

**COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, WISCONSIN**

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Amended Resolution No. 2994  
Authorizing the Community Development Authority,  
the Chairman and the Executive Director to take  
certain actions to develop 50 units of affordable  
housing known as Burr Oaks Senior Housing  
Project in the Badger-Ann-Park Redevelopment  
Area

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Presented November 11, 2010  
Referred \_\_\_\_\_  
Reported Back \_\_\_\_\_  
Adopted November 11, 2010  
Placed on File \_\_\_\_\_  
Moved By Timothy Bruer  
Seconded By Julia Kerr  
Yeas 7 Nays 0 Absent 0  
Rules Suspended \_\_\_\_\_

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The Community Development Authority of the City of Madison, Wisconsin (the “**Authority**”) is a redevelopment authority organized by the City of Madison, Wisconsin (the “**Municipality**”), under Section 66.1335 of the Wisconsin Statutes, and is authorized by Section 66.1333 of the Wisconsin Statutes, as amended (the “**Redevelopment Act**”):

- a) to acquire any real or personal property necessary or incidental to a redevelopment project and to lease, sell or otherwise transfer such property to a public body or private party for use in accordance with a redevelopment plan;
- b) to enter into contracts determined to be necessary to effectuate the purposes of the Redevelopment Act; and
- c) to issue revenue bonds or other indebtedness; and

The members of the Board of Commissioners of the Community Development Authority of the City of Madison hereby adopt the following resolutions to be effective as of the date set forth above in connection with the development of fifty (50) affordable housing units by Burr Oaks Senior Housing, LLC, a Wisconsin limited liability company ( “**Company** ”), together with the associated appurtenances located at West Badger Road and Cypress Way, Madison, Wisconsin (collectively, the “**Project**”) as more particularly described in **Exhibit A** attached hereto.

**RESOLVED**, that the Company be and hereby is, authorized by the Authority, as its managing member, to take the following actions and sign the following documents, each related to the Project, each action to be taken under such terms and conditions as may be acceptable to the Chair, and Secretary of the Authority (“**Authorized Officers**”):

- a. Acquisition of Land. Causing the Company to enter into a Purchase and Sale Agreement with the Authority, as seller, and the Company, as purchaser (the “**Purchase Agreement**”), and acquiring or causing the Company to acquire the land underlying the Project pursuant to such Purchase Agreement for a purchase price of \$300,000.00; and executing and delivering such Purchase Agreement, all closing certificates, title affidavits, indemnities and other documents required in connection with the acquisition of the land underlying the Project.

- b. Tax Credits. Making application, or causing the Company, to file all forms and take all such actions as may be reasonably necessary to obtain from the Wisconsin Housing and Economic Development Authority an allocation of low-income housing tax credits for the Project.
- c. Investor. Offering, and/or causing the Company to offer, to Wachovia Affordable Housing Community Development Corporation or its designated affiliates (“Wachovia “), a 99.99% membership interest in the Company, negotiating the terms and conditions of such offering, and executing and delivering a term sheet outlining the terms and conditions of Wachovia’s investment in the Company.
- d. Operating Agreement. Causing the Company to enter into an Operating Agreement for the Company (the “Operating Agreement “), pursuant to which, Wachovia shall acquire a 99.99% membership interest in the Company and make capital contributions to the Company in the aggregate amount of approximately \$5,752,339.00.
- e. Related Agreements. Entering into and/or causing the Company to enter into each of the agreements referenced and described in the Operating Agreement including, but not limited to, a tax opinion certificate; a Security Agreement in favor of Wachovia pursuant to which the Authority pledges its membership interest in the Company to Wachovia to secure the Company’s obligations under the Operating Agreement; an Investor Member Asset Management Fee Agreement pursuant to which Wachovia is entitled to receive certain fees for overseeing and monitoring the management and administration of the Company; a Managing Member Asset Management Fee Agreement pursuant to which the Authority is entitled to receive certain fees for the administration, management and direction of the business of the Company; a Right of First Refusal and Purchase Option Agreement pursuant to which the Authority is given a right of first refusal and purchase option to acquire the Project from the Company upon the occurrence of certain events; and a Reimbursement and Assignment Agreement pursuant to which the Company agrees to reimburse each of HDG and Horizon Construction Group, Inc. (“HCG”) for any and all costs incurred in connection with the development of the Project and each of HDG and HCG assign to the Company any and all contracts and agreements they entered into on behalf of the Company.
- f. Construction Loan. All actions taken in connection with (i) negotiating the terms of a construction loan from Wells Fargo Bank, National Association ( “Wells Fargo “) whereby Wells Fargo will provide construction financing for the Project in the aggregate amount of up to \$5,000,000.00; and (ii) executing and delivering all construction loan documents required by Wells Fargo for the Project including, but not limited to, a Promissory Note Secured by Mortgage, a Building Loan Agreement, a Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, an Assignment of Rights to Capital Contributions, a Security Agreement (Rights to Payment), a Repayment and Completion Guaranty (to be executed by the Authority), a Hazardous Materials Indemnity Agreement (unsecured), an Assignment of Construction Agreements, an Assignment of Architectural Agreements and Plans and Specifications, an Assignment of Property Management Agreement, a Disbursing Agreement, subordination agreements and all other loan documents required by Wells Fargo in connection with said construction financing of the Project.

