



A G E N D A
CITY OF WAUPUN CDA SPECIAL MEETING
Waupun City Hall – 201 E. Main Street, Waupun WI
Wednesday, June 14, 2023 at 8:00 AM

The Waupun Community Development Authority will meet In-person, virtual, and teleconference. Instructions to join the meeting are provided below:

Virtual: <https://us02web.zoom.us/j/86858338835?pwd=WGQwU0Y4Wnh0RnRmVlBlbjF6WXI4dz09>

Meeting ID: 868 5833 8835

Passcode: 384202

Phone: 312 626 6799 US (Chicago)

CALL TO ORDER

ROLL CALL

CONSIDERATION - ACTION

1. Review and Approve Sale Transfer of 450 E Franklin St.

ADJOURNMENT

Upon reasonable notice, efforts will be made to accommodate disabled individuals through appropriate aids and services. For additional information, contact the City Clerk at 920-324-7915.



AGENDA SUMMARY SHEET

MEETING DATE: 6/14/23

TITLE: Review and Approve Sale Transfer of 450 E Franklin St.

AGENDA SECTION: DISCUSSION

PRESENTER: Kathy Schlieve

DEPARTMENT GOAL(S) SUPPORTED <i>(if applicable)</i>	FISCAL IMPACT	
Economic Vitality	N/A	

ISSUE SUMMARY

The CDA currently holds a Developer’s Agreement with the owners of Whispering Oaks Apartments, located at 450 E Franklin St. The property is being sold to Jason Tracy, Sole Member, W4728 Hogsback Rd, Juneau, WI 53039. A Developer’s Agreement is in place that currently requires property owners to pay a guaranteed tax valuation of \$2,000,000. The difference between the actual tax valuation and the guarantee of \$2,000,000 is multiplied by the current Mil rate and is special assessed to the tax bill annually through 2025. Under section 5.2 of the current agreement the sale transfer must be approved by the CDA. Furthermore, we recommend that the CDA impose a requirement that the new owner be contractually bound to the terms of the Developer Agreement as outlined through the duration of the agreement.

STAFF RECCOMENDATION:

ATTACHMENTS:

- Current Developer’s Agreement

MOTIONS FOR CONSIDERATION:

Motion to approve the sale transfer of Whispering Oaks Apartments, located at 450 E Franklin St to Jason Tracy, Sole Member, W4728 Hogsback Rd, Juneau, WI 53039, contingent on the assignment of the current Developer Agreement terms to Jason Tracy upon transfer of the property.

RESOLUTION FOR AMENDED DEVELOPER AGREEMENT

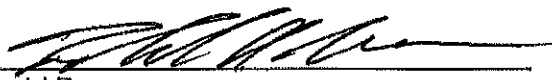
The Senior Community Center of Waupun, LLC, a Wisconsin limited liability company ("the company"), adopts the following resolutions in accordance with Wisconsin Law.

IT IS RESOLVED:

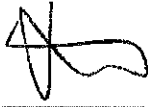
1. The company is authorized to enter into an Amended Developer Agreement with the City of Waupun, acting through its Community Development Authority, which Agreement amends an existing Developer Agreement between these parties dated August 15, 2007. An accurate copy of the Amended Developer Agreement is attached and incorporated by reference here. Todd Brunner is authorized to execute all necessary documents in order to execute this Agreement and carry out the company's obligations with respect to this Agreement.

2. Todd Brunner, Dennis Witthun and Robert Simonson individually warrant and represent to all those relying on this resolution that they constitute all of the members of the company; that the company is in good standing with the State of Wisconsin, and that they are fully authorized to take all action authorized by this resolution pursuant to the company articles of organization, any applicable members' or operating agreement between them and the provisions of Wisconsin law.

Dated this 8 day of Feb, 2010.



Todd Brunner
Member



Dennis Withun
Member



Robert Simonson
Member

AMENDED DEVELOPER AGREEMENT
Senior Community Center of Waupun, LLC

This Amended Developer Agreement is made by and between the Waupun Community Development Authority, ("the CDA") and Senior Community Center of Waupun, LLC a Wisconsin limited liability company ("the Owner").

Recitals

The City has established Tax Incremental District #3, City of Waupun (the "District" or "TID #3"), as evidenced by action of the Joint Review Board, City Planning Commission and City Council action dated May 31, 2005.

The TIF plan permits the payment of development incentive payments and municipal improvements for the "Project," as deemed below, to be reimbursed from the property tax increments for the Project.

