

ITEM #: 38
DATE: 03-28-23
DEPT: P&H

COUNCIL ACTION FORM

SUBJECT: OPTION AGREEMENT FOR SALE OF BAKER SUBDIVISION LOT 27 TO TOWNHOMES AT CREEKSIDE, LLLP (AFFILIATED WITH THE HATCH DEVELOPMENT GROUP) IN CONJUNCTION WITH A DEVELOPMENT AGREEMENT FOR A LOW-INCOME HOUSING TAX CREDIT (LIHTC) APPLICATION FOR MULTI-FAMILY HOUSING

BACKGROUND:

On February 28, 2023, City Council selected the Hatch Development Group as its partner to develop affordable multi-family rental housing on Lot 27 in the Baker Subdivision (formerly known as 321 State Avenue). The City Council directed staff to prepare agreements to partner on a Low-Income Housing Tax Credit (LIHTC) application for this project.

In order to meet the LIHTC submittal deadline of April 19, 2023, and adhere to the transfer of land requirements, the City Council set March 28, 2023, as the date for the public hearing for the approval of an option for the sale of Lot 27 within the Baker Subdivision to Townhomes at Creekside, LLLP (an Iowa Limited Liability Limited Partnership affiliated with the Hatch Development Group).

The option agreement allows for acquisition of the property at no cost and spells out the terms for the acquisition of Lot 27 if Hatch Development Group is successful in obtaining 9% tax credits through the Iowa Finance Authority. Notification of award is anticipated to occur in August or September 2023.

Attached for the City Council's review is the option to purchase agreement with Townhomes at Creekside, LLLP. A development agreement will accompany the Option Agreement, and the City will then partner with Hatch to submit a LIHTC application to IFA for multi-family housing units on Lot 27 (formerly 321 State Avenue) by the April 19, 2023, deadline.

ALTERNATIVES:

1. Approve the option agreement for the sale of lot 27 to Townhomes at Creekside, LLLP (affiliated with the Hatch Development Group), in conjunction with a development agreement for a low-income housing tax credit (LIHTC) application for multi-family housing development within the Baker Subdivision (formerly 321 State Avenue).
2. Approve the option agreement for the sale of lot 27 as described in Alternative #1, **with modifications**.
3. Do not approve the option agreement.

CITY MANAGER'S RECOMMENDED ACTION:

The developer must demonstrate control of the site as part of the application process for LIHTC. The City Council's approval of the option agreement and development agreement will allow time for Hatch Development Group to finalize its LIHTC application before the Iowa Finance Authority's April 19, 2023, deadline. Granting of the property to the developer is consistent with the proposed incentive that was part of the RFP for a partner developer. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1, as described above.

OPTION AGREEMENT FOR PURCHASE OF REAL ESTATE

THIS AGREEMENT, made and entered into on this _____ day of March 2023, (the Effective Date”), by and between Townhomes at Creekside, LLLP, whose address for the purpose of this Agreement is 2331 University Avenue, Ste. 200, Des Moines IA 50311 (the “Buyer”) and the City of Ames, Iowa, a Municipal Corporation, (the “City” or “Seller”) whose address for the purpose of this Agreement is 515 Clark Avenue, Ames, IA 50010.

WHEREAS, the City owns the real property legally known as “Lot 27, Baker Subdivision, Ames, Story County, Iowa” (the “Real Estate” or “Property”).

WHEREAS, Buyer desires to obtain an option, in accordance with the terms herein, to purchase the Real Estate from the City, subject to the terms outlined below.

WHEREAS, the Parties have reached an agreement on the terms and provisions for the option to purchase and wish to herein reduce their agreement to writing for formal execution and acknowledgement.

IT IS THEREFORE AGREED as follows, to-wit:

1. **Optioned Property:** City hereby grants to Buyer the exclusive right of option to purchase the Real Estate legally described above (“Option”), subject to the contingency described in paragraph 3 below.
2. **Option Payment:** City hereby acknowledges as consideration for this Option, the receipt of the sum of ten dollars and no cents (\$10.00), plus the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.
3. **Option Term:** Buyer shall have the exclusive right to exercise the Option through March 31, 2024, following and contingent upon a successful award of 9% low-income housing tax credits (“LIHTC”) awarded to Buyer by the Iowa Finance Authority and

