



## Legislation Text

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**File #:** 74675, **Version:** 1

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### Fiscal Note

The proposed resolution authorizes the purchase of property located at 818 W. Badger Road. The purchase price is not to exceed \$1,240,000 and up to \$160,000 is authorized for related expenses. This purchased will be funded from Economic Development's Land Banking capital program.

### Title

Authorizing the City's execution of a Purchase and Sale Agreement between the City of Madison and 818 W Badger LLC dba JEK Property Management LLC for the City's purchase of the property located at 818 W. Badger Road in the City of Madison. (14<sup>th</sup> AD)

### Body

WHEREAS, 818 W BADGER LLC, dba JEK Property Management LLC ("Seller") is the owner of the property located at 818 W. Badger Road, which contains two parcels on 0.74 acres improved with a commercial office building and adjacent parking areas ("Property"); and

WHEREAS, the City of Madison ("City") desires to purchase the Property for combination with adjacent parcels at 802 and 810 W. Badger Road for potential mixed use residential, commercial and community uses consistent with the recommendations of the South Madison Plan (Enactment No. RES-22-00026, File I.D. No. 68084); and

WHEREAS, the Common Council directed City Real Estate Staff to pursue the purchase of other parcels in the immediate vicinity for such uses (Enactment No. RES-21-00805, File I.D. No. 68333, RES-22-00311, File I.D. No. 70640); and

WHEREAS, acquisition of the Property shall further aid in the orderly redevelopment of a key gateway block in South Madison.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement ("Agreement") between the City ("Buyer") and 818 W Badger LLC dba JEK Property Management LLC and/or its assigns ("Seller"), for the purchase of the Property on substantially the following terms and conditions:

1. The Property. The Buyer shall purchase and the Seller shall sell and convey by Special Warranty Deed ("Deed") their fee simple interest to the real property located at 818 W. Badger Road in the City of Madison, Wisconsin, together with all improvements located thereon (collectively, the "Property"), identified as tax parcel numbers 0709-352-0320-1 and 0709-352-0315-2, and legally described as follows:

Parcel A: Part of the Southeast 1/ 4 of the Northwest 1/ 4 of Section 35, Township 7 North, Range 9 East, in the City of Madison, Dane County, Wisconsin, to-wit: Commencing at the Southeast corner of the Northwest 1/4 of said Section 35; thence North 89°29'27° West; 401.34 feet; thence North 0°37'14° West, 208.00 feet to the point of beginning; thence North 89°29'27" West, 133.29 feet; thence North 00° 22"32' West, 66.00 feet; thence South 89°29'27" East, 133.01 feet; thence South 00°37'14" East, 66.00 feet to the point of beginning.

Parcel B: Part of the Southeast 1/4 of the Northwest 1/4 of Section 35, Township 7 North, Range 9 East, in the City of Madison; Dane County, Wisconsin, described as follows: Commencing at the Southeast corner of said Northwest 114; thence North 89°36'24" west, 266.70 feet; thence North 89°38'09" West, 135.0 feet to the point of beginning; thence continuing North 89°38'09" West, 134.18 feet; thence North 00°37'29" West, 208 feet; thence South 89°38'09" East, 133.29 feet; thence South 00°52'09" East, 208 feet to the point of beginning.

2. Effective Date. The "Effective Date" shall be the later date of execution of this Agreement by the Buyer or Seller, as indicated on the signature page(s).
3. Purchase Price. The total purchase price of the Property ("Purchase Price") shall be One Million Two Hundred Forty Thousand and no/100 (\$1,240,000.00) which amount shall be payable in cash at Closing, as defined herein, subject to the adjustments and prorations herein provided.
4. Personal Property. The transaction contemplated by the Agreement will not include any personal property.
5. Earnest Money. The Buyer will deposit with Buyer's chosen title insurance company ("Title Company"), Ten Thousand Dollars (\$10,000.00) as "Earnest Money" within ten (10) days of execution of the Agreement by the Buyer, which will be non-refundable except that the Earnest Money shall be forfeited and returned to the Buyer if the Seller defaults on the terms of the Agreement. The Earnest Money shall be applied toward the Purchase Price at Closing in accordance with Paragraph 3.
6. Delivery of Documents.
  - a. The Seller shall, within (5) business days after the Seller's execution of the Agreement, provide the Buyer with complete copies of all documents in the Seller's actual possession or control relating to the physical and environmental condition of the Property.
  - b. Within five (5) business days after both parties execution of the Agreement, the Seller shall order a title insurance commitment from the Title Company with a policy amount of not less than the Purchase Price. The commitment shall include all supporting documents including, but not limited to, recorded declarations, use restrictions and annexation agreements.
7. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided in the Agreement, the Buyer shall purchase the Property in "AS-IS, WHERE-IS" condition and "with all faults," and shall agree that it relied upon no warranties, representations or statements by the Seller, its agents or employees, in entering into the Agreement or in closing the transaction described therein. The Buyer's Closing on the acquisition of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property.
8. Due Diligence Period.
  - a. The Buyer shall have ninety (90) days after execution of the Agreement by the Parties ("Due Diligence Period") to review, test and inspect all aspects of the Property, at its sole cost and expense. In the event said, review, tests or inspections disclose matters which would make the Property unsuitable for the Buyer's intended use or if the Buyer is not able to obtain adequate funding for the purchase, the Buyer may terminate the Agreement and the Seller shall return the Earnest Money. If the Buyer does not provide written notice terminating the Agreement on or prior

