



**Memorandum**

To: Administration Committee  
From: Greg Keil, CDD *GK*  
Date: February 13, 2014  
RE: Second Amendment to Development Agreement with Cypress Homes and Realty, Inc.

City staff has been working with the Redevelopment Authority of the City of Menasha to identify options to induce development in the Lake Park Villas Phase II Homeowner's Association. Most recently, we have been contacting builders/developers to offer various incentives with the goal of having one or more model homes constructed to aid in marketing and promotion efforts. Cypress Homes, Inc., the developer of the Cottages at Lake Park, has agreed to purchase a lot and undertake the construction of a model home if it is granted certain incentives from the city and the RDA.

The requested incentive from the city is the acceleration of a portion of the incentive payment for the Cottages at Lake Park development. The total incentive to be paid under the existing development agreement is \$175,000. This incentive is to be paid out over several years commencing in 2013, provided certain thresholds are met. The threshold will be met in 2014, and the first incentive payment will be owed to Cypress and is to be paid before September 1. The estimated amount of the 2014 incentive payment is \$20,000. The balance of the incentive owed is to be paid by 2018, unless a threshold value of \$2.8 million is not reached by December 31, 2017.

Cypress is requesting that the 2014 development incentive be in the amount of \$100,000 in order to enable it to finance the construction of a model home in Lake Park Villas. Toward that end, staff has prepared the attached Second Amendment to Development Agreement with Cypress Homes and Realty, Inc.

Staff recommends that the Administration Committee give favorable consideration to the request and recommend approval to the Common Council. Pending approval, the RDA will enter into negotiations with Cypress to complete the lot sale and transfer.

The incentive payment will be made out of tax increment from TID #12. Since development is in the early stages of TID #12, there is insufficient increment being generated by the district to meet all of its expenses. Therefore, TID #12 will be running a deficit for several years. This deficit will be met by utilizing increment from other districts to meet TID #12 obligations. The districts temporarily filling the TID #12 gap will be replenished by increment accrued by TID #12 in later years.

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT AMONG  
CITY OF MENASHA AND CYPRESS HOMES AND REALTY, INC.  
DATED JUNE 20, 2011**

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT, executed in Menasha, Wisconsin on this \_\_\_ day of \_\_\_\_\_, 2014, is made effective between the City of Menasha and Cypress Homes, Inc. and is made with reference to the Development Agreement dated June 20, 2011.

1. As to ARTICLE IV, CITY OBLIGATIONS, SECTION 4.02.5, after the sentence "DEVELOPER to be paid an annual payment made on or before September 1, commencing in 2013, equal to 75% of AVAILABLE TAX INCREMENT received by CITY until \$175,000 is paid out or until 2018, whichever occurs first." ADD the following: "\$100,000 of the \$175,000 of DEVELOPER's earned financial incentive may be accelerated and paid to DEVELOPER upon DEVELOPER'S purchase of a lot in the Lake Park Villas Phase II Homeowner's Association from the Redevelopment Authority of the City of Menasha, if the purchase occurs on or before March 31, 2014. In that event, annual payments equal to 75% of AVAILABLE TAX INCREMENT received by CITY will commence in 2015, rather than 2013, until \$175,000 is paid out or until 2018, whichever occurs first."
2. All other terms and conditions set forth in the Development Agreement dated June 20, 2011, as amended, shall remain the same.

IN WITNESS WHEREOF, the undersigned have executed this Second Amendment as of the date first written above:

**City of Menasha**

By: \_\_\_\_\_

Donald Merkes, Mayor

By: \_\_\_\_\_

Deborah A. Galeazzi, City Clerk

**Cypress Homes, Inc.**

By: \_\_\_\_\_

Mike Blank, President

shall provide written notice to the CITY whereupon the CITY shall take custody of said records assuming such records are not already maintained by the CITY. This provision shall survive termination of this AGREEMENT.

SECTION 3.09 Repair and/or Replacement of Infrastructure. DEVELOPER shall repair and/or replace any damaged CITY infrastructure or other CITY property that may occur as a result of the Development.

SECTION 3.10 Prevailing Wages. DEVELOPER shall pay all applicable prevailing wages as required by Wisconsin law.

## ARTICLE IV

### CITY OBLIGATIONS

SECTION 4.01 The CITY shall be responsible for the installation of curb and gutter and final paving, which will not be constructed earlier than one (1) winter season following completion of the development project. The CITY, in its sole discretion, will assess each property/lot owner the cost and expenses associated with these public improvements in accordance with CITY ordinances and state statutes.