- pursuant to Buyer's timely application in the 2022-23 9% Qualified Allocation Plan. In the event Buyer fails to file said application by April 19, 2023, or in the event Buyer does not receive the LIHTC award, Buyer shall notify City within ten (10) business days after the due date, or the date that the Iowa Finance Authority notifies the public of the LIHTC awards of such non-award, whichever date applies first, and this Agreement shall automatically terminate, the Option shall expire, and neither Party shall have any further rights and/or duties hereunder. Notwithstanding the foregoing, Buyer shall have no right to exercise the Option after March 31, 2024.
4. **Purchase Price:** The purchase price to be paid by Buyer at Closing shall be zero dollars and no cents (\$0.00).
 5. **Closing:** Unless the Parties mutually agree to a deferred date, possession shall be delivered and closing shall occur within thirty (30) days after Buyer exercises the Option, execution of the below noted Development Agreement, and delivery by the City of an abstract showing marketable title. Recording fees shall be the responsibility of the Buyer.
 6. **Access to Real Estate:** City agrees that during the Option Term, Buyer and Buyer's employees, designated agents and contractors shall have the right upon 24 hours advance notice to the City to enter the Real Estate for purposes of conducting any inspections and/or tests as provided hereunder. Buyer, at its sole expense, may inspect and make soil and other tests at any reasonable time during the Option Term. Buyer agrees to repair any damage to the Property caused by Buyer's exercise of its rights under this section. Buyer shall indemnify and hold City harmless with respect to all costs and expenses (including, without limitation reasonable attorneys' fees) incurred by City due to Buyer's (i) entry onto the Real Estate, and (ii) failure to repair any damage to the Real Estate caused by Buyer's entry onto the Real Estate. This provision shall survive the Closing or termination of this Agreement.
 7. **Development Agreement:** This Agreement is contingent upon both Parties mutually agreeing to and executing a concurrent Development Agreement between the Parties.
 8. **Abstract and Title:** Seller agrees to deliver forthwith to Buyer for Buyer's examination an abstract of title to the Property continued at Seller's expense to the date of this Agreement showing merchantable title in conformity with this Agreement, Iowa State Bar Association's Iowa Land Title Standards, and Iowa land title law. After Buyer's examination, the abstract shall be held by Seller. With delivery of the deed, Seller shall deliver the abstract to Buyer. Seller agrees to pay for any additional abstracting which may be required by acts, omissions or change in the legal status of Seller occurring before delivery of deed.
 9. **Real Property Taxes.** The City shall be responsible for all property taxes, if any, due on the Property prior to the closing date. Buyer agrees to pay, before they become delinquent, all other real property taxes levied upon the Property.

10. **Assessments:** City shall pay all assessments which are liens as of the date of closing.
11. **Insurance:** City shall retain liability insurance on the premises until the date of closing when possession is transferred to buyer.
12. **Deed:** At the time of closing, the City shall execute and deliver to Buyer a Deed without Warranty conveying to Buyer the City's interest in the Property, free and clear of all liens, and encumbrances.
13. **Condition of the Property:** City shall maintain the Property in the condition substantially the same as it exists on the date of this Agreement until the date of Closing, except as provided by this Agreement and except for ordinary wear and tear.
14. **Failure to Exercise Option:** In the event Buyer fails or neglects to timely exercise the Option or in any other manner fails to timely fulfill the terms of this Agreement, all sums paid to the City shall be forfeited to and become the property of City and neither party shall have any further rights or claims against the other.
15. **Assignment:** It is expressly agreed and understood that neither Party shall assign their interest and/or benefits of this Agreement without first obtaining prior written consent from the other Party. Either Party may choose to refuse consent of said assignment for any reason or for no reason at all.
16. **Successors and Assigns:** Should either party agree to allow an assignment of this Agreement, this Agreement shall become binding upon and insures to the benefit of successors and assigns.
17. **Entire Agreement:** This instrument constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior oral or written agreements, statements, representations, and promises. No addition to or change in the terms of this Agreement shall be binding upon the parties unless it is expressed in a writing signed by the parties.
18. **Modification of Agreement:** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party.
19. **Interpretation:** This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Iowa. The paragraph headings in this Agreement are for convenience only and in no way define or limit the scope or intent of any provisions of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.
20. **Venue:** Venue for any dispute shall be in the appropriate state or federal court in the State of Iowa.

[S I G N A T U R E P A G E S T O F O L L O W]

TOWNHOMES AT CREEKSIDE, LLLP,
an Iowa limited liability limited partnership,

By: TOWNHOMES AT CREEKSIDE, GP, LLC,
an Iowa limited liability company, its General Partner

Dated _____, 2023.

By:

Michael Kiernan, Managing Member

STATE OF IOWA, COUNTY OF POLK, SS.:

This instrument was acknowledged before me on _____, 2023, by Michael Kiernan, as Managing Member of Townhomes at Creekside, GP, LLC, the General Partner of Townhomes at Creekside, LLLP.

NOTARY PUBLIC

Passed and approved on _____, 2023, by Resolution No. 23-_____ adopted by the City Council of the City of Ames, Iowa.

CITY OF AMES, IOWA

By:

John A. Haila, Mayor

Attest:

Renee Hall, City Clerk

STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on _____, 2023, by John A. Haila and Renee Hall, as Mayor and City Clerk, respectively, of the City of Ames, Iowa.

NOTARY PUBLIC