



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Economic Development Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

FROM: Elizabeth H. Tyler, AICP, Director, Community Development Services

DATE: July 12, 2007

SUBJECT: Amend the Real Estate Option and Contract for 115-119 North Race (former Denny's Cleaners)

Introduction and Background

In January 2007, the City of Urbana entered into a Real Estate Option and Contract to purchase 115-119 North Race Street, which is commonly known as the former Denny's Cleaners property. The City then issued a Request for Proposals to private developers with the intention of transferring the City's option to purchase to a private development group. JSM Management, Inc. was one of the firms to submit a redevelopment proposal and was selected as the City's developer of choice for this project. The proposed project will be a three to four story mixed use project including first floor retail with residential above and is consistent with the City's Downtown and TIF 2 plans.

Since that time, through due diligence efforts, JSM Management and City staff have determined that potential environmental issues on the site require additional environmental testing to determine if it is feasible to exercise the option to purchase the property. This heightened level of environmental testing will require an amendment to extend the existing option to allow for the additional time necessary for these efforts.

While JSM Management has encouraged additional environmental testing to assess the environmental risk on the site, they have continued to show a strong commitment to moving forward with this redevelopment project.

Discussion

The attached ordinance (Exhibit A) amends Section I of the original Real Estate Option and Contract (Exhibit B) with the changes to the existing option underlined.

In order to allow for the additional time necessary for the environmental testing, the seller has granted the City the ability to extend the option on a month-to-month basis for 12 months at a

cost of \$1,500 per month. The seller has also agreed to credit any money spent on extending the option for the purposes of additional due diligence and environmental assessment toward the final purchase price. If the City does eventually exercise its option to purchase the property, the final purchase price will reflect any funds used to extend the option.

Another item of note in the amendment is the issue of the “Phase II” environmental assessment. Not only is the seller granting the City and its contractors access to the site, but the seller is also offering the City a \$35,000 credit toward the final purchase price to conduct the assessment. Additionally, the seller has agreed to negotiate the funding for any remediation efforts identified as part of the environmental assessment.

Fiscal Impact

The costs associated with this amendment are budgeted and will be paid out of TIF 2 funds.

While this amendment does obligate the City to pay \$1,500 per month to extend the option, this money is credited toward the final purchase price at closing. The seller’s current financial situation has prompted a request that the City provide the initial funding for the environmental assessment. Therefore, the amendment does obligate the City to “front” the money for a Phase II environmental assessment with the understanding that \$35,000 for this effort will also be credited toward the final purchase price at closing.

It should be noted that the option does not provide for any reimbursement for costs to extend the option or the environmental assessment if the City does not exercise its option. In the event the City chooses to not purchase the property, there is currently no mechanism in this agreement for the City of Urbana to recoup these costs.

Options

1. Approve the ordinance as presented
2. Approve the ordinance with changes. It should be noted that any changes will need to be agreed upon by the current property owner.
3. Deny the ordinance.

Recommendation

Staff recommends that the City Council approve the attached ordinance.

Prepared by:

Tom Carrino, Economic Development Manager

Attachments:

Exhibit A: Draft Ordinance

Exhibit B: Original Real Estate Option and Contract

ORDINANCE NO. 2007-07-087

AN ORDINANCE AUTHORIZING THE MAYOR
TO EXECUTE AN
AMENDMENT TO A REAL ESTATE OPTION AND CONTRACT
(115-119 North Race Street)

WHEREAS, the City of Urbana, Illinois (Optionee/Buyer) and the Lincicomes (Optionor/Seller), have agreed to an Amendment to a previously executed Real Estate Option and Contract for 115-119 North Race Street; and

WHEREAS, it is in the interest of the people of Urbana to amend the said Real Estate Option and Contract.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. The City Council hereby approves the Amendment to a Real Estate Option and Contract attached hereto.

Section 2. That the Mayor is hereby authorized to execute and the City Clerk to attest the said Amendment to a Real Estate Option and Contract.

