

MEMORANDUM

To: Council President Ann Hill

From: Charles V. Pepler, City Attorney *cvp*

Date: February 10, 2022

Re: REVISED Option Agreement for Parcels 4 and 5 of Community
Maritime Park

Attached is a revised version of the Option Agreement, which specifies in Section 13 that the Option Agreement is contingent on the approval of an Area Reinvestment Agreement (ARA) by the Community Redevelopment Agency (CRA). The changes are being submitted in redline and strikethrough for the Council's review and approval for tonight's Council Meeting.

cc:

Council Vice President Delarian Wiggins
Councilmember Jennifer Brahier
Councilmember Teniade Broughton
Councilmember Casey Jones
Councilmember Sherri F. Myers
Councilmember Jared Moore
Grover C. Robinson, Mayor
Kerrith Fiddler, City Administrator
Don Kraher, Council Executive

OPTION AGREEMENT

THIS OPTION AGREEMENT (this “**Agreement**”), dated as of _____, 2022 (the “**Effective Date**”), is entered into between **CITY OF PENSACOLA, a Florida municipal corporation (“Optionor”)**, and **INSPIRED COMMUNITIES OF FLORIDA, LLC., a Florida limited liability corporation (“Optionee”)**. Optionor, and Optionee, their successors, and assigns, are each a “**Party**,” and collectively referred to herein as the “**Parties**”.

RECITALS

WHEREAS, Optionor is the owner of those certain vacant parcels of land more particularly described on the attached **Exhibit “A”** (the “**Lots**” described in the description on Exhibit “A” are referred to hereinafter individually as a “**Parcel**”, and collectively as the “**Parcels**” or the “**Property**”); and

WHEREAS, the purpose of this Agreement is to provide for the development of the Property as a predominantly multifamily apartment project with retail space and a parking garage as more particularly described in this Agreement and the Lease Agreement (the “**Project**”) in order to spur the development of the western side of downtown in a cohesive way pursuant to and in accordance with the West Main Master Plan created by DPZ CoDesign and Speck & Associates dated November 24, 2019, including without limitation the design guidelines dated November 21, 2019 and the project report dated November 24, 2019 (collectively, the “**West Main Master Plan**”).

NOW, THEREFORE, in consideration of the Option Payment and the other mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Grant of Option. Subject to Optionee's timely payment of the Option Payments (defined below), Optionor hereby grants to Optionee an irrevocable and exclusive option (the “**Option**”) to lease the Property, pursuant to a ground lease as more fully described in Section 6.

2. Option Term. The term of the Option (“**Option Term**”) shall commence on the Effective Date and automatically expire at midnight on August 31, 2023 (such date being 18 months from the Effective Date) (the “**Option Termination Date**”), unless duly extended, exercised or sooner terminated as provided below in this Agreement and specifically including the extension provisions provided in Section 3 below and the termination provisions provided in Section 9 below.

~~3.~~ Extension of Option Term. Optionee shall have the right, in Optionee’s sole discretion, to extend the Option Term for an additional six (6) calendar months provided Optionee provides Optionor with at least five (5) days’ notice of such extension and subject to Optionee’s payment of the applicable Option Payment referenced in Section 4(a) below.-

4. Option Consideration.

- a. Option Payments. The Option is granted in consideration of Optionee's payment to Optionor of the "Option Payment" described below, which shall be payable by Optionee by certified check or official bank check.

Effective Date – August 31, 2023	\$3,480.00 per month
September 1, 2023 – February 28, 2024 (if applicable per Section 3)	non-refundable lump sum of \$60,000.00

If Optionee exercises the Option, the sum of all option payments will be credited towards the Optionee's payment of building permit fees in connection with the proposed project to be built on the Property.