to the ninetieth (90th) day of the Due Diligence Period, the Agreement shall remain in full force and effect, the Buyer shall accept the Property as-is, and the Parties shall proceed to Closing.

- b. Should the buyer desire to close prior to the end of the due diligence period, the buyer may provide the seller with written notice of its intent to do so. The provision of such notice by the buyer shall not affect the terms contemplated in the agreement, except that the closing shall occur on or before fifteen (15) days from the date the seller receives such notice, unless the parties agree in writing to another date. The due diligence period in the agreement may be extended upon written agreement of the parties.

9. Inspections and Testing.

- a. The Buyer and the Buyer's authorized agents, contractors, and engineers shall be permitted access to the Property for the purpose of conducting inspections and testing, including but not limited to, a Phase 1 Environmental Site Assessment report ("ESA"), hazardous materials assessment, and any other inspections deemed necessary by the Buyer. Access shall be at reasonable times with advance notice to the Seller. In no event shall Buyer or its agents or representatives have any right to perform any invasive testing (including, but not limited to, any soil testing, any Phase II testing, or testing for the presence of hazardous building materials) on the Property, nor shall any samples from the Property be taken, without the express written consent of Seller, which consent shall not be unreasonably withheld.
- b. In the event Buyer's Phase 1 ESA recommends a Phase 2 ESA, which Seller consents to as provided above, the Buyer may notify the Seller in writing of its desire to extend the Due Diligence Period if necessary to conduct such investigation. If the Seller does not consent as provided above, or the Parties are unable to agree on an extension of the Due Diligence Period, the Buyer may declare the Agreement terminated by providing notice as set forth in the Agreement. In no event shall the Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property or any improvements located thereon. The Buyer shall repair, at its sole cost and expense, all damages caused by any of its assessments and inspections so that the condition of the Property is returned to as good or better condition as existed prior to the assessment(s) and inspections.

10. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to Closing, a commitment in its final form from the Title Company to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Property, as of a date no more than fifteen (15) days before such title proof is provided to the Buyer, to be in the condition called for in the Agreement, and further subject only to liens which will be paid out of the proceeds of the Closing and to any exceptions acceptable to the Buyer. Prior to Closing, the Buyer shall notify the Seller in writing of any valid objections to title that remain after review of the draft provided pursuant to Paragraph 6b. The Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections and Closing shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to carry out the Agreement by reason of a valid legal defect in title which the Buyer is unwilling to waive, the Agreement shall be void.

11. No Brokers. The Buyer represents that it has not entered into any contracts with any brokers or finders nor has the Buyer obligated itself to pay any real estate commissions or finders' fees on account of the execution of the Agreement or the close of the transaction contemplated therein. These provisions in the Agreement shall survive any expiration or termination of the Agreement and shall not merge into any

deed delivered and accepted upon the closing of the transaction therein contemplated.

12. Closing.

- a. Closing shall occur on or before fifteen (15) days from; (a) the expiration of the Due Diligence Period; or (b) the date of the Seller's receipt of notice from the Buyer requesting an earlier date of Closing; or (c) such other date agreed to in writing by the Parties, at the office of the Title Company issuing the commitment for title insurance, unless the Parties agree in writing to an alternate Closing location. Notwithstanding the foregoing, the Closing Date shall be no later than February 28, 2023.
- b. The Seller agrees to execute and deliver to the Buyer at Closing the Deed, reviewed and accepted by the Buyer prior to Closing, conveying the Property to the Buyer free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and agreements entered under them; recorded easements for the distribution of utility, municipal services; easements; recorded building and use restrictions and covenants; and any Permitted Exceptions. "Permitted Exceptions" shall mean exceptions to title approved by Buyer.
- c. The Buyer shall pay all recording/filing fees except that the Seller shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for by the Agreement.
- d. Real estate taxes applicable to the Property in the year of Closing shall be prorated between the Buyer and the Seller as of the date of Closing based upon the latest known assessment and latest known mill rate.
- e. The Seller shall be responsible for the payment of any existing special or area assessments, sewer interceptor charges, or any other charges payable to any municipality or utility with regard to the Property as of the date of Closing.
- f. The Seller shall pay any fees related to the Wisconsin Real Estate Transfer fee.
- g. The Title Company shall prepare and deliver at Closing the Wisconsin Transfer Return due in connection with conveyance of the Property.
- h. Except for those costs related to providing title as described in Paragraph 10, all costs charged by the Title Company to facilitate Closing shall be prorated between the Parties.
- i. The Seller shall pay any and all broker commissions or fees due in connection with the sale of the Property.
- j. The Seller shall leave any remaining supplies relating to the building's mechanical, electrical and plumbing systems.

