

REAL ESTATE PURCHASE OPTION AGREEMENT AND LICENSE

by and between

CITY OF COLUMBUS, OHIO
Seller

and

COLUMBUS URBAN GROWTH CORPORATION
Purchaser

Dated April ____, 2005

REAL ESTATE PURCHASE OPTION AGREEMENT AND LICENSE

THIS REAL ESTATE PURCHASE OPTION AGREEMENT AND LICENSE (the "Agreement") is made this _____ day of April, 2005 (the "Effective Date"), by and among **THE CITY OF COLUMBUS, OHIO**, a municipal corporation ("Seller"), and **COLUMBUS URBAN GROWTH CORPORATION**, an Ohio nonprofit company ("Purchaser").

In consideration of One Dollar (\$1.00) paid by Purchaser to Seller for an Option (the "Option Payment") the receipt of which is acknowledged, the parties agree as follows:

1. **GRANT OF OPTION; PROJECT.** Seller hereby grants to Purchaser, subject to the terms and conditions hereof, an option to purchase certain real property (the "Option"), now owned by Seller and commonly known as Gowdy Field, the primary portion of which is described in Exhibit "A" attached hereto and incorporated herein by reference (subject to the addition of certain additional adjacent real property) (the "Option Property"), together with all buildings, structures and improvements located thereon, along with all appurtenant rights, privileges and easements.

The Option described herein is granted to Purchaser in order that the Purchaser may pursue the development of the Option Property for commercial purposes, which shall include the construction of commercial buildings on the Option Property, the sale of those buildings to one or more private or public entities, and the creation of new jobs related thereto (the "Project").

2. **OPTION TERM.** The Option shall be exercised, if at all, by Purchaser on or before March 31, 2008. The period of time between the Effective Date and the earlier of (a) the Closing and (b) March 31, 2008, shall be referred to herein as the "Term".

3. **EXERCISE AND PURCHASE PRICE.** Purchaser may exercise the Option at any time during the Term by providing Seller with written notice of its intention to purchase the Option Property (the "Option Notice"). Purchaser may exercise the Option with respect to all, or any portion of the Option Property. In the event Purchaser exercises the Option with respect to a portion of the Option Property this Agreement shall remain in full force and effect with respect to the Option Property that is not the subject of such partial exercise of the Option.

The purchase price for the Option Property shall be equal to \$25,654.18 per acre (\$25,654.18 x 19.49 acres = \$500,000).

4. **TAX INCREMENT FINANCING.** In addition to the foregoing, but not as a condition to the full exercise of Purchaser's option rights, Purchaser and Seller agree to use commercially reasonable efforts to prepare and enter into an

agreement, (the “TIF Public Infrastructure Agreement”), to construct public infrastructure improvements benefiting the Option Property, which improvements consist of the construction of a 12 inch water main, an 8 inch sanitary sewer line, and public street and traffic improvements, (collectively the “TIF Infrastructure Improvements”), with respect to the Option Property.

As soon as practical after the date of execution of this Agreement, Seller shall endeavor to create the Gowdy Field Tax Increment Financing District, the “GFTIFD”, which shall designate the Option Property (and possibly additional real property) as a tax increment financing district under Chapter 5709 of the Ohio Revised Code. The ordinance creating the GFTIFD, the “TIF Ordinance”, shall direct the County Treasurer to pay directly to the Columbus Public School District, out of service payments paid in lieu of real property taxes, an amount equal to the real property taxes the District would have received had the property subject to the GFTIFD not been exempted from taxation pursuant to the TIF Ordinance. The remainder of the service payments shall be directed to be deposited into the Gowdy Field Municipal Public Improvement Equivalent Fund, the “TIF Revenues”. The TIF Revenues shall be applied by Seller pay for the cost of capital for TIF Infrastructure Improvements and for the park improvements, the “TIF Park Improvements”, as described below, hereinafter collectively the “TIF Improvements”.

Seller’s obligation to enter into the TIF Public Infrastructure Agreement is subject to the passage of an ordinance of its Council appropriating and authorizing the expenditure of such funds as are for the necessary to contract and pay for the construction of the TIF Infrastructure Improvements and the certification of such funds by its City Auditor pursuant to Section 159 of its City Charter. Furthermore, Seller’s obligation to issue bonds to pay for the TIF Improvements is conditioned on the private developers of the Option Property executing a financing agreement with Seller, which agreement shall provide sufficient credit guarantees to permit the issuance by Seller of TIF Revenue Bonds, at a reasonable rate(s) of interest and issuance costs, the proceeds of which, the “TIF Bond Proceeds”, shall be sufficient to paid for the TIF Improvements.

