

COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, WISCONSIN

Resolution No. 4058

Authorizing the execution of an Option to Purchase Agreement with Brickl Holdings, LLC for the purchase of a parcel of land located at 707 Rethke Avenue for the development of permanent supportive housing for homeless adults.

Presented January 9, 2014
Referred _____
Reported Back _____
Adopted January 9, 2014
Placed on File _____
Moved By Daniel Guerra, Jr.
Seconded By Dean Brasser
Yeas 7 Nays 0 Absent 0
Rules Suspended _____

PREAMBLE

On March 19, 2013 the Common Council passed Resolution Enactment No.13-00226 directing Planning, Community & Economic Development staff to explore locations, financing, and partnership options for the development of additional single-room occupancy housing for very low income people within the City of Madison (the "SRO Report"). In June of 2013 staff submitted the SRO Report and after review and comments by the Housing Strategy Committee, the CDA, and the CDBG Committee, the Common Council accepted the SRO Report. The report identified Affordable Housing Tax Credits as a key component of financing Housing for Homeless Adults and applications for the next available round of Affordable Housing Tax Credits are due January 31, 2014. The application for Affordable Housing Tax Credits requires control of a site for the housing development.

The City's adopted 2014 Capital Budget provides funds to support the contemplated permanent supportive housing for homeless adults and Dane County's 2014 Capital Budget provides funds for the acquisition of land for the housing development.

NOW THEREFORE BE IT RESOLVED that the Community Development Authority of the City of Madison (the "Buyer") does hereby authorize the execution of a Option to Purchase Agreement (the "Agreement") with Brickl Holdings, LLC (the "Seller") for the acquisition of a parcel of land located at 707 Rethke Avenue, Madison, Wisconsin (the "Property"), as legally described below, for the construction of permanent supportive housing for homeless adults subject to the following terms and conditions:

1. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Seller or the Buyer, as indicated on the signature pages.
2. Grant of Purchase Option. The Seller shall grant to the Buyer the option to purchase all of the Seller's right, title and interest in and to the Property pursuant to the terms and conditions hereinafter set forth (the "Purchase Option").
3. Terms of Purchase Option.
 - a. Initial Option Payment. At the time of execution of the Agreement, the Buyer shall pay to the Seller as consideration for the Purchase Option the sum of Two Thousand Five Hundred Dollars (\$2,500) (the "Initial Option Payment").
 - b. Term. Unless sooner exercised, terminated, or extended as hereinafter provided, the Purchase Option shall expire on May 31, 2014 at 11:59 p.m. (the "Expiration Date"). At any time between the Effective Date and the Expiration Date (the "Initial Option Period"), the Buyer may, at its sole discretion, terminate the Purchase Option by providing a written notice of termination to the Seller.
4. Extension of Purchase Option. Provided that the Buyer is not in default under the terms of this Option Agreement, the Buyer shall have the right (the "Purchase Option Extension") to extend the Purchase

Option for an additional thirty (30) day period beyond the Expiration Date (the "Option Extension Period"), subject to the following terms and conditions:

- a. Notice of Extension. The Buyer shall exercise the Purchase Option Extension by providing a written notice to the Seller of its intent to extend the Purchase Option (the "Extension Notice"). The Extension Notice shall be delivered a minimum of thirty (30) days prior to the Expiration Date and shall be accompanied by the "Option Extension Payment" described below.
 - b. Option Extension Payment. If the Buyer elects to exercise the Purchase Option Extension, the Buyer shall pay to the Seller the sum of One Thousand Five Hundred Dollars (\$1,500) (the "Option Extension Payment") as additional consideration for the Purchase Option.
 - c. Term. Unless sooner exercised or terminated as provided for in the Agreement, the Purchase Option shall expire at 11:59 p.m. on the last day of the Option Extension Period (the "Extended Expiration Date"). At any time during the Option Extension Period the Buyer may, at its sole discretion, terminate the Purchase Option by providing a written notice of termination to the Seller.
5. Delivery of Documents. Within ten (10) days following the Effective Date, the Seller will reproduce at the Seller's expense and mail or personally deliver to the Buyer at the Buyer's office copies of all environmental studies, reports, surveys, permits, applications and remediation plans or assessments of the Property in the Seller's possession or control related to the condition of the Property.
 6. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided herein, 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 this Agreement or in closing the transaction described herein. Except as provided below, 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.
 7. Leasing. The Seller shall represent that the Property is currently not leased or currently occupied, and the Seller shall agree that it shall not enter into any lease or rental agreement for the Property, or any portion thereof, or allow the occupation of the Property during the Option Period and the Option Extension Period, if any, and through the date of closing, without the prior written consent of the Buyer.
 8. Access to the Property. The Buyer and the Buyer's authorized agents and contractors shall be permitted access to the Property for the purpose of conducting a Phase 1 or 2 environmental assessment and conducting any inspections, appraisals, studies or reports deemed necessary by the Buyer to determine the suitability of the Property for use by the Buyer at reasonable times with at least twenty-four (24) hours written notice to the Seller. The Buyer shall repair all damages caused by its inspections, surveys or studies, at the Buyer's cost, so that the condition of the Property is returned to as good or better condition as existed prior to these activities. The Buyer shall provide to the Seller, upon receipt, copies of all inspections, appraisals, studies and reports obtained by the Buyer.
 9. Manner of Exercising Purchase Option. The Buyer may exercise the Purchase Option by delivering a written notice of exercise (the "Exercise Notice") to the Seller on or before the Expiration Date or the Extended Expiration Date, if applicable. Upon delivery of the Exercise Notice, this Option Agreement shall automatically become and be deemed to be a contract for the sale and purchase of the Property. If the Buyer does not deliver the Exercise Notice to the Seller on or before the Expiration Date or the Extended Expiration Date, if applicable, then: (1) the Purchase Option shall terminate and the Buyer shall have no further right to purchase the Property; and (2) neither the Buyer nor the Seller shall have any continuing or further rights or obligations under this Option Agreement, except as specifically set forth herein, and all Option Payments shall be retained by the Seller.
 10. Terms of Purchase.
 - a. Conveyance. Upon exercise of the Purchase Option as provided in Paragraph 9, the Buyer shall purchase and the Seller shall sell and convey by Warranty Deed (the "Deed") fee simple title to the Property, including all related improvements if any located thereon and all appurtenances thereto.