Section 3. This Ordinance takes effect immediately upon passage and approval by the Mayor.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of the Council.

PASSED by the City Council this ____ day of _____, 2007.

AYES:

NAYS:

PRESENT:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this ____ day of _____, 2007.

Laurel Prussing, Mayor

AMENDMENT TO REAL ESTATE OPTION AND CONTRACT

WHEREAS, the City of Urbana, Illinois (hereinafter referred to as "Optionee/Purchaser") and the Lincicomes (hereinafter referred to as "Optionor/Seller") hereto previously entered into an Agreement entitled Real Estate Option and Contract dated January 2, 2007, a true copy of which is attached hereto and incorporated herein by reference and hereinafter referred to simply as "Original Option Agreement"; and,

WHEREAS, the original Option Agreement set forth certain option periods for the payment of amounts set forth therein. The Optionor/Seller herein acknowledges that all payments for the initial option period Phase I and Phase II, and the additional option period described therein have been paid; and

WHEREAS, it has been determined that it is desirable to extend the option period as provided for herein and certain amendments to the original Option Agreement are in order.

NOW THEREFORE, for and in consideration of mutual promises contained herein, the parties agree as follows:

AMENDED SECTION 1

Section 1 of the Original Option Agreement is hereby amended to read as follows:

Initial Option Period.

Phase I. Commencing as of the Effective Date and continuing until 5:00 p.m. on the sixtieth (60) day thereafter. Payment for Phase I is Two Thousand Dollars (\$2,000.00), the receipt of which is hereby acknowledged.

Phase II. Commencing upon the expiration of Phase I and continuing until 5:00 p.m. on the sixtieth (60) day thereafter. Payment for Phase II is Three Thousand Dollars (\$3,000.00) which sum is due and payable at the commencement of Phase II.

Additional Option Period.

Commencing upon the expiration of Phase II and continuing until 5:00 p.m. on July 3, 2007. Payment for additional option period is Three Thousand (\$3,000.00) which is due and payable at the commencement of the additional option period.

Payments for the Phase II Initial Option Period and Additional Option Period shall be credited as partial payment of the purchase price in the event the option is exercised.

Following the expiration of the Additional Option Period and commencing immediately thereafter, the Optionor/Seller hereby agrees to extend the option period on a month to month basis as follows:

(a) Upon payment of Fifteen Hundred Dollars (\$1500.00) on the third (3rd) day of July, 2007, and a like sum on or before the third (3rd) of each month thereafter for a total of twelve (12) such monthly payments, the Seller grants the Purchaser the exclusive right to purchase the subject real estate under the terms and conditions stated herein if the Purchaser notifies Seller of the Purchaser's election to exercise the option granted herein prior to midnight of the fifteenth (15) of the month in which such monthly payment was made.

(b) All payments made on the month to month extension provisions shall be credited as a partial payment of the purchase price in the event the option is exercised and the Purchaser purchases the subject real estate.

(c) The subject real estate is legally described as:

Lot 7 of William Park's Addition of Out Lots to the City of Urbana, except the north 52.33' and the south 9.79' of said Lot, all in Champaign County, Illinois.

Tax Parcel #91-21-08-453-008
91-21-08-453-015

AMENDED SECTION 5

Section 5(a) of the Original Option Agreement is hereby amended to read as follows:

(a) (1) Purchaser may obtain a "Phase II" environmental audit of the subject real estate. Purchaser, its agents, and contractors, shall be granted access to the subject real estate at all reasonable times for such purposes.

(2) If Purchaser obtains a "Phase II" environmental audit, Seller will give Purchaser a credit at closing not to exceed Thirty Three Thousand Dollars (\$33,000.00) for sums expended for such audit.

