



Legislation Text

File #: 27864, Version: 2

Fiscal Note

Funds for the Option Payment(s) of \$7,500 plus appraisal expenses are authorized in the 2012 operating budget of the Office of the Director of Planning, Community and Economic Development (PCED, Account GN01-54950-212000). Funding to exercise the purchase price option of \$135,000 (and additional renovation expenses) is included in the 2013 Executive Capital Budget of PCED (Project No. 8, "Neighborhood Centers," Acc't NO. 810559). Any Option Payment paid by the City will be credited against the purchase price at time of closing.

Title

SUBSTITUTE Authorizing the execution of Option to Purchase Agreement with John P. Schneider LLC for the City's acquisition of a condominium duplex located at 1409-1411 Theresa Terrace for a neighborhood center.

Body

The City of Madison is completing a neighborhood center study which, when approved by the Common Council, will provide a process for locating neighborhood centers. The proposed 2013 Capital Budget includes funding for the acquisition and/or renovation/construction of neighborhood centers. A condominium duplex located at 1409 and 1411 Theresa Terrace (collectively the "Property") has been identified for potential acquisition and renovation as a neighborhood center. The owner has agreed to hold off on leasing the Property for a period of time to allow the City to complete the neighborhood center study and determine whether the Property would be suitable for the location of a neighborhood center. A Letter of Intent has been executed between the City and the owner John P. Schneider LLC setting forth the terms and conditions for an Option to Purchase Agreement (the "Option Agreement") for the acquisition of the Property. The Option Agreement will provide the City with a ninety (90) day period (and one thirty (30) day extension period) to exercise its option to purchase to assess the feasibility and cost of renovating the Property for a neighborhood center, to obtain an appraisal which supports the purchase price, to determine an operator of the center and to approve funding for the acquisition and renovation of the Property for a neighborhood center.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of an Option to Purchase Agreement (the "Agreement") with the John P. Schneider LLC (the "NHLT") for the purchase of the condominium duplex located at 1409-1411 Theresa Terrace, legally described in Exhibit A below and depicted on the attached Exhibit B, for operation of a neighborhood center, on the following terms and conditions:

1. Purchase Price. The total purchase price for the Seller's interest in the Property (the "Purchase Price") shall be One Hundred Thirty-five Thousand and 00/100 Dollars (\$135,000.00). The Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations herein provided.
2. Effective Date. The Purchase Option shall take effect on November 1, 2012 (the "Effective Date").
3. Purchase Option.
 - a. Grant of Purchase Option. The Seller shall grant to the Buyer an exclusive option to purchase the Property for the Purchase Price on the terms and conditions set forth in the Purchase Option. Upon exercise of the Purchase Option as herein provided, the Buyer shall purchase and the Seller shall sell and convey by Condominium Deed (the "Deed") fee simple title to the Property, including all related improvements if any located thereon and all appurtenances thereto.

b. Initial Option Payment. At the time of execution of the Purchase Option, the Buyer shall pay to the Seller as consideration for the Purchase Option the sum of Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) (the "Initial Option Payment").

c. Term of Purchase Option. Unless sooner exercised or terminated as provided for in the Purchase Option, the Purchase Option shall expire ninety (90) days from the Effective Date at 11:59 p.m. on the last day of said period (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. The Buyer shall be able to extend the Purchase Option pursuant to the following terms and conditions:

a. General. Provided that the Buyer is not in default under the terms of the Purchase Option, 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").

b. 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.

c. Option Extension Payment. If the Buyer elects to exercise the Purchase Option Extension, the Buyer shall pay to the Seller the sum of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) (the "Option Extension Payment") as additional consideration for the Purchase Option.

d. Term of Purchase Option. Unless sooner exercised or terminated as provided for in the Purchase Option, 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.

e. Option Payments. The Initial Option Payment and the Option Extension Payment 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 as follows: the entire Initial Option Payment and One Thousand and 00/100 Dollars (\$1,000.00) of the Option Extension Payment. The Option Payments will be non-refundable to the Buyer, except in the event of the Seller's default. The Seller shall agree that the Initial Option Payment and the Option Extension Payment, if any, will be deemed "paid" under the Purchase Option when delivered by the Buyer to the Seller.

5. 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, the Purchase Option 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 or the Seller shall have any continuing or further rights or obligations under the Purchase Option, except as specifically set forth hereunder.

6. Delivery of Documents. Within ten (10) days following the Effective Date or the Extended Expiration Date, if applicable, 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 and all studies, reports, plans or assessments in the Seller's possession or control related to the condition of the Property.

7. Leasing. The Seller represents that the Property is currently not leased, and the Seller agrees that it shall not enter into any lease or rental agreement for the Property, or any portion thereof, during the Option Period and the Option Extension Period, if any, 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, including but not limited to, design, renovation and/or structural studies and construction cost estimates of the Property 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. Upon termination of the Purchase Option by the Buyer, the Buyer will 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.

9. 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 Purchase Option, 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 Seller be unable or unwilling to carry out the Purchase Option by reason of a valid legal defect in title which the Seller is unwilling to waive, the Purchase Option shall be void.

10. Closing.

a. 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.

b. The Seller agrees to execute and deliver to the Buyer at closing a Condominium 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.

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 Purchase Option.

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 mil 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 Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are 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 resolution.

BE IT STILL FURTHER RESOLVED that funds are authorized for miscellaneous Purchase Option costs including the Option Payments (\$7,500 for the Initial Option Payment and \$2,500, if required, for the Extension Option Payment) and the cost of an appraisal (\$2,500).

EXHIBIT A

Legal Description of the Property:

Unit 1 and Unit 2, in Amore Condominium, together with the undivided interest in the common elements appurtenant to said units, in the City of Madison, Dane County, Wisconsin, being a condominium created under the Condominium Ownership Act of the State of Wisconsin by a "Declaration of Condominium for Amore Condominium" dated March 19, 1998, and recorded on March 24, 1998, in the Office of the Register of Deeds for Dane County, Wisconsin, as Document No. 2947942, and by a Condominium Plat therefore, and any amendments thereto.