Closing of the transaction shall occur as provided in Paragraph 10.e.i. No personal property is included in the sale of the Property.

- b. Purchase Price. The total purchase price for the Seller's interest in the Property (the "Purchase Price") shall be One Hundred Thirty Thousand Dollars (\$130,000). The Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations hereinafter provided.
- c. Application of Option Payments. The Initial Option Payment and the Option Extension Payment, if any, shall be collectively referred to as the "Option Payments." If the Purchase Option is exercised by the Buyer, the Option Payments shall be applied as a credit against the Purchase Price at closing. The Seller agrees that the Initial Option Payment and the Option Extension Payment, if any, will be deemed "paid" under this Option Agreement when delivered by the Buyer to the Seller. If the Purchase Option is not exercised by the Buyer, the Option Payments shall be retained by the Seller.
- d. Title Insurance. The Seller shall provide to the Buyer at the Seller's expense at least ten (10) business days prior to closing a commitment from a title insurance company (the "Title Company") licensed in Wisconsin to issue title insurance 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 this Option Agreement, and further subject only to liens that will be paid out of the proceeds of the closing, easements, covenants and restrictions of record, and any standard title insurance exceptions acceptable to the Buyer. The Buyer shall notify the Seller of any valid objection to title, in writing, prior to closing. 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 this Option Agreement by reason of a valid legal defect in title, which the Seller is unwilling to waive, this Option Agreement shall be void, and all Option Payments shall be retained by the Seller.
- e. Closing.
 - i. Closing shall occur within thirty days (30) days after the date of the Exercise Notice at the Title Company, unless an extension to the closing date is mutually agreed to by the Seller and the Buyer.
 - ii. The Seller shall agree to execute and deliver to the Buyer at closing the Deed 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 real estate taxes for the year of Closing and thereafter.
 - iii. 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 this Option Agreement.
 - iv. All real estate taxes with respect to the Property 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.
 - v. The Seller shall be responsible for any existing, area assessments or any other charges payable to any municipality or utility with regard to the Property as of the date of closing.
 - vi. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.
 - vii. Legal and physical possession to the Property shall be delivered to the Buyer at the time the transaction is closed
- f. Brokers. The parties shall mutually warrant and represent to one another that neither has authorized

any broker to act on its behalf in respect of the transactions contemplated hereby. Each party shall provide a statutory lien waiver with respect thereto, if requested by the Title Company, at closing.

11. Assignment. The Buyer shall have the right to assign this Option Agreement without the Seller's consent, but shall provide written notice to the Seller of any such Assignment within three (3) days after any such Assignment. The Assignee shall take assignment subject to all of the terms of the Agreement.

BE IT FURTHER RESOLVED that the Chair and the Secretary of the CDA are authorized to execute any and all documents and to take such other actions as shall be necessary to accomplish the purposes of this resolution.

Legal Description of the Property:

That part of Outlot Fifty-eight (58) in Burke Assessor's Plat No. 1, in the City of Madison, Dane County, Wisconsin, and more fully described as follow: Commencing at the Southwest corner of the Southwest ¼ of the Southeast ¼ of Section 32, in Town of Burke, Dane County, Wisconsin; thence North 00°00'00 353.7 feet; thence East parallel to the North line of Highway 30, 225.0 feet; thence North 05° 02' 00 West, 250.0 feet to the point of beginning; thence North 88° 46' 00 West, 167.7 feet; thence North 00° 35' 00 East along the East line of Rethke Avenue 55.0 feet; thence South 88° 33' 00 East, 162.3 feet to the East line of Outlot 58; thence South 05° 02' 00 East 55.0 feet to the point of beginning.

Tax Parcel No.: 251-0810-324-3019-2