(3) Upon receipt of a "Phase II" environmental audit, the parties shall meet and attempt to reach an agreement on an appropriate amount (if any) that represents the probable costs of remediation necessary to obtain a "No further remediation" letter from the Illinois Environmental Protection Agency to allow as a credit against the purchase price for the subject real estate.

Optionor/Seller:

Dated: _____

Optionee/Purchaser:

The City of Urbana,
Champaign County, Illinois

By: _____

Laurel Lunt Prussing
Mayor

Dated: _____

REAL ESTATE OPTION AND CONTRACT

This Real Estate Option and Contract (the "Contract") is made as of the date of the last to execute of the parties hereto (the "Effective Date") by and between the City of Urbana, Champaign County, Illinois (the "Optionee/Purchaser, sometimes referred to as Buyer") and the undersigned party, executing this Contract as the Optionor/Seller (the "Optionor/Seller sometimes referred to as Seller").

WITNESSETH

WHEREAS, Optionor/Seller is the owner of certain real estate as later more specifically described in this Contract; and

WHEREAS, the Optionee/Purchaser desires to obtain an option to purchase said real estate on such terms and conditions as are provided for herein; and

WHEREAS, the parties agreed upon the terms and conditions relating to an Option for the Purchase of the property, and now wish to reduce their agreement to writing.

NOW, THEREFORE, in consideration of the representations, promises, covenants, agreements and undertakings set forth in this Contract, the Optionor/Seller and the Optionee/Purchaser hereby agree as follows:

Section 1. Grant of Option. Optionor/Seller, in consideration of the payments occurred by Optionee/Purchaser to Optionor/Seller, the exclusive right and option to purchase the real estate described below ("Subject Real Estate) on the terms and conditions for each option period as set forth below:

Initial Option Period.

Phase I. Commencing as of the Effective Date and continuing until 5:00 p.m. on the sixtieth (60) day thereafter. Payment for Phase I is Two Thousand Dollars (\$2,000.00), the receipt of which is hereby acknowledged.

Phase II. Commencing upon the expiration of Phase I and continuing until 5:00 p.m. on the sixtieth (60) day thereafter. Payment for Phase II is Three Thousand Dollars (\$3,000.00) which sum is due and payable at the commencement of Phase II.

Additional Option Period.

Commencing upon the expiration of Phase II and continuing until 5:00 p.m. on the sixtieth (60) day thereafter. Payment for additional option period is Three Thousand (\$3,000.00) which is due and

payable at the commencement of the additional option period.

Payments for the Phase II Initial Option Period and Additional Option Period shall be credited as partial payment of the purchase price in the event the option is exercised.

Subject Real Estate

(Legal description to come from Ben Fischer.)

Section 2. Purchase Price. Optionee/Purchaser agrees to pay to Optionor/Seller the total sum of Five Hundred and Seventy Thousand Dollars (\$570,000.00) for the Real Estate, which amount, adjusted by prorations and credits allowed the parties by this Contract, shall be paid to Optionor/Seller at closing if Optionee/Purchaser elects to exercise this Option.

Section 3. Special Covenants. (a) During any Option periods, the Optionor/Seller shall not create any leases, liens, mortgages clouds on title or other encumbrances, (except as the Optionee/Purchaser shall in writing consent to), to affect or exist with respect to the Real Estate. The Optionor/Seller hereby covenants that the persons or the entities executing this Contract as the Optionor/Seller are the owners of record of the Real Estate; (b) owner/seller represents that there are no existing leases pertaining to the subject real estate or, if there are any existing leases, that owner/seller has the legal right to terminate such leases and owner/seller agrees that the subject real estate shall be vacated by such leases prior to closing unless the Optionee/Purchaser consents to any such lease continuing beyond closing.

Section 4. Evidence of Title. In the event that Optionee/Purchaser elects to exercise this Option, Optionor/Seller shall, within a reasonable time, deliver to Optionee/Purchaser, as evidence of Optionor/Seller's title, a Commitment for Title Insurance issued by a title insurance company regularly doing business in the county where the real Estate is located, committing the company to issue a policy in the usual form insuring title to the Real Estate in Optionee/Purchaser's name for the amount of the purchase price.