- b. Option Payment Earned Upon Execution. Optionee acknowledges and agrees that the Option Payment constitutes consideration to Optionor for Optionor's agreement to (i) enter into this Agreement with Optionee, (ii) neither solicit for sale nor lease, nor sell nor lease the Property to another purchaser, lessee, or tenant while this Agreement is in effect, and (iii) lease the Property to Optionee on certain terms and conditions to be more particularly defined in a definitive ground lease agreement, provided that Optionee has exercised the Option in the manner provided in Section 8 below. The Option Payment shall be fully earned by Optionor, and due and owing by Optionee, upon the Parties' execution of this Agreement, and shall be non-refundable to Optionee except for (A) a default by Optionor giving Optionee the right to terminate this Agreement, (B) a termination of this Agreement pursuant to Section 9 below (but only with respect to any portion of the Option Payment accruing after the effective date of such termination); (C) a termination of this Agreement pursuant to Section 11 below, or (D) a termination of this Agreement pursuant to Section 12 below.

5. Project; Project Compliance; Parking Garage and City's Expansion Rights.

- a. Project. The Project shall include (1) a mixed-use complex consisting of up to 600 apartments across two phases, and up to 50,000 square feet (but no less than 10,000 square feet) of ground floor retail, all as more fully described in the Ground Lease Term Sheet; (3) subject to Section 5(c), a structured concrete parking garage consisting of approximately, but not less than, 900 parking spaces (being Phase 1a and sometimes referred to as the "**Parking Garage**"), which Parking Garage may be built in phases as the Parties determine.
- b. Project Compliance. Optionee shall make good faith efforts to pursue all pre-development approvals and entitlements for the Project in a commercially reasonable and diligent manner.
- c. Parking Garage. Within one hundred twenty (120) days of execution of this Agreement, Optionee and Optionor, will execute a mutually acceptable Parking Garage Agreement with respect to the Parking Garage.

6. Ground Lease Agreement. As of the Effective Date, Optionor and Optionee have agreed upon certain terms for a ground lease agreement, a copy of which is attached hereto as **Exhibit “B”** (the “**Ground Lease Term Sheet**”). The Parties agree to use the Ground Lease Term Sheet as a starting point for negotiations of a definitive ground lease agreement. The ground lease agreement will be drafted using (i) the base form of ground lease agreement typically used by the Optionor for prior Maritime Park ground leases and (ii) that certain Master Lease Agreement, dated as of March 27, 2006 by and between the Optionor, as lessor and the Optionor, as lessee (the “**Master Lease**”), together with such changes that are agreeable to Optionee and Optionor. Optionor and Optionee expressly agree that all other terms and conditions of any definitive ground lease agreement for any Parcel will be negotiated using commercially reasonable terms and conditions taking into consideration the specific use of any Parcel as proposed by Optionee. The Parties will consider in good faith, any revisions, deletions, and modifications to the final form of any ground lease agreement in working towards finalizing a mutually agreeable definitive ground lease agreement (the “**Ground Lease Agreement**”) on or before March 31, 2022.

7. Optionee Rights to Enter the Property during the Option Period. Optionee, its agents, lenders, investors, and representatives designated by Optionee, 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 Optionee in its sole discretion and to determine the adequacy and suitability of the Property for Optionee’s intended uses thereof (“**Due Diligence Investigations**”). In conducting the Due Diligence Investigations, Optionee agrees to not unreasonably interfere with the Property’s current use as a parking lot. Notwithstanding the foregoing, Optionee shall not conduct any test boring, excavation, drilling, or other destructive test on or of any portion of the Property or any improvements thereon without Optionor’s prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. Further, Optionee shall promptly repair any damage to the Property, any improvements thereon, or any other real or personal property of Optionor or any other person resulting from any activities of Optionee, its agents, contractors, lenders, investors, or representatives to the condition that had previously existed prior to such damage. Optionee shall indemnify, defend and hold Optionor harmless from and against any and all construction or mechanics liens and all claims, liabilities, injuries and damages to persons and property (including without limitation the Property) suffered or incurred by Optionor as a result of such activities or the acts of anyone undertaking such activities for or on behalf of Optionee; provided that in no event shall Optionee be liable for any damage caused to the Property by Optionor and Optionor shall not be liable for the discovery of any adverse conditions on the Property. In the event that Optionee does not exercise the Option, then all property inspection reports, environmental site assessments, surveys and title reports shall be provided by Optionee to the Optionor within thirty (30) days after the date of expiration or earlier termination of this Option Agreement. Optionee’s obligations under this Section shall survive any exercise or termination of the Option.