Of the TIF Bond Proceeds, \$500,000 shall be allocated for use by Seller for parkland improvements as designated in the TIF Ordinance (which proceeds must be used by Seller in accordance with all applicable laws, including those governing the expenditure of revenues generated by the GFTIFD. Any TIF Bond Proceeds, or TIF Revenues remaining after the allocation for TIF Improvements may be used for the construction or improvement of public infrastructure as designated in the TIF Ordinance or as may be further modified by an ordinance of Seller’s Council.

5. LEGAL DESCRIPTION AND SURVEY. Seller shall provide to Purchaser all legal descriptions, surveys, reports, and studies relating to the Option Property now in its possession (which have not previously been provided to Purchaser). Purchaser has obtained (or will obtain) an updated survey of the Option Property completed by a registered surveyor which survey shall include a legal description of the Option Property. The legal description prepared by the surveyor shall be used in Seller’s

deed, provided that the descriptions are approved by all appropriate governmental authorities. Seller shall obtain and bear the costs of any necessary government consents or approvals required in relation to Seller's transfer of the Option Property to Purchaser. Seller shall be responsible for accomplishing any lot split that may be required in order to create the Option Property as a separate parcel of Real Estate in the records of the Franklin County Auditor, Engineer, and Recorder prior to the Closing.

6. **DEED.** At the Closing, the Option Property will be conveyed and title transferred to Purchaser, free and clear of all liens, claims, or encumbrances, except for easements, conditions, covenants, restrictions, and reservations of record, zoning ordinances and legal highways, taxes and assessments not yet due and payable created by or expressly assumed by Purchaser and such easements as Seller shall require in order to accommodate Seller so long as such easements shall not materially interfere with the development of the Project.

At Closing, Seller shall pay transfer taxes and deed preparation and shall convey, at Closing, marketable title to the Property (as determined according to the Ohio State Bar Association's Standards of Title Examination) in fee simple by recordable and transferable quit-claim deed.

7. **TITLE.** Seller will not grant, enter into or record any encumbrances, easements, restrictions, covenants, conditions or restrictions on the Option Property during the Term.

If desired, during the Term, Purchaser may obtain a commitment for an owner's policy of title insurance (the "Commitment") issued and underwritten by a title insurer of Purchaser's choice (the "Title Company") pursuant to which the Title Company shall commit to issue an owner's policy of title insurance insuring Purchaser's title to the Option Property.

The title evidence shall be certified to within thirty (30) days prior to Closing with endorsement not before 8:00 a.m. on the business day prior to the date of Closing, all in accordance with the standards of the Columbus Bar Association, and shall show in Seller marketable title in fee simple free and clear of all liens and encumbrances except: (a) those created by or assumed by Purchaser; (b) those specifically set forth in this Agreement; (c) zoning ordinances; and (d) legal highways.

At the Closing, Seller shall furnish Purchaser and the Title Company with a seller's affidavit as to mechanic's and materialmen's liens, persons in possession of the Option Property, and similar title matters required by the Title Company in accordance with local custom as a condition of its deletion of the standard printed exceptions relating to such matters from the title policy. All costs, fees and premiums of the commitment and the title policy, including the costs of title examination shall be paid by Purchaser.

8. **PURCHASER'S LICENSE.** For the Term, Seller hereby grants to Purchaser, its agents, employees, contractors, representatives and invitees a continuing

license to enter upon the Option Property for purposes of conducting inspections, evaluations, and due diligence investigations of any type reasonably undertaken by Purchaser (the "License"). Upon the expiration or termination of the License, Purchaser agrees to return or restore the Option Property substantially to its original state, normal wear and tear excepted (with the exception of improvements made by Purchaser with the approval of Seller).

Purchaser shall indemnify and hold harmless Seller and all of its agents, employees and representatives from and against all claims, damages, losses, suits, and actions, including reasonable attorney's fees, arising or resulting from Purchaser's and Purchaser's agents', employees', representatives', contractors', invitees', or guests' use of the Option Property pursuant to the License. The foregoing notwithstanding, however, Purchaser shall not indemnify and hold harmless Seller for claims, damages, losses, suits, and actions, including reasonable attorney's fees, arising or resulting, in whole or in part, from Seller's gross negligence or intentional malicious acts.

9. **CLOSING.** The Closing for the delivery of the Deed and other instruments contemplated by this Agreement shall occur within fifteen (15) days after the Purchaser's delivery of the Option Notice to Seller (the "Closing"). However, if that date falls on a weekend or a legal holiday, then the Closing date shall be on the next business day thereafter. The Closing shall be held at a time and place designated by Seller.

