

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AUTHORIZING THE CITY MANAGER TO EXECUTE AN OPTION AGREEMENT FOR THE PURCHASE OF REAL PROPERTY, BEING SEVERAL PARCELS, LOCATED AT THE INTERSECTION OF 19TH AND JACOB STREET AND FURTHER AUTHORIZING THE CITY MANAGER TO COORDINATE THE EXECUTION OF ANY AND ALL AGREEMENTS, DEEDS AND OTHER DOCUMENTS TO EFFECTUATE THE CONVEYANCE AS THE GOVERNING BODY HAS INTENDED WITHIN SAID OPTION AGREEMENT

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

WHEREAS, the City Council has discussed the need to construct a Public Safety Building for its Police and Fire Safety Forces in a centralized area within close proximity of downtown Wheeling and the need to assemble such real property for purposes of development; and

WHEREAS, The City of Wheeling desires to authorize the City Manager to execute an Option Agreement with Americo Inc., a West Virginia Corporation, for the purchase of real property and shown on the attached map, so that the real property be developed for the health, safety, and welfare of the citizens of Wheeling, WV, in accordance with the intent of the City Council and this Ordinance which provides the City Manager the authority to negotiate and coordinate the execution of such Option Agreement and any and all other necessary agreements, deeds, and documents so that it serves the best interest of the municipality and the intentions of the governing body, including appropriate environmental remediation allowances.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

Section 1. The Option Agreement is described generally herein and described in detail by the City of Wheeling Legal Department, in the attached Option Agreement and map of the subject properties, which is incorporated herein and may be modified if necessary, subject to such terms and conditions as will effectuate the intentions of the governing body and ensure the successful execution of such Option Agreement and transfer of these properties and such terms as described therein are acceptable by the City; to further the clarification of title and the development and redevelopment of the sites in Wheeling, WV.

Section 2. The City Manager is hereby authorized to negotiate as necessary and execute with America Inc, a West Virginia Corporation an Option Agreement deemed to be in the best interest of the City of Wheeling and to coordinate with America Inc., the execution of such Agreements, Deeds and other documents as shall be necessary to effectuate the conveyances intended by the parties in accordance with such terms and conditions as included in said Option Agreement and any and all others that may be necessary to further the goals of the City Council regarding development of said property.

Section 3. A copy of the Proposed Option Agreement for the properties located at the intersection of 19th and Jacob Streets, as shown on the map, is attached and incorporated herein.

Section 4. This ordinance shall be effective from and after the date of its passage.

By the Administration

**OPTION AGREEMENT TO PURCHASE
AND DEPOSIT RECEIPT**

THIS OPTION TO PURCHASE, made this ____ day of December, 2019, by and between **AMERICO, INC**, a West Virginia corporation, of Wheeling, Ohio County, West Virginia, the party of the first part (Seller) and **THE CITY OF WHEELING, a West Virginia Municipal Corporation**, party of the second part (Buyer).

WHEREAS, the party of the first part is the owner of **several PARCELS OF REAL ESTATE SITUATE AT THE INTERSECTIONS OF 18TH AND JACOB STREETS, WHEELING, OHIO COUNTY, WEST VIRGINIA as depicted upon the attached map**; and

WHEREAS, the party of the second part desires to obtain an option to purchase said real property; and

WHEREAS, the party of the first part is willing to enter into an option agreement. Accordingly

WITNESSETH: That in and for the consideration of Five Hundred (\$500.00) Dollars the receipt of which is hereby acknowledged, the Seller does hereby grant to the Buyer, an OPTION from the execution of this Agreement and ending NINETY (90) DAYS THEREAFTER, to advise the Seller of Buyer's decision to proceed with the purchase of said properties as follows, ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) to Seller at the time of the Closing.

At the time of closing, ONE HUNDRED NINETY-FIVE THOUSAND (\$195,000.00) will be deposited into an Environmental Escrow Account with a local bank of the Buyer's choice. From the date of closing, the buyer shall have up to eighteen (18) months to utilize its best efforts to acquire Federal and State grant monies for remediation of the site. If the Buyer receives said grant funding in excess of the escrow amount (\$195,000.00), then the Buyer will release the escrowed funds to the Seller. If the Buyer

does not receive grant funding in excess of the escrowed amount (\$195,000.00) then the Buyer shall keep said escrowed funds to be used in site remediation. Commencement of construction during the aforementioned 18-month period and thereafter is solely the decision of the Buyer.