8. Exercise of Option. At any time during the Option Term, Optionee may exercise the Option by timely sending Optionor a written notice of Optionee's intention to exercise the Option (“**Exercise Notice**”). The Parties agree to work diligently in good faith to enter into the Ground Lease Agreement after Optionee’s Exercise Notice. If Optionee does not timely exercise

the Option in the manner described herein on or before the Option Termination Date, the Optionor shall have the right to terminate this agreement and retain all option payments made by Optionee prior to Optionor's exercise of its right to terminate. Thereafter, neither party shall have any further obligations hereunder except for those that expressly survive termination of this Agreement.

9. Termination of Option. Optionee shall have the right, at Optionee's sole discretion to terminate this Agreement on no less than thirty (30) days' prior written notice to Optionor and after the effective date of such termination, neither party shall have any further obligations hereunder except for those that expressly survive termination of this Agreement. All option payments made by Optionee prior to and during the thirty (30) days of notice to terminate shall be retained by Optionor.

10. Damage or Destruction. If the Property is totally or partially damaged or destroyed by fire, earthquake, accident or other casualty prior to exercise of the Option through no fault of Optionee, Optionee may cancel this Agreement by giving written notice to Optionor and shall be entitled to the return of the Option Payment. However, Optionee shall have no right to cancel this Agreement if, before Optionee gives notice of cancellation to Optionor, the Property has been repaired or replaced so that it is in substantially the same condition as it was on the Effective Date.

11. Obligation to Maintain/Restrictions. During the Option Term, Optionor will maintain the Property in its existing condition and will not make any major removals, alterations or changes thereto, except as may be required by law, and shall effect no changes to the Property's zoning classification, land use, boundary lines or physical topography unless Optionee, in its sole absolute discretion, consents thereto in writing. Optionor shall keep the Property free of all liens and encumbrances, except for those in effect on even date herewith and identified in a title commitment obtained by Optionee, and delivered to Optionor on or before the Effective Date.

12. Title Matters. During the Option Term, Optionee may, at its sole expense, obtain a title insurance commitment (the "**Title Commitment**") for the issuance of 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 will be vested in Optionee upon its timely and proper exercise of this Option, subject only to the exceptions identified in the Title commitment. In addition, during the Option Term, Optionee may, at its sole expense, obtain a current ALTA/NSPS survey (the "**Survey**") of the Property. In the event that Optionee finds objectionable any exceptions listed in the Title Commitment or any matters disclosed by the Survey (collectively, the "**Title Objections**"), Optionor shall deliver to Optionee written notice specifying the Title Objections (the "**Title Objection Notice**"). Optionor shall make good faith efforts to cure such Title Objections to Optionee's satisfaction, except that Optionor shall be obligated to cause to be cancelled or terminated of record all leases, mortgages, liens, claims of liens, and notices of commencement affecting the Property within thirty (30) days after delivery of the Title Objection Notice. In the event that despite the Optionor's best efforts it is unable to provide for the removal of an objectionable matter, then Optionee, as its sole and exclusive remedies, may either (x) terminate the Option Agreement, or (y) extend the Option Agreement for such time as may be required for the Optionor to cure such objection (in any event

not to exceed 90 days), or (z) exercise the Option in accordance with the terms of this Agreement and accept leasehold title to the Property subject to all uncured Title Objections.

Notwithstanding the foregoing, Optionee shall have the right to object to any matters which first appear on an updated Title Commitment or Survey following the delivery of the initial Title Objection Notice within ten (10) days upon receipt of such updated Commitment or Survey (the “**Post Notice Title Objections**”). Any Post Notice Title Objections shall be treated as Title Objections and governed by the immediately preceding paragraph.