SECTION 4.02 Provision of Tax Increment Financial Incentive. In order to induce DEVELOPER to undertake the DEVELOPMENT within proposed TID #12, the DEVELOPER has requested and the CITY may be required to make available financial incentive to the DEVELOPER in a total amount not to exceed \$175,000, for the purpose of implementing the proposed TID #12 Project Plan and this AGREEMENT (the "CITY Contribution"). The CITY Contribution is made pursuant to Sections 66.1105(2)(f)1 of the Wisconsin Statutes, and shall be made available in the amount as follows:

SECTION 4.02.1 DEVELOPER agrees to advance funds for project costs, including costs associated with the installation of the Public Infrastructure. The CITY shall pay the DEVELOPER financial incentive under the terms of this AGREEMENT with funds to be made available upon verification of the Tax Increment increase as defined below.

SECTION 4.02.5 Earned financial incentive based on AVAILABLE TAX INCREMENT may be distributed to the DEVELOPER according to the schedule set forth herein when and only when the 10<sup>th</sup> residential unit in Development Area "D" is completed and certificate of occupancy have been issued: DEVELOPER to be paid an annual payment made on or before September 1, commencing in 2013, equal to 75% of AVAILABLE TAX INCREMENT received by CITY until \$175,000 is paid out or until 2018, whichever occurs first.

#### SECTION 4.02.6 CONDITIONS TO PAYMENT OF CITY CONTRIBUTION

If on or before December 31, 2017, the DEVELOPER has not met the Minimum Development or threshold value of \$2.8 million, the CITY shall not be required to continue to pay DEVELOPER the City contribution.

SECTION 4.02.7 No City contribution to DEVELOPER provided for in this AGREEMENT shall be paid or deemed due and owing to DEVELOPER for any year in which any property tax pertaining to the Development Property or any portion thereof which is under the ownership and control of the DEVELOPER, is not timely paid. In the event of any delinquency the CITY may give the DEVELOPER 30 days to cure. If the DEVELOPER fails to cure, the City contribution shall be withheld in that year. Nothing in this AGREEMENT shall

in any way affect the City's right to enforce collection of property taxes in the manner provided by law.

SECTION 4.03 CERTIFICATION OF COMPLETION. Upon completion and review of the Development Improvements by the CITY, the CITY shall provide the DEVELOPER with an appropriate recordable instrument certifying that the improvements have been made in accordance with this AGREEMENT and the project plans and any amendment or modifications thereto.

SECTION 4.04 CITY PERFORMANCE SUBJECT TO REQUIRED GOVERNMENT APPROVALS. The DEVELOPER acknowledges that various of the specific undertakings of the CITY described in this AGREEMENT require approvals from the City's Common Council and/or Planning Commission as well as from governmental bodies external to the CITY, some of which approvals may require public hearings and other legal proceedings as conditions precedent thereto. The City's obligations are conditioned upon the obtaining of all such approvals in the manner required by law. The CITY cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

## ARTICLE V

### CONDITIONS PRECEDENT TO CLOSING

SECTION 5.01 Purpose. The parties acknowledge that the Development will require substantial financial resources. While each party is willing and prepared to perform its obligations hereunder, the parties recognize that each must begin its performance under this AGREEMENT and continue it up to the point of Closing without absolute assurance that the other will be able to raise and commit all the funds necessary for Closing.

SECTION 5.02 Conditions to DEVELOPER's Obligation to Close. DEVELOPER's obligation to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

SECTION 5.02.1 The CITY, at its expense, causing Development Areas "D" to be split from Lot 2 of the Lake Park Villas subdivision and that part, if any, of Parcel #7-01722-00 comprising the Development Area via Certified Survey Map.

SECTION 5.02.2 Creation of a Mixed Use Tax Incremental Financing District – Proposed TID#12 sufficient to meet obligations under this Agreement.

SECTION 5.03 Pre-Closing Undertakings of the DEVELOPER. Prior to Closing, the DEVELOPER agrees that it shall:

SECTION 5.03.1 Financing Commitment. DEVELOPER shall obtain and provide to the CITY: (1) a written financial commitment from a conventional lender, (2) written construction contract to construct and finance the Development, (3) other written proof of financial resources to construct the Development, or (4) any combination thereof. Said documents shall be acceptable in all respects to the CITY, in the sole and absolute discretion of the CITY Comptroller or other agent for the CITY. DEVELOPER shall have closed the loan, which is the subject of the financing commitment and in connection