The CDA is authorized, by § 66.1105 of the Wisconsin Statutes, to pay certain project costs. The CDA is also authorized by § 66.1105(3)(e) of the Wisconsin Statutes to enter into any contract or agreement necessary or convenient to implement the provisions and effectuate the purposes of a project plan for the District. Prudent management by the CDA requires that financial incentives provided to the Owner be accompanied by assurances to the CDA, and the City, that the Project will be developed substantially as presented to the CDA.

On August 15, 2007 the CDA and the Owner entered into a developer agreement ("the developer agreement") with respect to a project site identified as tax parcel WPN-14-15-99-EA-251-00 ("the Project Site"). The CDA and the Owner wish to amend the terms of the developer agreement as provided here.

THEREFORE, for a valuable consideration, the CDA and Owner agree to amend their pending developer agreement as follows:

Section 1. Incentive Payments.

1.1. Owner Representations as to Project Completion. The Owner has provided the CDA with a list of all subcontractors and others to whom funds are currently owed with respect to the Project, together with the approximate amount of such indebtedness. The Owner has further provided to the CDA an estimate as to such additional funds that are necessary to complete the Project. This information is set forth in specific detail in Appendix "A" to this amended agreement, which is incorporated here by reference. As to this appendix, the Owner represents and warrants to the CDA that all information with respect to subcontractor indebtedness is complete and accurate to the best of the Owner's knowledge, and that all estimates as to additional expenses necessary to complete the Project are provided in good faith, and are based on the best information available to the Owner as of this date. The Owner further represents and warrants to the CDA that the Owner has sufficient private funds available to complete the Project, subject to application of the incentive payment identified below to the indebtedness identified on Appendix "A."

1.2. Revised Incentive Payment. The provision of redevelopment incentive payments to be made to the Owner, as identified in subsection 5.1 and Exhibit 2 of the developer agreement dated August 15, 2007 (consisting of the reimbursement of a portion of the property taxes paid on Project lands for fifteen years) is revoked in its entirety. In lieu of such periodic incentive payments, the CDA shall make payment of a total of three hundred thousand dollars (\$300,000.00) on the terms and conditions as

provided in Subsections 1.3 and 1.4 of this amendment. This payment shall be the exclusive incentive payment from the CDA with respect to the Project, and no other incentive of any kind shall be provided by the CDA with respect to the Project, nor shall any additional payment or credit be inferred from the developer agreement as amended, or otherwise.

1.3. Reimbursement of CDA Administrative Expenses. With respect to the revised incentive payment identified in Subsection 1.2 above, the sum of twenty-five thousand dollars (\$25,000.00) of such funds shall be paid to the CDA to cover municipal and other administrative expenses with respect to the Project. Execution of this amendment by the Owner shall constitute full authorization for the disbursement of such funds to the CDA for this purpose. Such funds may be disbursed to the CDA immediately on execution of this amendment, or periodically as the CDA may determine. No accounting or other documentation shall be provided to the Owner with respect to the application of such administrative expenses, or in any other respect.

1.4. Additional Fund Disbursement. With respect to the revised incentive payment identified in Subsection 1.2 above, the sum of two hundred and seventy-five thousand dollars (\$275,000.00) of such funds shall be paid by the CDA directly to the subcontractors and others to whom Project debt is owed as identified on Appendix "A," and for such other Project indebtedness as may be agreed on by the CDA in writing. Such funds may be disbursed through a title company selected by the CDA, at the option of the CDA, and shall be subject to obtaining such lien waivers and other supporting documentation from the Owner and various subcontractors as may be prescribed by the CDA. The Owner agrees to fully cooperate with the CDA and any title

company selected by the CDA with respect to the documentation and disbursement of such funds. The Owner agrees to fully indemnify and hold the CDA harmless with respect to disbursement of such funds by the CDA, or any title company selected by the CDA, provided that such action is taken in good faith.

Section 2. Project Completion.

2.1. Project Completion. The Owner shall diligently pursue project completion. The Owner shall have not less than twenty-four (24) separate residence units completed and available for occupancy no later than June 30, 2010. The Owner shall have all remaining project work completed, including without limitation all finishing and landscaping, no later than August 31, 2010.

2.2. Default Surcharge. The CDA and the Owner acknowledge that project completion within the timeline set forth above is a principal reason for the CDA to agree to this amendment. In order to insure timely compliance, the Owner agrees to pay to the CDA a surcharge of one hundred dollars (\$100.00) per day for each day after ~~May~~ ^{June} 31, 2010 that all residences are not completed and available for occupancy; and for each day after August 31, 2010 that all remaining project work is not completed. This surcharge shall be in addition to any other contractual or other remedy available to the CDA in the event of the Owner's default with respect to the developer agreement as amended.

Section 3. Guaranteed Tax Increment.