All notices to "Seller" shall be mailed to: AMERICA, INC., at the following address: _____

The Seller represents that he will not solicit offers, or accept proposals, to lease the subject property, during the term of this option, and furthermore, will not enter into any type of agreement that will bind the Buyer, if the Buyer purchases the subject property. Seller hereby advises Buyer that the subject property is presently being leased to: NOT APPLICABLE, for a period of NOT APPLICABLE, and will promptly provide Buyer with a copy of the written lease agreement if requested.

The Seller further authorizes Buyer, and its agents, to have access to said real property, for the purpose of determining the existence and cost of removal of environmental hazards, if any. In the event that the Buyer chooses not to exercise the option granted herein, all funds tendered as consideration of the option(s) granted herein, shall remain the property of the Seller, and this Agreement shall terminate and become void as between the parties herein.

In the event that the Buyer decides to proceed with the purchase of the said subject property, the sale of the said real property shall be upon the following terms:

- (1) All funds tendered to the Seller, in consideration of the option(s) granted herein, shall be applied against the purchase price.
- (2) Taxes and fire service fees are to be apportioned as of date of closing.
- (3) The Seller shall, upon payment of the purchase price, convey the property by good and sufficient general WARRANTY DEED, free and clear of all valid liens and encumbrances except for restrictions of record and covenants running with the land and duly recorded, if any. Provided, however, Buyer shall have the option of waiving any such defect, and proceeding to Closing.

- (4) The Seller agrees that any and all documents and materials related to the title of the properties that the Seller and/or its legal counsel have within its possession shall be delivered to the Buyer at the time of executing this Option Agreement. The Buyer intends upon seeking Title Insurance for said property and the intended site use/development project.
- (5) Buyer may assign this Agreement without obtaining Seller's prior written consent. Following any such assignment, but prior to Closing, the Buyer will notify Seller of the name and address of the assignee. This Agreement shall be binding upon all heirs, executors, administrators, successors and assigns of the respective parties hereto.
- (6) The risk of loss or damage by fire or an act of God until the date of closing is assumed by the Seller. If the improvements or personal property, or both, are damaged or destroyed, in whole or in part, by casualty prior to closing, this Agreement is voidable by Buyer. All existing insurance covering the property (both real and personal) now in effect, shall be continued by Seller until the date of closing.
- (7) Buyer agrees to buy said property in an "AS IS" condition, and Seller makes no warranties or other statements as to the conditions thereof.
- (8) Seller agrees to vacate the premises ONE HUNDRED EIGHTY (180) days from the date of closing.
- (9) Buyer agrees to provide relocation compensation in an amount not to exceed Thirty Thousand Dollars (\$30,000.00) to Seller upon appropriately submitted documentation of said expenses. The Buyer and Seller agree to execute any necessary Supplemental Agreements to document relocation expenses and the release of funds for documented relocation expenses expended by the Seller.

If this option to purchase said real property, is exercised by the party of the second part, the transaction is to be closed at a location mutually agreed upon by the parties, on or before NINETY (90) DAYS AFTER EXECUTION OF THIS AGREEMENT. THE PARTIES HEREBY MUTUALLY AGREE AND ACKNOWLEDGE THAT **TIME IS OF THE ESSENCE** IN THE COMPLETION OF THIS CONTRACT.

POSSESSION IS TO BE GIVEN THIRTY (30) DAYS AFTER THE TIME OF CLOSING UNLESS PARTIES AGREE IN WRITING OTHERWISE.

In the event that Buyer desires to exercise this option, then should the Buyer fail to carry out this Agreement, all money paid thereunder shall be forfeited to Seller as liquidated damages, and Seller shall have no further claim against the Buyer, and this Agreement shall terminate and neither party shall have any further claims against the other by reason of this Agreement. Should the Seller be unable to convey a good, sufficient and marketable title subject to and in accordance with this Agreement, the sole obligation of Seller, to Buyer, shall be to refund the Five Hundred (\$500.00) Dollars option money, deposited hereunder, to the Buyer, and upon such refund this Agreement shall terminate and neither party shall have any further claims against the other by reason of this Agreement and the lien, if any, of the Buyer against the said real property, shall wholly cease.

Buyer does unconditionally guarantee the validity of, and promises to make negotiable, any bank check used as purchase money for the above described property, whenever said check is presented for payment.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

WITNESS the following signatures:

SELLER:

AMERICO, INC., a West Virginia Corporation

BUYER:

The City of Wheeling, a municipal corporation

BY: _____
Its City Manager