13. Area Reinvestment Agreement. ~~This contract is contingent upon Optionee complying with attached Area Reinvestment Agreement Policy for the West Main District marked as Exhibit “C” and incorporated by reference. Pursuant to this policy, Concurrently with the execution of this Agreement,~~ Optionee and the Community Redevelopment Agency of the City of Pensacola ~~will have executed~~ a mutually acceptable Area Reinvestment Agreement (ARA) with respect to the Project pursuant to Section 163.387, Florida Statutes which provides for a redevelopment incentive in an amount equal to seventy-five percent (75%) of the City of Pensacola and Escambia County’s portion of the incremental increase in property taxes resulting from the Project for a period of ten (10) years, followed by a redevelopment incentive in an amount equal to fifty percent (50%) of such incremental property tax increase for the next ten (10) years, with such time periods in each case commencing upon the issuance of a final certificate of occupancy for Phase 1a, 1b, or 2, as the case may be. ~~CRA is expected to meet shall meet prior to March 31, 2022 to approve the ARA, subject to Optionee ultimately complying with any such conditions in the ARA which can not be confirmed as of the date of this Option, such conditions being measured by mutually agreeable objective criteria to be described in the ARA. Should the CRA refuse to approve or accept an ARA with Optionee, then this option agreement shall terminate. terminate and Optionor shall have the right to retain all Option Payments paid by Optionee and neither Optionor nor Optionee shall thereafter have any further liability or obligations hereunder. Such Area Reinvestment Agreement is attached hereto as Exhibit “C” and incorporated herein by reference.~~

14. Default by Optionee. In addition to Optionor's rights in the event that Optionee does not exercise the Option in the manner described in Section 8 on or before the Option Termination Date, if Optionee fails to perform any of its monetary obligations under this Option Agreement and such failure continues for more than ten (10) days after notice from Optionor, then Optionor may terminate this Option Agreement and retain all Option Payments paid by Optionee, and neither Optionor nor Optionee shall thereafter any further liability or obligations hereunder.

15. Default by Optionor. If Optionor fails to perform any of its obligations or is otherwise in default hereunder, Optionee, as its sole and exclusive remedies, shall have the right either (1) to terminate this Option Agreement and obtain a refund of the Option Payment, or (2) to seek such other relief Optionee may have in equity, including, without limitation, seeking injunctive relief to prevent a lease, sublease, or sale of the Property to a party other than Optionee and the filing of an action for specific performance. In no event shall Optionee have the right to seek or recover monetary damages (other than a refund of the Option Payment) from Optionor.

16. Assignment of Option. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs or successors and permitted assigns. Optionee may not assign its interest under this Agreement without the prior consent of the Optionor, which consent will not be unreasonably withheld; provided however, Optionee will be permitted to assign this Agreement without the consent of the Optionor, if (a) Optionee gives the Optionor written notice of such assignment at least thirty (30) days prior to such assignment, and (b) the assignee is a corporation, limited liability company, partnership, other entity, or joint venture of which The Dawson Company, LLC remains a principal thereof, and (c) Optionee's assignee executes an instrument in form reasonably satisfactory to the Optionor agreeing to be bound by all the terms and conditions of this Agreement, and (d) Optionee or Optionee's assignee pays in full all Option Fee installments then accrued but unpaid.. Upon any assignment of Optionee's entire interest under this Agreement made in accordance with the conditions and requirements of this Section, Optionee shall be relieved of all further liability under this Agreement and shall have no further rights under this Agreement.

17. Recording of Agreement. Within ten (10) days after the Parties' execution of this Agreement, Optionee, at its sole expense, shall record this Agreement in the public records of Escambia County, Florida.

18. Notices. Unless specifically stated otherwise in this Agreement, all notices shall be in writing and delivered by one the following methods: (a) personal delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier, (c) registered or certified mail, postage prepaid, return receipt requested, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service, or (d) electronic transmission (facsimile or electronic mail) provided that such transmission is completed no later than 5:00 pm on a business day and the original is also sent by personal delivery, overnight delivery or by mail for receipt the next business day, in the manner previously described, whereby delivery is deemed to have occurred at the end of the business day on which the electronic transmission is complete. The address for the aforesaid notice is as follows:

Optionor: City of Pensacola
Attn: City Administrator
222 West Main Street, 7th Floor
Pensacola, Florida 32502
Email: kfiddler@cityofpensacola.com
Telephone: (850) 436-5627

With copy to:
City of Pensacola
Attn: City Attorney
222 West Main Street, 7th Floor
Pensacola, Florida 32502
Email: legal@cityofpensacola.com

Telephone: (850) 435-1615

Optionee: Inspired Communities of Florida, LLC
Attention: Harold Dawson
223 W. Gregory Street
Pensacola, Florida 32502
Email: had@thedawsoncompany.com
Telephone: (404) 406 9473

