

COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF MADISON, WISCONSIN

Resolution No. 4635

Authorizing execution of a Development Agreement with EC Residential and/or its assigns for the public purpose of assisting construction of multi-family affordable housing and parking stalls at the property located at 5546 Element Way in the University Research Park.

Presented November 26, 2024
Referred _____
Reported Back _____
Adopted _____
Placed on File _____
Moved By _____
Seconded By _____
Yeas _____ Nays _____ Absent _____
Rules Suspended _____
Legistar File Number _____

RESOLUTION

WHEREAS, the City of Madison (“City”), the Community Development Authority of the City of Madison (“CDA”), and EC Residential, LLC and/or its assigns (“Developer”) are parties to a certain Term Sheet (“Term Sheet”) outlining the principal terms and conditions of agreements for the public purpose of assisting construction of 197 multi-family affordable housing units and 151 parking stalls (“Project”) at the property located at 5546 Element Way in the University Research Park, in Tax Incremental District 46, in the City of Madison (“Property”); and

WHEREAS, on or after December 10, 2024 (File I.D. 86170), the City of Madison Common Council may act to authorize a \$4,365,000 grant to the CDA for the purpose of providing an incentive to Developer that the project remains affordable beyond the mandatory 15-year affordability period (“the CDA Incentive”). Such CDA Incentive includes a ground lease payment, an option to purchase, and payment toward the purchase of the Project by CDA after the affordability period expires as set forth in the Term Sheet attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the CDA Chair and Executive Director are hereby authorized to negotiate and execute a grant agreement with the City to accept funds for the CDA Incentive, and a Development Agreement between CDA and Developer substantially based upon the applicable terms of that certain Term Sheet, which Agreement shall include the following general elements and terms of CDA participation in the Project:

1. CDA Grant, Land Lease Assignment. Contingent upon Sections 4, 5, 6 and 7 below, the CDA shall pay, in the form of a grant to Developer, the net present value of a 49-year land lease (“Land Lease”) between University Research Park and Developer, in the amount of \$2,400,000 and Developer shall assign said prepaid Land Lease to the CDA.
2. New Land Lease Executed. The CDA shall execute a new land lease to Developer in the amount of \$1.00 per year for 49 years, with all remaining terms of said new land lease similar to those of said assigned prepaid Land Lease to the CDA.
3. CDA Option to Purchase the Project and Purchase Price Deposit. CDA shall pay Developer \$500,000 (the “Option Fee”) for an option to purchase the Project and make a payment to the Developer in the amount of \$1,465,000 (the “Purchase Price Deposit”), which shall be a

portion of the future value of the ground lease interest and credited against the "Market Price" as defined below. Said Purchase Price Deposit and Option Fee shall be credited toward the total estimated purchase price and set forth in an agreement between CDA and Developer, to the City and CDA's satisfaction. If the CDA exercises its option to purchase the Project, the final purchase price of the Project shall be determined by appraisal and a Purchase and Sale Agreement executed between CDA and the Developer.

a. Option Terms.

- i. The Developer and CDA agree that the Developer anticipates selling the Project in Lease year 18, which is approximately the 15th year of operating the Project (the "Operating Period"). Prior to any sale or transfer of the Project by the Developer, including a transfer resulting from bankruptcy, in any year (but no earlier than the end of the Operating Period unless resulting from an involuntary transfer), the CDA shall have the option to purchase the ground lease interest held by the Developer, in the Property and Project, at a purchase price equal to the Market Price, defined below, minus the amount of the Option Fee and Purchase Price Deposit (the "Purchase Price"), but no less than the Minimum Purchase Price (as defined below), and subject to normal and customary prorations.
- ii. After the end of the Operating Period, if (1) Developer shall notify the CDA in writing of its desire to sell the Project or (2) the CDA shall notify Developer in writing of the CDA's desire to evaluate the option, then the parties shall calculate the Market Price as defined below. CDA will have a period of ninety (90) days after determination of the Market Price and the Minimum Purchase Price to exercise the option and elect to close on the acquisition of the ground lease interest held by the Developer, in the Property and Project. If CDA fails to exercise the option within such period, the option shall expire, the parties shall terminate the Option Agreement of record, the Option Fee shall be retained by Developer and Developer shall refund the Purchase Price Deposit to CDA upon a sale or cash-out refinancing of the Project. If the CDA exercises its rights under the option, then the additional terms and conditions of the purchase and sale shall be set forth in a real estate purchase and sale agreement, wherein: (x) the Purchase Price Deposit shall be returned to the CDA in the event the closing does not occur; and (y) the Purchase Price shall not be less than the Minimum Purchase Price.
- iii. The "Market Price" is defined as the fair market value of the Project at the end of the Operating Period, as determined by appraisals engaged by Developer and CDA. In determining Market Price, the appraisers will take into account the land use restrictions, and rent restrictions, outstanding debts or liens on the property, regardless of the holder of such restriction, remaining term of the Ground Lease, and any and all other considerations that may exist. If the appraisers engaged by Developer and CDA are not able to agree on a fair market value, the first two appraisers will engage a third appraiser to determine the fair market value, and the average of the two closest determinations of fair market value shall be binding on the parties as the Market Price. Notwithstanding anything to the contrary, the Purchase Price shall be no less than the amount resulting in a gross residual profit to Developer before taxes of \$4,000,000 (the "Minimum Purchase Price").

4. TID 46 Project Plan Amendment. The City shall amend the Project Plan of TID 46 to provide a grant of tax increment from TID 46 from the City to CDA in the amount of \$4,270,000

for the land lease, prepayment and option agreement for the purpose of securing affordable housing in the Project.

5. 2025 Capital Budget Amendment – CDA. Funding for the CDA shall be contingent upon: (1) the City of Madison’s Common Council adopting a 2025 Capital Budget Amendment that authorizes the distribution of TID 46 tax increment in the amount of the CDA Incentive to the CDA; (2) the Joint Review Board approving an amendment to the TID 46 Project Plan authorizing the distribution of the CDA Incentive to the CDA, and the use of the CDA Incentive for the purposes described in this Section 5; and (3) the CDA authorizing the terms and conditions of this Section 5. The date that the last of these three items have been completed is referred to herein as the “Approval Date”.

6. No TID 46 Project Plan Amendment Certification. In the event that the TID 46 Project Plan Amendment is not certified by DOR on or about May 30, 2026, the City shall make its best efforts to secure TID amendment certification. If said City effort is unsuccessful in 2026, the CDA Incentive, or portion thereof actually expended, shall be repaid as a conventional loan on terms agreed upon between the parties.

7. Tenant Selection Plan. As a condition of an agreement between the CDA and Developer, Developer shall conform to the City of Madison’s Tenant Selection Plan (TSP) requirements for the Project, as described in the City of Madison Affordable Housing Fund Tax Credit RFP program.

BE IT FURTHER RESOLVED that CDA execution of said Development Agreement shall be contingent upon Common Council approval of the CDA Incentive and execution of a Lease Incentive Agreement between the City and CDA.

BE IT FINALLY RESOLVED that the CDA Chair and Executive Director are hereby authorized to sign, accept, and record any and all documents and legal instruments required to complete the transactions contemplated in this resolution, on a form and in a manner that has been approved by the City Attorney.