion of Project for its intended use:

- The completion date for phase 1(a) and 1(b) shall be January 1, 2026. The completion date for phase 2 shall be January 1, 2028. Should ICF commenced Construction but not have certificates of occupancy by these above dates, ICF can extend each of the completion dates for up to three (3) one (1) year extensions by relinquishing their tax abatements for the applicable Phase on a year by year basis as follows: for the first year the completion date is extended, the tax abatement for that Phase shall be relinquished in year twenty (20), for a second year extension of that Phase the tax abatement shall be relinquished for year nineteen (19), for a third year extension of that Phase the tax abatement shall be relinquished for year eighteen (18). Thereafter, ICF may extend a Phase only for one (1) additional year by payment of a one-time non-refundable payment of \$150,000 per Phase. If the completion dates have still not been met, then the Ground Lease shall be amended, as more specially set forth in Construction Matters below.

**CONSTRUCTION
MATTERS:**

ICF, at ICF's sole cost and expense, shall use commercially reasonable efforts to substantially complete the portions of the Project described in the Completion Dates section of this Term Sheet. City agrees to cooperate with ICF in this effort in all reasonable respects including without limitation execution of applications for permits to be made by the owner of the Property but without any requirement that it expend its own funds to do so.

If (a) ICF has not substantially completed Phase 1(a) and 1(b) of the Project by the applicable Substantial Completion Date (taking into account the Construction Extension Period) and is not paying property taxes based on improvements valued at no less than \$55mm, and (b) the City acting through its Mayor in his sole discretion concludes that continuing with the Ground Lease to ICF is not in the best interests of the City, then the City and ICF shall enter into good faith but exclusive negotiations for a period not to exceed sixty (60) days in order to determine whether there is common ground between them for amendments to the Ground Lease to allow for further efforts to develop the Project. In the event such negotiations are not successful within such sixty (60) day period, and subject to Lender's Rights below, the City shall have the right in its sole discretion and without cost to terminate ICF's right to develop all phases of the Project and to terminate the Ground Lease by written notice to ICF given within thirty (30) days of the end of the sixty (60) day exclusive negotiation period.

If (a) ICF has not substantially completed Phase 2 of the Project by the applicable Substantial Completion Date (taking into account the Construction Extension Period) and is not paying property taxes based on improvements valued at no less than \$110mm, and (b) the City acting through its Mayor in his sole discretion concludes that continuing with the Ground Lease of phase to ICF is not in the best interests of the City, then the City and ICF shall enter into good faith but exclusive negotiations for a period not to exceed sixty (60) days in order to determine whether there is common ground between them for amendments to the Ground Lease to allow for further efforts to develop Phase 2 of the Project. In the event such negotiations are not successful within such sixty (60) day period, and subject to Lender's Rights below, the City shall have the right in its sole discretion and without cost to terminate ICF's right to develop Phase 2 of the Project and to amend the Ground Lease accordingly and to adjust the tax abatement equitably by written notice to ICF given within thirty (30) days of the end of the sixty (60) day exclusive negotiation period.

**AREA
REINVESTMENT
AGREEMENT:**

Upon completion of Phase 1 (issuance of CO), the City and Escambia County will provide ICF with (1) a 75% tax refund of the City and County's portion of the property taxes paid on Phase 1 the Property for a period of ten (10) years following the issuance of the Phase 1 CO, and (2) a 50% tax refund of the City and County's portion of the property taxes paid on the Phase 1 of the Property for an additional period of ten (10) years. Should the completion date be extended as provided for above, the tax abatement relinquishments would amend these provisions as appropriate.

Upon completion of Phase 2 (issuance of CO), the City and Escambia County will provide ICF with (1) a 75% tax refund of the City and County's portion of the property taxes paid on Phase 2 the Property for a period of ten (10) years following the issuance of the Phase 2 CO, and (2) a 50% tax refund of the City and County's portion of the property taxes paid on Phase 2 of the Property for an additional period of ten (10) years. Should the completion date be extended as provided for above, the tax abatement relinquishments would amend these provisions as appropriate.

LENDER RIGHTS:

The Ground Lease will contain mortgagee protective covenants in favor of ICF's mortgagees from time to time, including the right to

cure any default by the ICF under the Ground Lease, a right to obtain a new Ground Lease on the same terms and conditions and with no additional payment of rent in the event of any termination of the Ground Lease without the consent of the Mortgagee, and such other protections as will allow ICF to obtain financing substantially similar in form and terms as would be available for a fee purchase of the Property.

THIRD PARTY EXPENSES:

Each Party shall be responsible for its own legal, advisory and other expenses associated with completion of this transaction.

EXCLUSIVITY:

During the period of negotiation of the Documents and thereafter in accordance with the Option Agreement, City shall not solicit or accept any other offers for purchase or lease of the Property.

PARKING GARAGE COSTS:

As currently contemplated, ICF and City shall each be responsible for 50% of the cost to construct the Parking Garage, as the usage is anticipated to be 50/50. Should the final design and mutually agreed upon allocation of parking between ICF and City be different than 50/50, the cost sharing percentages shall be adjusted accordingly. Subject to provisions to be described in the Ground Lease, ICF shall be responsible for constructing the Parking Garage, with City paying for its 50% (or such other percentage if so determined per above) of the garage as and when payments are due under the construction contract between ICF and its contractor. The parties agree that the parking garage construction is essential to the development of Parcels 4 and 5 and the remaining parcels. ICF agrees that it will have to pay penalties or liquidated damages in the event that the construction of the parking garage is delayed through no fault of the City and not as a result of a *force majeure*. ICF understands that others who have rights in the parcels, such as Valencia, will be looking to the parking garage for utilizing their parcel to its best and highest use.

COVENANT WITH THE COMMUNITY:

ICF agrees in good faith to comply with the provisions of the Covenant in all material respects.

This Preliminary Term Sheet is not intended to be and shall not constitute a legally binding agreement to lease the Property, but each party agrees to negotiate exclusively to execute the documents described herein.

Acknowledged and Agreed to:

City:

ICF

CITY OF PENSACOLA

**INSPIRED COMMUNITIES OF
FLORIDA, LLC**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

Community Maritime Park Lots 4 and 5