3.1. Tax Increment Guarantee. Commencing with the year ~~2010~~ ²⁰¹¹ and continuing through the year 2025, the Owner shall pay the difference between the guaranteed tax increment and the actual tax increment levied against the Project Site real estate. In this

respect, the "guaranteed tax increment" shall mean the annual applicable mil rate multiplied by Two Million Dollars (\$2,000,000.00) of tax assessable value of all land and improvements. The Owner shall not be entitled to any credit or reimbursement whatsoever if the actual tax increment exceeds the guaranteed tax increment in any year during this period of time.

3.2. Guaranteed Payment Collected by Special Assessment. All guaranteed tax increment payments due with respect to Section 3.1 above shall be added as special assessments to the property and shall be included with the real estate tax statement for the Project Site real estate, as provided in Section 4.1 below.

Section 4. Performance Guarantee.

4.1. Special Assessment Waiver. In consideration of the revised incentive payment identified in Section 1 above, and the application of such payment to the Project Site development and improvements, the Owner acknowledges and admits that such development constitutes an improvement that directly benefits the Project Site real estate, and the Owner thereby consents to the levy of special assessment against the Project Site real estate under § 60.60(18) of the Wisconsin Statutes for any and all costs, expenses, charges or guaranteed payments due with respect to this amended developer agreement, including without limitation, any guaranteed tax increment payment due under Section 3 above at any time during the term of this developer agreement as amended. The Owner waives any further notice of special assessment with respect to all such costs, expenses, charges or guaranteed payments that may be due with respect to this amended developer agreement, in

accordance with § 66.60(18) of the Wisconsin Statutes and consent that the actual cost of charges be levied and assessed against the above described property.

4.2. Personal Guarantee of Members. As additional consideration for this amendment, Todd Brunner, Dennis Witthun and ~~Robert Simonson~~ shall each execute unlimited personal guarantees with respect to the Owner's full performance of all terms and conditions set forth in this developer agreement as amended. The personal guarantees shall be in such form as prescribed by the CDA.

Section 5. Transfer of Interest.

5.1. Owner Interest Modification. The CDA consents to an amendment of the membership interest in the Owner limited liability company to reflect the following: Todd Brunner, 80%; Dennis Witthun, 13%; and Robert Simonson, 7%.

5.2. Warranty of Entity Non-Transferability. The CDA has entered into this Developer Agreement with Owner, on the basis of the identity of parties who own Senior Community Center of Waupun, LLC, and on the strength of their experience. Therefore, Owner hereby warrants and represents to CDA that the Owners of all interests in Owner are as shown in Subsection 5.1 above. The Owner may not transfer: (a) any interest in the Land or Senior Community Center of Waupun, LLC; (b) any interest in the Project; (c) its rights under either this developer agreement as amended; (d) any interest in Owner, at any level in excess of 10% of the issued and outstanding membership interests in Owner; or (e) control of Owner without the prior written consent of the CDA. Members of Senior Community Center of Waupun, LLC may be allowed to purchase membership interests in the entity amongst themselves. Owner shall not change management companies without the prior written consent of the CDA, which consent

shall not be unreasonably withheld. In any event, any permitted transferee must agree to be bound by the terms of this developer agreement, as amended here.

Section 6: Additional Provisions.

6.1. Option to Terminate Agreement Rescinded. The Owner's option to terminate this agreement in accordance with Section 7.4 of the developer agreement is rescinded with the execution of this amendment.

6.2. Ratification of Terms. Except as otherwise specifically provided in this amendment, all of the remaining terms and conditions of the developer agreement between the CDA and the Owner dated August 15, 2007 are ratified and affirmed.

6.3. Record Notice of Agreement. The CDA may record a memorandum of this agreement with the Fond du Lac County Register of Deeds in order to provide public notice of the terms of the developer agreement as amended.

Dated this day of ^{FEB. 16 EC JAW} ~~January~~, 2010.

**COMMUNITY DEVELOPMENT AUTHORITY
OF WAUPUN, WISCONSIN**

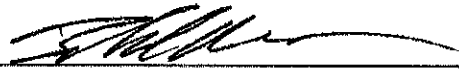
By: Jodi Steger
Jodi Steger
Mayor

Kyle Clark
Kyle Clark
Clerk-Treasurer

- Angie Hull

Dated this 8 day of ^{Feb} ~~January~~, 2010.

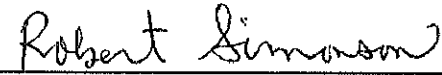
**SENIOR COMMUNITY CENTER OF
WAUPUN, LLC**

By: 

Todd Brunner
Member



Dennis Withun
Member



Robert Simonson
Member

AMENDED DEVELOPER AGREEMENT

Document Number:

Return Address: Vande Zande & Kaufman, LLP
Post Office Box 430
Waupun, WI 53963
(920) 324-2951
dan@vklaw.us

Parcel ID Number: see attached Exhibit "A"

This Amended Developer Agreement is made by and between the Waupun Community Development Authority, ("the CDA") and Whispering Oaks Apts. LLC a Wisconsin limited liability company ("Whispering Oaks").

