



Legislation Text

File #: 80423, Version: 1

Fiscal Note

The proposed resolution authorizes the inclusion of a Land Use Restriction Agreement to the Purchase and Sale Agreement authorized by Leg file 79643 (RES-23-00579). If the Purchaser fails to comply with the Agreement, the City would be eligible for compensation, and the Economic Development Division's budget would be amended in that instance. No additional City appropriation is required with the approval of the proposed resolution.

Title

Authorizing the inclusion of a Land Use Restriction Agreement as an exhibit to the Purchase and Sale Agreement between Core Spaces, LLC ("Purchaser") and the City of Madison for the Purchaser's acquisition of the property located at 405 W. Gorham Street (District 4)

Body

WHEREAS, as a university city, the City of Madison has a need for affordable student housing; and

WHEREAS, Section 28.071 of the Madison General Ordinance allows for buildings within the Downtown Height Map to exceed the maximum number of stories if the development or redevelopment receives City of Madison funding to support affordable units; and

WHEREAS, the Common Council adopted RES-23-00579 on September 19, 2023 authorizing the negotiation and execution of a Purchase and Sale Agreement for the property at 405 W. Gorham St between the City and Core Spaces, LLC ("Purchaser");

WHEREAS, the City and Purchaser have negotiated the terms of the Purchase and Sale Agreement, including a sale price of \$1 as a form of financial contribution to support affordable units with the contingency that the Purchaser, City, and the University of Wisconsin-Madison enter into a mutual agreement regarding affordable student housing to be included in the proposed development; and

WHEREAS, the City and Purchaser have negotiated the terms of the Purchase and Sale Agreement, including requiring Purchaser to execute a land use restriction agreement with specific affordability requirements;

NOW, THEREFORE, BE IT RESOLVED that the City's Common Council hereby authorizes the inclusion of a Land Use Restriction Agreement as an exhibit to the Purchase and Sale Agreement, to include substantially the following terms:

1. Term. The Term of this LURA shall be Forty (40) years from the date of issuance of the certificate of occupancy for the Building, or that portion of the Building containing the housing.

2. Affordability. Owner shall provide 10% of the Building's total beds (approximately one hundred sixty-five [165] beds) in two (2) bedroom dwelling units being leased to four (4) individuals (the "**Low-Cost Beds**"). The Low-Cost Beds shall be leased to Eligible Students (defined below), at a lease rate that is forty-percent (40%) less (the "**Student Discount**") than the market rate charged for a bed in a comparable bed in the Building. Except for the Student Discount rental rate, the Eligible Student's leases shall include the same terms and conditions as those set forth in the market rate leases including, without limitation, the same right to relocate to another bed in another dwelling unit (whether in the unit described above or in another unit), but at the rental rate of the Student Discount. It is the intent of the parties that Eligible Students

will be treated the same as the students with market rate leases except for the Student Discount. If an Eligible Student relocates to a bed in a unit other than the above described units, such student shall still count toward the [165] Low-Cost Beds requirement.

3. Eligibility. UW's Office of Student Financial Aid ("**UWOFA**") and Owner shall agree on a Memorandum of Understanding ("**MOU**"), which shall be attached to the LURA as **Exhibit B**, with Owner to apply UWOFA's guidelines for determining eligibility based on household income, or other criteria (the "**Eligible Students**"). Owner shall be deemed to have complied with this section by accepting students referred to the Owner by UWOFA. In the event UWOFA stops providing such service, Owner shall comply with the same UWOFA rules for eligibility at its own expense. In the event that Owner is unable to satisfy its obligation to provide the Student Discount as a result of its failure to satisfy its obligation, Owner may be required to add the deficient number of Low-Cost Beds to the number of Low-Cost Beds required for the next lease year as more fully set forth in the MOU.

4. Compliance. Owner shall provide a report each June during the Term certifying the number of leases to Eligible Students ("**Lease Certification**"). The City shall have the right, but not the obligation, to audit the Lease Certification in a commercially reasonable manner as it chooses (the "**Audit**"), but with the understanding that the City shall not create public records of student names as a result of during the Audit.

5. Default. In the first event of a default under the LURA, and subject to the provisions of Sections [8] and [9], due to the failure to provide sufficient Low-Cost Beds, Owner shall pay to the City an amount equal to the Student Discount multiplied by the deficient number of Low-Cost Beds ("**Low-Cost Bed Deficiency**"). Any repeated Low-Cost Bed Deficiency, or other form of Default, shall result in the City having the option to seek specific performance, or liquidated damages as provided herein.

