



Legislation Text

File #: 41524, Version: 1

Fiscal Note

No fiscal impact.

Title

Authorizing the execution of a Purchase and Sale Agreement by the City of Madison, for the purchase of two platted outlots located at 334 Rustic Drive and 134 Venus Way, from AnchorBank FSB.

Body

Anchor Bank FSB ("Anchor") is the owner of Outlot Two (2) and Outlot Three (3), First Addition to Nelson's Addition to Rustic Acres, located at 134 Venus Way and 334 Rustic Drive, respectively, City of Madison, Dane County, Wisconsin (collectively, the "Property"). Anchor obtained the Property by a Sheriff's Deed on Foreclosure recorded on March 4, 2015 as Document No. 5133119.

The Property is subject to a plat reservation which limits the use of the Property to public storm water management purposes. Due to said plat reservation, Anchor has no interest in keeping ownership of the Property and contacted the City of Madison ("City") about the possibility of dedicating the Property to the City.

The City Attorney's Office and the City Engineering Division reviewed and approved the dedication from Anchor, with the request that the dedication be at no cost to the City, and access to the Property be allowed to perform a Phase 1 Environmental Site Assessment if deemed necessary by the City, to ensure the Property is free of adverse environmental conditions prior to conveyance.

A Purchase and Sale Agreement ("PSA") has been negotiated and executed by Anchor for the sale of the Property. Adoption of this resolution will authorize the City to execute the PSA, as well as any other associated documents required to accomplish the dedication of the Property to the City.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement between the City ("Buyer") and AnchorBank FSB ("Seller") for the purchase of two outlots that are owned by the Seller located at 134 Venus Way and 334 Rustic Drive, City of Madison, Dane County, Wisconsin, legally described in attached Exhibit A and depicted on attached Exhibit B, subject to the following terms and conditions:

- 1. The Property.** The Buyer shall purchase and the Seller shall sell and convey by Special Warranty Deed ("Deed") fee simple title to the Property, including all related improvements, if any, located thereon and all appurtenances thereto.
- 2. Effective Date.** The "Effective Date" shall be the later date of execution of the PSA by the Seller or the Buyer, as indicated on the signature page.
- 3. Purchase Price.** The total purchase price of the Seller's interest in the Property (the "Purchase Price") shall be Zero Dollars (\$0).
- 4. Delivery of Documents.** Within ten (10) days of the Effective Date, the Seller will reproduce at the Seller's expense and send 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 and all studies, reports, plans or assessments related to the condition of the Property in the Seller's possession or control. Said documents are provided for the Buyer's convenience and without

representation or warranty of any kind by the Seller.

5. Buyer's Contingencies. The Buyer shall have ninety (90) days from the Effective Date (the "Buyer's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate the PSA, unless extended as provided herein:

a. Environmental. The Buyer obtaining a Phase 1 and/or Phase 2 environmental assessment of the Property that is satisfactory, in the Buyer's sole discretion, to the Buyer.

b. Approval. The Common Council of the City of Madison approving acceptance of the Property.

The Buyer's Contingency Period may be extended for an additional thirty (30) days by written notice from the Buyer to the Seller delivered prior to expiration of the Buyer's Contingency Period.

6. 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/or wetlands delineation survey of the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer will repair all damages caused by its inspections, at the Buyer's cost, so that the condition of the Property is returned to as good or better condition as existed prior to the inspection.

7. 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 not to be in the condition called for in the PSA, and further subject only to liens which will be paid out of the proceeds of the closing and to 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 Buyer be unable or unwilling to carry out the PSA by reason of a valid legal defect in title which the Seller is unwilling to waive, the PSA shall be void.

8. Lease. The Seller shall represent that the Property is currently not leased and the Seller agrees that it shall not enter into any new lease or rental agreement for the Property, or any portion thereof, during the Buyer's Contingency Period and through the date of closing, without the prior written consent of the Buyer.