With copy to:

Greenberg Traurig, P.A.
Attn: Brian J. Sherr, Esq. and Zachary Bazara, Esq.
401 East Las Olas Boulevard, Suite 2000
Fort Lauderdale, Florida 33301
Email: sherrb@gtlaw.com; bazaraz@gtlaw.com
Telephone: (954) 768-8247

19. No Optionee Real Estate Broker. Optionee warrants and represents to Optionor that it has not engaged any finder or broker who is or may be entitled to a commission or fee with respect to the transactions contemplated by this Agreement.

20. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

21. Time of Essence. Optionor and Optionee hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either Party will constitute a material breach of and a non-curable (but waivable) default under this Agreement by the Party so failing to perform.

22. Force Majeure. Each Party's obligations under this Agreement shall be abated or excused when performance of such obligations is rendered impossible or impracticable by reason of strikes, riots, acts of God, fire, public enemy, injunction, closure of capital markets, insurrection, court order, requisition of other governmental body or authority, war, or any other causes which are beyond the reasonable control of the Parties hereto (each a "**Force Majeure Event**"), until such Force Majeure Event is eliminated or ceases to exist; provided however, that each responsible Party shall use all due diligence to eliminate or mitigate such Force Majeure Event or the effects thereof as soon as possible.

23. Jurisdiction and Venue. In the event of any litigation arising out of or based upon this Agreement, Optionee hereby irrevocably consents to the personal jurisdiction over Optionee of the state courts of the State of Florida; irrevocably waives the right to invoke the jurisdiction of any other court, state or federal, and irrevocably agrees that venue for such litigation shall be in Escambia County, Florida, which forum Optionee acknowledges and agrees is convenient.

24. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

25. Recitals. The recitals on page one of this Agreement are true and correct and are hereby incorporated herein by reference.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

OPTIONOR:

CITY OF PENSACOLA
a Florida municipal corporation

By:

Grover C. Robison, IV, Mayor

(AFFIX CITY SEAL)

_____, 2022

Date

signed:

Attest:

Ericka L. Burnett, City Clerk

Signed, sealed and delivered in the presence of:

Print Name: _____

Print Name: _____

Legal in form and valid as drawn:

Approved as to content:

Charles V. Pepler, City Attorney

Print

Name:

Title: _____

STATE OF FLORIDA

COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me by means of physical presence this _____ day of _____, 2022, by Grover C. Robinson, IV, the Mayor of City of Pensacola, a Florida municipal corporation, on behalf of said municipal corporation, who () is personally known to me or () has produced a driver's license as identification.

[SEAL]

NOTARY PUBLIC

OPTIONEE:

INSPIRED COMMUNITIES OF FLORIDA,

LLC

Print: _____

By: _____

Print name: _____

Print: _____

Its: Managing Member _____

Date signed: _____, 2022

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence this _____ day of _____, 2022, by _____, the managing member of INSPIRED COMMUNITIES OF FLORIDA, LLC., a Florida limited liability company, on behalf of said limited liability company, who () is personally known to me or () has produced a driver's license as identification.

NOTARY PUBLIC

[SEAL]

EXHIBIT “A”
to
OPTION AGREEMENT
BETWEEN
CITY OF PENSACOLA AND INSPIRED COMMUNITIES OF FLORIDA, LLC

PROPERTY

The land referred to herein below is situated in the County of Escambia, State of Florida, and is described as follows:

Lots 4 and 5 of VINCE WHIBBS SR. COMMUNITY MARITIME PARK, according to the Plat thereof as recorded in Plat Book 19, Page(s) 23 and 23A, of the Public Records of Escambia County, Florida.

**EXHIBIT “B”
to
OPTION AGREEMENT
BETWEEN
CITY OF PENSACOLA AND INSPIRED COMMUNITIES OF FLORIDA, LLC**

Ground Lease Term Sheet

[TBA]

EXHIBIT “C”

to

OPTION AGREEMENT

BETWEEN

CITY OF PENSACOLA AND INSPIRED COMMUNITIES OF FLORIDA, LLC

AREA REINVESTMENT AGREEMENT