6. Liquidated Damages. The City and Owner agree that the approval of the additional stories under Madison General Ordinance 28.071(2)(a)2. will result in the authorization to construct a Building that has additional stories and rentable space resulting from the City Work. The harm to the City for failing to comply with the LURA would be difficult if not impossible to calculate, and, therefore, the parties agree that liquidated damages for willful uncured default shall be Eight Million Dollars (\$8,000,000). In the event Owner pays the liquidated damages set forth in this Section [6], this LURA, the Agreement, and the MOU shall automatically terminate upon such payment and a release, in form and substance sufficient to remove the land use restrictions set forth in this LURA, shall be recorded promptly thereafter. The City's rights under this paragraph shall be in addition, and not cumulative, to all other rights and remedies at law or equity.

7. Indemnification. The Owner shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Owner's and/or its subcontractor's acts or omissions in the performance of this LURA, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees..

8. Meet and Confer. Whenever, during the term of the LURA, in advance of the payment of Liquidated Damages, and optionally upon any other default, any disagreement or dispute arises between the parties as to the interpretation of this LURA, or any rights or obligations arising hereunder, such matters shall be resolved, whenever possible, by meeting and conferring. The Owner shall produce, at the City's reasonable request, documents related to Eligible Students and Low-Cost Beds. Any party may request such a meeting by giving notice to the other; in which case such other party shall make itself available within seven (7)

business days thereafter. If such matters cannot be so resolved within no more than ten (10) business days after the giving of such notice to confer, either party may proceed under any applicable remedy at law or in equity.

9. Opportunity to Cure. In the event Owner defaults in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Owner, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Owner, including expressly the specific enforcement hereof, recover the Liquidated Damages defined in Section [6]. The City shall extend the cure period if the City determines, in its sole discretion, that the Owner has begun to cure the default and diligently pursues such cure, or, without further written notice to the Owner, declare the Owner in default. The cure period shall in no event be extended more than ninety (90) days.

10. Notices. Any notice, consent, waiver, request or other communication required or provided to be given under this LURA shall be in writing and shall be sufficiently given and shall be deemed given when delivered personally or when mailed by certified or registered mail, return receipt requested, postage prepaid, or when dispatched by nationally recognized overnight delivery service, in any event, addressed to the party's addresses below. If electing to utilize electronic mail, said emails shall be sent to the email addresses provided below with an active read receipt and shall include a statement that the electronic mail constitutes notice under the terms of this LURA.

If to City: City of Madison
 Office of Real Estate Services
 Economic Development Division
 PO Box 2983
 Madison, WI 53703
 ores@cityofmadison.com

with copy to: City Attorney
 City County Building, Room 401
 210 Martin Luther King, Jr. Blvd.
 Madison, WI 53703
 mrobles@cityofmadison.com;
 and attorney@cityofmadison.com

If to Owner: C/O Core Campus Manager
 Attn: Brendan Miller & Austin Pagnotta
 1643 N. Milwaukee Avenue, 5th Floor
 Chicago, IL 60647
 austinp@corespaces.com

or to such party at such other address as such party, by ten (10) days prior written notice given as herein provided, shall designate, provided that no party may require notice to be sent to more than two (2) addresses. Any notice given in any other manner shall be effective only upon receipt by the addressee.

11. Application of Funds. Any funds received by the City pursuant to this LURA, shall be applied toward programs supporting housing initiatives, 80% of which shall be allocated into the City's Affordable Housing Fund.

12. Miscellaneous.

A. Modification. No modification of any provision of this LURA will be binding upon the parties except as expressly set forth in a writing.

B. Time is of the Essence. Time is of the essence with respect to all payment provisions of this LURA.

C. Binding Effect. This LURA benefits the City, its successors and assigns, and binds Owner, its successors and assigns.

D. Severability. In the event any provision of this LURA is determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, this LURA and such provision shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this LURA, which shall remain in full force and effect.

E. Governing Law. This LURA shall be interpreted, construed, and enforced according to the laws of the State of Wisconsin.

F. Counterparts. This LURA may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this LURA may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this LURA 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 this LURA may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this LURA, fully executed, shall be as valid as an original.

G. Third Party Rights. This LURA is intended to be solely between the parties hereto. No part of this LURA shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.