10. **DEFAULT; NONEXERCISE OF OPTION.**

A. Should Seller default in the performance of any of its obligations set forth in this Agreement or should there be a breach of any of the Seller's representations and warranties, Purchaser shall be entitled to exercise all remedies as may be available to it either at law or in equity.

B. Seller shall have the right to retain the Option Payment if Purchaser fails to exercise the Option prior to the termination or expiration of the Option period. If Purchaser defaults in the performance of any of its material obligations set forth in this Agreement, Seller shall have the right to terminate this Agreement, provided that Seller provides Purchaser with written notice identifying with particularity said material default and provides Purchaser with at least thirty (30) days in which to cure said default, or such longer period as may be reasonably necessary to cure said default so long as Purchaser promptly commences and proceeds with due diligence to cure said default.

11. **NOTICES.** All notices to be given by either party to the other hereunder (including the Option Notice) shall be deemed given when hand-delivered to that party's address as set forth below (or as changed by written notification) or when mailed by certified United States mail, postage prepaid, return receipt requested, addressed as follows:

- (a) If to Seller: Executive Director
Recreation and Parks Department

90 West Broad Street
Columbus, OH 43220
Attn: Wayne A. Roberts

With a copy to: Chief Real Estate Attorney
Real Estate Division
109 North Front Street
Columbus, OH 43215

(b) If to Purchaser: Columbus Urban Growth Corporation
415 East Main Street
Columbus, Ohio 43215
Attn: Managing Director

With a copy to: Peck, Shaffer & Williams LLP
175 South Third Street, Suite 600
Columbus, Ohio 43215
Attn: Charles H. Waterman

13. **CASUALTY; CONDEMNATION.** In the event that during the Term the Option Property or any portion of the Option Property shall be damaged or destroyed by fire, or taken or condemned by any governmental authority or other entity having the power of eminent domain, or Seller shall receive a notice of a proposed taking or condemnation, Seller shall immediately notify Purchaser in writing. Purchaser shall then have the option of either to (a) terminate this Agreement by giving written notice to Seller, in which event the parties shall be released from all further obligations hereunder, or (b) require Seller to assign to Purchaser at the Closing, all of Seller's rights, title and interest in any proceeds of insurance payable in connection with the damage or destruction or any awards that may be made by reason of such condemnation, in which event there shall be no adjustment to the Purchase Price.

14. **ASSIGNMENT.** This Agreement may not be assigned by Purchaser or Seller.

15. **CERTAIN ENVIRONMENTAL ASSESSMENT COSTS TO BE PAID BY SELLER.** Seller, acting through its Director of Development, shall reimburse Purchaser up to \$50,000 of the cost of certain assessments of the Option Property as more fully set forth in the Seller's Ordinance No. 0175-2005 passed by the Columbus City Council on February 5, 2005.

16. **MISCELLANEOUS.**

A. No change in this Agreement may be made except by an agreement in writing signed by the party against whom enforcement of any change is sought.

B. With respect to their performance of this Agreement, the parties will comply with all applicable laws, codes and regulations and will refrain from and promptly cure any and all actions that would place themselves of the other party in noncompliance with applicable laws, codes or regulations.

C. This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser and their respective heirs, personal representatives, and successors.

D. This Agreement shall be construed without reference to the titles of the various paragraphs, which are inserted for convenience of reference only.

E. Time is of the essence of this Agreement.

F. Whenever used in this Agreement, the singular shall be deemed to include the plural, and vice versa, and the use of any gender shall be deemed to include all others.

G. A memorandum of this Agreement shall be recorded for record in the records of the Franklin County, Ohio Recorder.

Executed to be effective as of the date first written above.

Purchaser:
COLUMBUS URBAN GROWTH CORPORATION,
an Ohio nonprofit corporation

Odis Jones, Managing Director and CEO

State of Ohio :
: ss,:
County of Franklin :

The foregoing instrument was acknowledged before me this ___ day of April, 2005 by Odis Jones, the Managing Director and CEO of Columbus Urban Growth Corporation, an Ohio nonprofit corporation, on behalf of the corporation.

Notary Public

Seller:
THE CITY OF COLUMBUS, OHIO,
a municipal corporation*

Wayne A. Roberts, Executive Director,
Department of Recreation and Parks

Mark Barbash, Director of Development
As to Paragraph 14 only

* As authorized by Columbus City Council Ordinance No. _____ passed on the
_____ day of April, 2005

State of Ohio :
: ss,:
County of Franklin :

The foregoing instrument was acknowledged before me this ___ day of April, 2005 by
Wayne A. Roberts,, Executive Director, Department of Recreation and Parks for The City
of Columbus, Ohio, a municipal corporation, on behalf of the corporation.

Notary Public

Exhibit A

(Legal Description of the Option Property)