

**OPTION TO PURCHASE REAL ESTATE**

This Option to Purchase Real Estate (“Agreement”) is by and between the City of Rochelle, Ogle County, Illinois (“Owner”) and Walter Wayne Development, LLC (“Option Holder” or “Holder”), with an effective date of \_\_\_\_\_, 2017 (“Effective Date”).

Recitals

WHEREAS, Owner is the fee simple title owner of 413 W. 4<sup>th</sup> Avenue, Rochelle, Ogle County, Illinois, PIN 24-24-340-009 (the “Property”); and

WHEREAS, the Property is located within the Downtown TIF area for the City of Rochelle; and

WHEREAS, Option Holder desires to obtain an option to purchase Owner’s Property on the parcel identified above; and

WHEREAS, Owner desires to sell the property and sees value in granting this Option to Holder as a means leading to a possible, eventual sale of the Property.

NOW, THEREFORE, for good and valuable consideration, of which receipt is acknowledged:

- 1) The Recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.
- 2) Holder shall have an option to purchase the Property (“Option”) at any time within a three-month period commencing on the Effective Date (“Option Period”).
  - a. Holder shall pay Owner \$250 as consideration for the Option Period. Holder may extend the Option Period in two three-month increments, by payment of \$250 for each extension, provided however Holder is limited to exercising two extensions. The total option period can be a maximum of nine (9) months from the date it is fully-executed by both parties.
  - b. During the Option Period, including extensions, Holder shall have the right to purchase the Property, and Owner shall not sell the Property to a third-party unless 1) Holder notifies Owner it will not purchase the Property 2) the Option Period lapses, or 3) a third-party submits a bid or proposal that is greater than the purchase price submitted by Holder.
- 3) Owner covenants that it owns the Property in fee simple, and has the requisite authority to grant this Option and will seek all necessary authority to sell the Property should

the parties consummate a purchase agreement.

4) If the aforementioned Property is encumbered by a mortgage or lien, Owner agrees to make all loan payment, and to pay property taxes when due, and to maintain reasonable insurances.

5) In the event the Option is exercised, Owner agrees to negotiate in good faith with Holder for purchase and sale terms and conditions contained in Holder's contract. Upon consummation of such contract, Holder acknowledges that the real estate contract is subject to public notice, a public hearing, and qualified third-parties who may bid on the Property. Should no qualified third-party provide a bid that has a monetary value greater than the contract executed by Holder, Owner agrees to convey at closing good and marketable title and deliver a warranty deed, free of encumbrances with all documentary stamps affixed, and each party shall pay their own closing costs customarily paid in local real estate transactions, and as further established in a definitive purchase and sale contract.

For the purposes of this Agreement, "qualified third-party" shall mean an individual, partnership, corporation, or limited liability company, that has at least one-third of the total project in cash available to pay at time of the closing, a commitment for the remaining amount of the project from a bank or other federally accredited financial institution, and will be able to provide a performance bond in the amount of 115% of the total value of the project.

6) The closing shall occur no later than sixty (60) days after the date Holder exercises the Option, subject to the applicable close bid requirements that are required under Illinois law for the sale of municipally owned properties within a TIF District.

7) Any notice required or permitted hereunder shall be sent by certified mail, postage fully prepaid, and return receipt requested, to the parties at the following addresses:

To City of Rochelle:

City of Rochelle  
420 N 6th St  
Rochelle, IL 61068  
Attn: City Manager

To Walter Wayne Development, LLC:

Walter Wayne Development, LLC  
Attn: David Diamond  
951 S 7TH ST STE A  
Rochelle, IL 61068

or at such other address as the respective parties may from time to time give notice of. Notice shall be effective when received, refused or returned by the Postal Service as undeliverable.

- 8) Nothing contained in this agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment or fiduciary relationship between the Parties. Neither Party nor its agents have any authority of any kind to bind the other Party in any respect whatsoever without the express written consent to be bound.
- 9) This Agreement may be amended only by the mutual consent of the Parties, by adoption of an ordinance by City approving said amendment as provided by law, and by the execution of a written amendment by the Parties or their successors in interest.
- 10) If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provision, covenant or portion of this Agreement, and to that end, all provisions, covenants, agreements and portions of this Agreement are declared to be severable.
- 11) This Agreement sets forth and fully integrates all agreements, understandings and covenants between the Parties with respect to the subject matter hereof, and is intended to supersede and discharge all prior oral or written or contemporaneous oral agreements, negotiations and understandings between the Parties.
- 12) The terms and conditions of this Agreement are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.
- 13) Holder may file a memorandum of this Option with the county recorder's office, at Holder's expense.
- 14) The failure of the Parties to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
- 15) Time is of the essence of this Agreement and of each and every provision hereof.
- 16) This agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.
- 17) Holder is represented by Walter Wayne Real Estate, LLC.
- 18) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on their behalf, as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Owner: City of Rochelle, Illinois

Holder: Walter Wayne Development, LLC

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

By: David Diamond

Its: President