Optionor/Seller shall be responsible for payment of the owner's premium and Optionor/Seller's search charges. Permissible exceptions to title shall include only the lien of general taxes and special assessments; zoning laws and building ordinances; easements, apparent or of record, which do not underlie the improvements; covenants and restrictions of record which are not violated by the existing improvements or the present use of the Real Estate and which do not restrict reasonable use of the Real Estate; existing mortgages to be paid by Optionor/Seller or assumed by Optionee/Purchaser at closing. If title evidence discloses exceptions other than those permitted, Optionee/Purchaser shall give written notice of such exceptions to Optionor/Seller within a reasonable time. Optionor/Seller shall have a reasonable time to have such title exceptions removed, or any such exception which may be removed by the payment of money may be cured by deduction from the purchase price at the time of closing. If Optionor/Seller is unable to cure such exception, then Optionee/Purchaser shall have the option to terminate this Contract.

Section 5. Environmental Audit and Disclosure.

(a) Buyer may obtain at its own expense an environmental audit of the Property if deemed necessary by Buyer, and Buyer's agent or agents, shall be granted access to the property for such purpose at all reasonable times. Buyer shall also be entitled to conduct a Phase II environmental audit of the Property, at its own option and expense.

(b) The Seller shall disclose to the Buyer any and all information known to the Seller, whether oral or written, of any environmental condition or contamination which may affect the marketability or usability of the Property. Such disclosure shall include, but not be limited to, any notice or inquiry made to or received from, the Illinois Environmental Protection Agency, the United States Environmental Protection Agency, the State Fire Marshal's Office, the Illinois Department of Public Health, or any other local, state or federal agency in regard to any hazardous condition, industrial process, or use of chemicals on or about the Property or any business operating thereon. The Seller shall provide an affirmative declaration to the Buyer that to the best of its knowledge and belief, the Property is free of pollution and/or contamination and/or any environmental condition that might affect the marketability or usability of the Property for commercial or residential purposes.

(c) If the Buyer becomes aware of the existence of any environmental concern or violation of any environmental law or regulation at any time prior to closing which affects either the value of the Property or its use for a commercial or residential purpose, Buyer shall notify Seller in writing of such concern or violation. If the parties do not come to an agreement regarding an adjustment of the purchase price based upon the cost of environmental mediation and associated costs within thirty (30) days of written notice to the Seller, and the Buyer shall have the right to terminate the agreement by written notice to the Seller.

Section 6. During the option periods and at all times prior to closing, the Buyer and assigns shall have reasonable access to the subject real estate for purpose of inspection and to "show" the subject real estate to others. Such access shall be arranged through Optionor/Seller's real estate broker.

Section 7. Taxes and Assessments. In the event that the Optionee/Purchaser elects to exercise this option, Seller shall pay prior to closing or give credit to Buyer at the time of closing for all general real estate taxes, sewer benefit taxes, sanitary district user charges, if any, and special assessments, if any, now a lien on the Property or outstanding, except the general real estate taxes, sewer benefit taxes and sanitary district user charges for the current year which shall be prorated between the parties as of the date of closing on the calendar year basis, using the most recent ascertainable tax figures for such computation. Seller shall give Buyer credit at the closing against the purchase price for its prorated share of the said current taxes.

Section 8. Exercise of Option and Closing. The Option herein provided to the Optionee/Purchaser shall be exercised and the closing of this transaction shall occur either by the fact of concluding the purchase and taking possession within any Option period or by notice in writing to the Optionor/Seller within any Option period and with the fact of concluding the purchase and taking possession within thirty (30) days of such notice, at the time and place in Champaign County designated by Optionee/Purchaser.