9. Closing.

a. Closing shall occur within thirty days (30) days after the satisfaction or waiver of the Buyer's Contingencies unless an extension to the closing date for up to an additional thirty (30) days is requested by the Buyer in writing.

b. 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, any matters reflected on the title insurance commitment referenced above, to which the Buyer does not timely object.

c. The Seller shall pay all 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 PSA.

- d. 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.
- e. 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.
- f. The Seller shall pay any fees associated with filing a Wisconsin Real Estate Transfer Return in connection with conveyance of the Property.

10. Notices. All notices required or permitted to be given hereunder shall be given by certified mail, postage prepaid, or by overnight delivery service, or by email, or shall be personally served, to the Buyer and the Seller at the following addresses:

- a. Buyer: City of Madison Economic Development
Division Office of Real Estate Services
215 Martin Luther King, Jr. Blvd, Room 312
Post Office Box 2983
Madison, WI 53701-2983
- b. Seller: Gina John, REO Coordinator
Special Assets Group
AnchorBank FSB
25 West Main Street
Madison, WI 53703
reo@anchorbank.com

All notices shall be deemed received either when actually received or three (3) days after deposit (if mailed), one business day after deposit with the delivery service (if sent by overnight delivery), or when delivered (if personally delivered). Either party may change the above addresses by written notice to the other.

11. Default. If the Seller defaults in the full and timely performance of any of its obligations hereunder, the Buyer shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate the PSA or seek specific performance. If the Buyer defaults in the full and timely performance of any of its obligations hereunder, the Seller shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate the PSA or seek specific performance.

12. Representations and Warranties/AS IS Statement. The Buyer recognizes that the Seller is a federal savings bank that has obtained title to the Property by foreclosure or deed in lieu of foreclosure and has limited knowledge with respect to the Property. Any representations or warranties contained in the PSA are strictly limited to the Seller's actual knowledge. Any representations or warranties contained in the PSA (including any other addenda or attachment thereto) are hereby removed. The knowledge of others, including the Seller's agents and previous owners, shall not be imputed to the Seller. The Seller has no duty to investigate conditions with respect to the Property. Except as set forth in the PSA, the Property is sold in its AS IS condition, without any warranties expressed or implied as to its condition, compliance with any laws, environmental condition, or condition of title. The Buyer has been and will be given adequate opportunity to investigate the Property and arrive at the Buyer's own conclusion as to whether to acquire the Property. The Buyer hereby agrees that the Buyer does not rely upon any statements made by the Seller or by the Seller's agents relative to the condition of the

Property or title to the Property, including, without limitation, any statement made by the Seller or the Seller's agents in response to the Buyer's inquiries. The Buyer hereby acknowledges that the Seller expressly disclaims and negates any warranties or representations relating to the Property, and the Buyer hereby waives all warranties with respect to the condition of defects in the Property, whether known or unknown to the Seller.

13. Entire Agreement. The PSA contains the entire agreement between the Seller and the Buyer and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, regarding the transaction contemplated hereby. The PSA may be amended only by a further written document signed by each of the parties.
14. Successors and Assigns. The provisions of the PSA shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives.
15. Captions. The captions of the paragraphs in the PSA have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used to construe any of the provisions hereof.
16. Severability. If any provision of the PSA is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provision(s) involved and shall not affect the validity or enforceability of the remaining provisions.
17. Counterparts and Transmittal of Signatures. The PSA may be executed in one or more counterparts, and all such executed counterparts shall constitute the same agreement. A signed copy of the PSA transmitted by facsimile or email shall be treated as an original and shall be binding against the party whose signature appears on such copy.
18. Time of the Essence. Time is of the essence for the performance of the PSA.

NOW THEREFORE, BE IT FURTHER RESOLVED that the Mayor, City Clerk, Finance Director, Risk Manager and City Attorney of the City of Madison are hereby authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolutio