

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

August 26, 2010

Resolution No. 2976

**AMENDED RESOLUTION APPROVING THE AMENDMENT OF THE TERMS
OF A LETTER OF INTENT AND DEVELOPMENT AGREEMENT WITH
HORIZON DEVELOPMENT GROUP, INC. TO REDEVELOP CDA-OWNED
PROPERTY IN THE BADGER ANN PARK REDEVELOPMENT AREA**

PREAMBLE

On April 8, 2010, the Community Development Authority approved Amended Resolution No. 2951, which authorized the Chair and Executive Director to execute a Letter of Intent and to enter into a Development Agreement with Horizon Development Group, Inc or its associated limited liability company (Developer). Since the date of that approval, Horizon has created a limited liability company named Burr Oaks Senior Housing, LLC which will own, construct, manage and maintain the Burr Oaks Senior Housing Project. Amended Resolution No. 2951 sets forth the material terms of the Letter of Intent and Development Agreement between the parties. One such term required the Authority to secure \$385,000 additional funds for the Project. The Authority has applied for a loan of \$385,000 from the City's HOME Program, and the Common Council is scheduled to act on this request at its September 7th meeting. If the Council approves of the loan to the Authority, this requirement can be removed from the Letter of Intent. The Developer has approached the Authority regarding repayment of Developer-funded predevelopment costs in an amount not to exceed \$182,867, should the Project not close. If the Project does close, Developer will reimburse itself from tax credit proceeds for these pre-development costs. This Resolution will authorize the CDA to reimburse Developer for predevelopment costs if the Project does not close, provided the Common Council authorizes such funding. In addition, the investor in the Project has requested that the cash flow distribution be amended, as set forth below. Under the original arrangement, the Authority was to receive 90% of the cash flow and the investor 10%.

NOW THEREFORE, BE IT RESOLVED, that the Authority approves of the amendment of the terms of a Letter of Intent and Development Agreement between the Authority and Developer as follows:

1. If the Project does not close, the Authority shall reimburse Developer in an amount of up to \$182,867 for the following expenses: architect design fees and reimbursables; legal fees; accounting fees; soils and environmental reports; municipal application fees;

WHEDA credit reservation and post reservation fees; and title work. The CDA's reimbursement is contingent upon Common Council approval of the funding.

2. Paragraph 1.c is amended to delete the requirement that the Authority secure an additional \$385,000 of funding for the Project, provided the Common Council approves the Resolution authorizing the HOME fund loan to the Authority.

3. Paragraph 1.h. is amended to provide that cash flow shall be distributed as follows: the Authority and investor shall each receive an annual asset management fee of \$7500 from cash flow, then 50% of all remaining cash flow shall be distributed to Developer or its affiliate as an incentive property management fee, and the other 50% of remaining cash flow shall be distributed 99.99% to the investor and 0.01% to the Authority.

4. Paragraph 1.i is amended to delete the reference to Developer's receipt of 10% of annual cash flow.

NOW THEREFORE, BE IT FURTHER RESOLVED, that the Chair and Executive Director are hereby authorized to execute an amended Letter of Intent and to execute a Development Agreement with Developer to contain the terms as stated in Amended Resolution No. 2951 and those stated herein, all in a form to be approved by the City Attorney.