Section 9. Owner/Seller agrees that prior to closing, any and all personal property shall be removed from the subject real estate, including but not limited to all garments in the possession of the establishment known as Denny's Cleaners or in the possession and control of a bankruptcy official.

[Need name and address]

Section 10. Notices. Notice of a request to extend or an election to exercise this Option shall be made by Optionee/Purchaser addressed to Optionor/Seller as follows:

Thorpe Facer, Attorney
210 N. Broadway
Urbana, IL 61801

All notices to the Optionee/Purchaser shall be addressed as follows:

Bruce K. Walden
Chief Administrative Officer
City of Urbana
400 South Vine Street
Urbana, IL 61801

All notices provided for herein shall be deemed to have been duly given, if and when deposited in the U.S. Mail, postage prepaid and addressed to the Optionor/Seller at the above listed address, or when delivered personally to such party.

Section 10. Termination by Transferee Where Property is Damaged or Destroyed. If, prior to closing, the improvements on the Property, are destroyed or materially damaged by fire or other casualty, then the Optionee/Purchaser may, at its option, rescind this Agreement, or Optionee/Purchaser may nevertheless agree to continue this Agreement, close and take possession of the property, in which event Optionee/Purchaser shall be entitled to settle the loss with the insurers and collect the full amount thereof for Optionee/Purchaser's own use. Optionor/Seller shall furnish all necessary proofs of loss, assignment of claim and other reasonable assistance as needed.

Section 11. Memorandum of Contract. The Optionee/Purchaser may and is hereby authorized to file in the appropriate real estate records, either a copy of this Contract or an appropriate memorandum of the existence of this Contract, identifying the Real Estate, the Optionor/Seller, the Optionee/Purchaser and a brief summary of this contract.

Section 12. Default and Enforcement. Default under this Contract shall mean failure to timely and fully perform with respect to any term or provision hereof. The Optionor/Seller and the Optionee/Purchaser shall have all rights and remedies available to them in law and in equity. The Optionor/Seller shall be liable for any consequential damages with respect to any willful default to close on the Real Estate transaction as hereby contemplated. No failure by the Optionor/Seller or the Optionee/Purchaser to elect to declare a default hereunder shall be deemed a waiver of their respective rights to make such election, and a waiver in one case shall not be a waiver of another. Default by the Optionor/Seller or the Optionee/Purchaser shall entitle the

non-defaulting party to claim as damages all reasonable costs, attorney's fees and expenses incurred in connection with enforcement of this Contract, whether by suit or otherwise.

Section 13. Agreements and Binding Effect. This Contract shall be binding upon the Optionor/Seller and the Optionee/Purchaser, and their respective successors and assigns, according to its tenor and import. When any term or provision of this Contract directs that any party hereto perform or undertake a particular action, such party hereby covenants and agrees to timely and fully perform. Time is of the essence of this Contract.

Section 14. Amendments. This Contract may be amended from time to time, but only in writing by the Optionor/Seller and the Optionee/Purchaser.

Section 15. Execution and CounterParts. This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. By executing this contract, the persons executing it as Optionor/Seller covenant that they are the record owners of the Real Estate, and all of the record owners thereof, and have full power and authority to so execute and deliver this Contract.

Section 16. Assignment of Option. This Option may be assigned by either party even without the approval of the other party, and it shall remain a binding obligation.

When executed by only the Optionee/Purchaser, this Contract shall constitute an offer which shall expire and any Option Fee shall be returned, unless this offer is accepted by Optionor/Seller by execution of this Contract on or before _____, 2006 at 5:00 o'clock p.m..

This Contract is made as of the date of the last to execute of the parties hereto.

Optionor/Seller:

H. Paul Imacone, Dennis L. Imacone
POA

H. Paul Imacone, Dennis L. Imacone
POA

Optionee/Purchaser:

The City of Urbana,
Champaign County, Illinois

By: *[Signature]*
Bruce K. Walden
Chief Administrative Officer

Dated: _____

Dated: JAN 3, 2007