13. Representations. The Seller represents and understands the following:

- a. No Prior Right to Purchase. No party has any option, right of first refusal or similar right to purchase all or any portion of the Property.
- b. No Adverse Possessors. There are no parties in possession of any portion of the Property as tenants at sufferance or trespassers.

- c. Lessees. The Seller will represent and the Buyer will acknowledge that the Property is currently leased in its entirety. The Seller will agree that it shall not enter into any new lease or rental agreement for the Property, or any portion thereof, during the Buyer's Due Diligence Period, as described in Paragraph 8, and through the date of Closing, without the prior written consent of the Buyer.
  - d. Exclusive Right. The Buyer shall have the exclusive right to negotiate with the Seller concerning acquisition of the Property and the Seller agrees that it shall not directly or indirectly solicit or entertain any other proposals for such acquisition of the Property from the date of execution of this LOI until Closing, unless otherwise released by the Buyer, or otherwise terminated in accordance with the Agreement ("Exclusive Right"). The Seller recognizes that in consideration of the Exclusive Right, the Buyer is diligently pursuing approval of the Agreement and is expending both time and money to achieve such approval. It is therefore agreed that the Exclusive Right cannot be challenged due to a lack of consideration. This provision shall be effective and in full force upon signature of the Agreement by the Seller.
14. Miscellaneous.
- a. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of the Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties hereto, to any person or entity other than the Parties.
  - b. Benefit and Burden. The Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, personal representatives, successors, and assigns. The provisions herein contained shall survive Closing and delivery of the Deed and shall not be merged therein.
  - c. Entire Agreement. The Agreement will contain the entire agreement between the Parties and any modification, alteration or addendum to the Agreement shall be valid only when written and executed by the Parties.
  - d. Counterparts and Transmittal of Signatures. The Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same Agreement. A signed copy of the Agreement transmitted by facsimile electronic scanned copy (.pdf) or similar technology and shall be as valid as original. The Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of the Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the Parties, whether or not a hard copy is also delivered. Copies of the Agreement, fully executed, shall be as valid as an original.
  - e. Severability. If any non-material part, paragraph, or article of the Agreement is determined to be invalid, or otherwise unenforceable, the validity of all the remaining parts, paragraphs, and articles shall not be affected thereby. Any such non-material parts, paragraphs, or articles shall be deemed severable.
  - f. Governing Law. The Agreement will be governed by, and construed in accordance with, the laws of or applicable to the State of Wisconsin.

g. Headings. The headings in the Agreement will be for reference purpose only and shall not in any way affect the meaning or interpretation herein.

15. § 1031 Exchange. Seller may consummate the sale of the Property as part of a so-called like kind exchange under § 1031 of the Internal Revenue Code of 1986, as amended, but only if: (i) closing will not be delayed or affected by the exchange; (ii) Seller effects the exchange through an assignment of this agreement, or its rights under this agreement, to a qualified intermediary; (iii) Buyer is not required to take an assignment of this agreement for the relinquished property or be required to acquire or hold title to any real property to consummate the exchange; (iv) Seller pays any additional costs associated with the exchange; and (v) the rights of Buyer under this agreement are not otherwise affected or diminished in any manner by the exchange.

BE IT FURTHER RESOLVED that up to \$1,400,000 in adopted 2023 Capital Budget funding from the Economic Development Division's Land Banking capital program may be used to complete the transaction contemplated in this Agreement, including up to \$1,240,000 to purchase the Property, and up to \$160,000 for related expenses including, but not limited to, any necessary due diligence, holding costs, general maintenance, and planning expenses for eventual Property redevelopment.

BE IT FINALLY RESOLVED that the Mayor, Clerk and City staff are hereby authorized to sign, accept, and record any and all documents and legal instruments required to complete the transaction contemplated in this resolution, on a form and in a manner that has been approved by the City Attorney.