RECITALS

The City has established Tax Incremental District #3, City of Waupun (the "District" or "TID #3"), as evidenced by action of the Joint Review Board, City Planning Commission and City Council action dated May 31, 2005.

The District plan permits the payment of development incentive payments and municipal improvements for the "Project," as described in the Developer Agreement identified below, to be reimbursed from the property tax increments for the Project.

The CDA is authorized, by § 66.1105 of the Wisconsin Statutes, to pay certain project costs. The CDA is also authorized by § 66.1105(3)(e) of the Wisconsin Statutes to enter into any contract or agreement necessary or convenient to implement the provisions and effectuate the purposes of a project plan for the District.

On August 15, 2007 the CDA and the Senior Community Center of Waupun, LLC entered into a Developer Agreement, as subsequently amended (“the Developer Agreement”), with respect to a project site identified as tax parcel WPN-14-15-99-EA-251-00 (“the Project Site”). The Project Site is more particularly described on the attached Exhibit “A,” and is incorporated here by reference.

Pursuant to the Developer Agreement, the CDA provides development incentive payments and municipal improvements for the Project, to be reimbursed from the property tax increments for the Project, based on a guaranteed minimum tax increment for the Project Site to be paid through the year 2025.

The Developer Agreement further provides, in pertinent part, that an Owner may not transfer any interest in the Project Site without the prior written consent of the CDA.

The CDA and Whispering Oaks wish to amend the terms of the Developer Agreement as provided here.

THEREFORE, for a valuable consideration, the CDA and Owner agree to amend their pending developer agreement as follows:

1. Consent to Transfer. The CDA consents to the immediate transfer of the Project Site to Whispering Oaks, contingent on execution by Whispering Oaks of this Amended Developer Agreement.

2. Tax Increment Guarantee. Commencing immediately and continuing through the year 2025 (to be paid in 2026), Whispering Oaks shall pay the difference between the guaranteed tax increment and the actual tax increment levied against the Project Site real estate, as specified in the Developer Agreement as previously amended.

3. Termination of Developer Agreement. The Developer Agreement as amended will expire and be terminated by mutual agreement of the parties immediately after full payment is made by Whispering Oaks of the 2025 guaranteed tax increment, and on full compliance by Whispering Oaks with respect to any and all remaining terms of the Developer Agreement.

4. Release on Record Title. The Developer Agreement and any related notice of record concerning the Developer Agreement shall be released from record title to the Project Site with no requirement that the CDA or Whispering Oaks execute or record any additional documentation other than this Amendment, unless notice of non-compliance or extension is recorded with Fond du Lac County by the CDA on or before December 31, 2026.

5. Ratification of Terms. Except as otherwise specifically provided in this amendment, all of the remaining terms and conditions of the developer agreement between the CDA and Whispering Oaks dated August 15, 2007, as subsequently amended, are ratified and affirmed.

6. Record Notice of Agreement. The CDA may record this Amendment with the Fond du Lac County Register of Deeds in order to provide public notice of the terms of the Developer Agreement as amended here.

[Signature Pages and Exhibit Follow]

Dated this ____ day of June, 2023.

Whispering Oaks Apts. LLC

By: _____
Jason R. Tracy
Authorized Member

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss:
_____ COUNTY)

Personally appeared before me this day and year above written, Jason R. Tracy, as authorized Member of Whispering Oaks Apts. LLC, a Wisconsin limited liability company, to me know to be the person who executed this Agreement and acknowledged the same.

Notary Public, Wisconsin
My Commission:

This Amended Developer Agreement was drafted by Attorney Daniel L. Vande Zande

EXHIBIT "A"

PROPERTY DESCRIPTION

Lot 2 of Certified Survey Map No. 6317 as recorded in the Register of Deeds office for Fond du Lac County in Volume 43 of Certified Survey Maps on Pages 16 and 16A as Document No. 749568, corrected by Affidavit of Correction, recorded January 24, 2003 as Document No. 770892, and being parts of Lots 1, 2, 3, 4, 5, 7, 8, 9, 10 and Part of Lot 6 in Block 24 of Plat of East Waupun and Outlots 41, 42, 48, 49 and part of Lot 43 of North Ward Outlots in the City of Waupun, Fond du Lac County, Wisconsin.

Property Address: 450 East Franklin Street, Waupun, WI 53963

Tax Parcel Number: WPN-14-15-99-EA-251-00