- g. HOME Loan. All actions taken in connection with (i) negotiating and obtaining a \$385,000.00 HOME loan (without shared appreciation or interest) from the Authority and (ii) executing and delivering all loan documents required by the Authority to evidence such HOME Loan including, but not limited to, a promissory note, a loan agreement, a mortgage, a land use restriction agreement and all other documents required by the Authority in connection with the HOME Loan.
- h. Permanent Financing. All actions taken in connection with (i) negotiating and entering into a permanent loan commitment with Wells Fargo which provides for permanent financing for the Project in the aggregate amount of approximately \$1,255,000.00, and (ii) executing said permanent loan commitment and all permanent loan documents for the Project including, but not limited to, a promissory note, a loan agreement, a mortgage and security agreement, an assignment of leases and rents, an environmental indemnity agreement (unsecured), subordination agreements and all other documents required by Wells Fargo in connection with such permanent financing of the Project.
- i. Development Agreement. All actions taken in connection with negotiating and entering into a Development Agreement with HDG dated as of September 1, 2010, pursuant to which HDG has performed and will perform certain services in connection with the development of the Project and the Company will pay HDG the development fees described therein.
- j. Co-Development Agreement. All actions taken in connection with negotiating a Co-Development Agreement with the Authority pursuant to which the Authority shall provide certain development services for the Project; executing and delivering said Co-Development Agreement; and paying all development fees to the Authority as and when required thereunder.
- k. Property Management Agreement. All actions taken in connection with negotiating a property management agreement with Horizon Management Services, Inc. ( "HMS ") pursuant to which HMS will perform certain property management services for the Project; executing and delivering said Property Management Agreement and paying all management fees to HMS as and when required thereunder.
- l. Architect Agreement. All actions taken in connection with negotiating and entering into that certain Abbreviated Form of Agreement Between Owner and Architect dated July 1, 2010, between the Company as Owner and Dimension IV – Madison, LLC as Architect pursuant to which the Company will pay Dimension IV – Madison, LLC a fixed sum of \$137,500.00 for the architect services described therein.
- m. Construction Contract. All actions taken in connection with negotiating a Standard Form of Agreement Between Owner and Contractor with the Company as Owner and HCG as Contractor in the approximate amount of \$4,960,000.00 and executing and delivering said agreement and paying to HCG the amounts required thereunder as and when due.
- n. PBV Housing Assistance Payments Contract. All actions taken in connection with entering into the U.S. Department of Housing and Urban Development, Section 8 Project-Based Voucher Program and executing and delivering a Housing Assistance Payment Contract in connection therewith and all other documents and applications related thereto.

- o. Professionals. Engaging or causing the Company to engage, such attorneys, accountants, appraisers, architects, builders, contractors and other professionals as have been engaged to date or may be necessary to engage in connection with the construction and development of the Project.
- p. Generally. Do all other things and take all other actions which the Authorized Officer may determine to be necessary or convenient to complete the transactions described above and all other aspects of the Project development, construction and financing.

**RESOLVED**, that the Authority be and hereby is authorized to take the following actions and sign the following documents, each related to the Project, each action to be taken under such terms and conditions as may be acceptable to the Authorized Officer:

- a. Sale of Land. Entering into a Purchase and Sale Agreement with the Authority, as seller, and the Company, as purchaser (the “Purchase Agreement”), and selling to the Company the land underlying the Project for a purchase price of \$300,000.00; executing and delivering such Purchase Agreement, a quit claim deed conveying the land to the Company, all closing certificates, title affidavits, indemnities and other documents required in connection with the sale of the land to the Company.
- b. Operating Agreement. Entering enter into an Operating Agreement for the Company (the “Operating Agreement “), pursuant to which, the Authority shall be the managing member of the Company and Wachovia shall acquire a 99.99% membership interest in the Company.
- c. Repayment and Completion Guaranty. Entering into a Repayment and Completion Guaranty in favor of Wells Fargo and guarantying certain obligations of the Company under the construction loan documents for the Project.
- d. Accepting HOME Loan from City of Madison. All actions taken in connection with (i) negotiating and obtaining a \$385,000.00 HOME loan (without shared appreciation or interest) from the City of Madison and (ii) executing and delivering all loan documents required by the City to evidence such HOME Loan including, but not limited to, a promissory note, a loan agreement, a mortgage, a land use restriction agreement and all other documents required by the City in connection with the HOME Loan.
- e. Advancing HOME Loan Proceeds as a Loan to the Company. All actions taken in connection with advancing the proceeds of the HOME Loan received from the City of Madison as a \$385,000.00 loan to the Company (without shared appreciation or interest).
- f. Certified Survey Map; Easements. All actions taken in connection with platting the land on which the Project is to be constructed and granting easements to public utilities and others which are necessary for the development of the Project; executing and recording a Certified Survey Map for the Project and any and executing and delivering all utility easements and other easements required pursuant to said Certified Survey Map or otherwise.

- g. Generally. Do all other things and take all other actions which the Authorized Officer may determine to be necessary or convenient to complete the transactions described above and all other aspects of the Project development, construction and financing.

**RESOLVED**, that the Authorized Officers are, and hereby are authorized, empowered and directed, on behalf of the Authority, without attesting signature or seal, to execute any and all of the documents referenced above.

**RESOLVED**, that the Authorized Officers be, and hereby are authorized, empowered and directed, on behalf of the Authority, without attesting signature or seal, to execute all other documents and to take all other actions deemed necessary to carry out the intent of the foregoing.

**RESOLVED**, that the Authorized Officers be, and hereby are, authorized and directed in the Authority's name and in its behalf, to do and perform any and all further things and acts, and to execute, without attesting signature, and deliver on behalf of the Authority, any and all contracts, agreements, instruments, certificates or other documents, including each of those described above, which either may determine to be necessary or convenient to implement the intendment of the foregoing resolutions, or any of them, any such determination to be inclusively evidenced by the doing or performing of any such act thing or the execution and delivery of any such papers.