

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

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THIS FOURTH 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 "\$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 April 30, 2014." ADD the following: "The remaining \$75,000 of the \$175,000 of DEVELOPER'S earned financial incentive may be accelerated and paid to DEVELOPER upon DEVELOPER'S execution of a Second Land Purchase and Development Agreement with the Redevelopment Authority of the City of Menasha, if the agreement is entered into on or before January 15, 2015. In that event, no further financial incentive is due DEVELOPER as a total of \$175,000 will be have been paid out."
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

Second Land Purchase and Development Agreement  
By and Between  
the Redevelopment Authority of the City of Menasha  
and  
Cypress Homes, Inc.  
Dated as of December \_\_, 2014

This Second Land Purchase and Development Agreement (hereinafter AGREEMENT) is made and entered into as of the \_\_\_\_ day of December 2014, by and between the Redevelopment Authority of the City of Menasha, Wisconsin, a Wisconsin municipal corporation with its principal offices located at 140 Main St., Menasha, Wisconsin 54952 (hereinafter "RDA"), and Cypress Homes, Inc., a Wisconsin corporation with its principal offices located at 1619 W. College Ave., Appleton, WI 54914 (hereinafter "Cypress").

**RECITALS**

Whereas: Cypress requested that the City of Menasha accelerate the payment of certain incentives owed under Section 4.02 of a development agreement by and between the City of Menasha and Cypress Homes and Realty, Inc. dated June 20, 2011, which request culminated in the execution of Amendment 4 to the development agreement authorizing the acceleration of such incentive payments in order that Cypress purchase three (3) lots and construct a second model home within Lake Park Villas Phase II Homeowners Association (LPVHOA); and

Whereas: On April 3, 2014, Cypress and RDA entered into a Land Purchase and Development Agreement (*April 3<sup>rd</sup> Agreement*) to facilitate the sale, development and marketing of certain properties within the Lake Park Villas Phase II Homeowners Association (LPVHOA); and

Whereas: The RDA has obligations under its development agreement with the City of Menasha to promote the development of the LPVHOA and to market and sell properties contributed from the city to the RDA; and

Whereas: The RDA has determined that the provision of incentives to Cypress is necessary to stimulate the sale of lots and construction of homes in LPVHOA.

**ARTICLE I**

SECTION 1.01 PURPOSE OF AGREEMENT. The purpose of this AGREEMENT is to supplement the *April 3<sup>rd</sup> Agreement* by and between Cypress and RDA. Upon Cypress' purchase of three (3) lots under the terms of this AGREEMENT, the number of lots remaining available for purchase under the terms of the *April 3<sup>rd</sup> Agreement* will be one (1) for a total of five (5).

## ARTICLE II

### DEVELOPER OBLIGATIONS

SECTION 2.01 Cypress agrees to purchase three (3) lots of its choosing within the LPVHOA from the RDA:

SECTION 2.01.1 Purchase Price of each lot shall be \$35,000.00.

SECTION 2.01.2 Closing shall occur on or before December 31, 2015.

SECTION 2.02 For lots purchased and upon which Cypress is building a model home: ARTICLES II, III, IV and V of the *April 3<sup>rd</sup> Agreement* shall apply and be given full force and effect.

SECTION 2.03 For lots purchased and upon which Cypress is building a home for a third party under contract:

SECTION 2.03.1 Cypress shall pay cash at closing.

SECTION 2.03.2 RDA shall obtain and pay for a title insurance commitment in the amount of the purchase price. The real estate shall be conveyed "as is" subject to LPVHOA; easements, restrictions and covenants of record; public and private utility easements. A commitment by the title company agreeing to issue a title policy upon the recording of proper documents as agreed herein shall be deemed sufficient performance.

SECTION 2.03.3 Construction of the home shall commence within 60 days of the date of purchase and shall be completed, demonstrated by receipt of a certificate of occupancy, no later than 120 days from the date of purchase.

SECTION 2.04 Cypress has completed construction of a model home within LPVHOA upon the first lot purchased pursuant to the *April 3<sup>rd</sup> Agreement*. This first model home is currently listed for sale. Cypress agrees to commence construction of a second model home within LPVHOA either before but no later than forty-five (45) days after the date of closing on the first model home.

SECTION 2.05 Taxes. It is understood that the land and improvements resulting from the acquisition and subsequent construction of homes on the lots shall be subject to property taxes. Cypress shall pay when due all federal, state and local taxes in connection with the lots and homes thereon constructed.

### ARTICLE III

#### MISCELLANEOUS PROVISIONS

SECTION 3.01 Assignment. The rights, duties and obligations of the any of the parties hereunder may not be assigned without the written consent of both parties to the assignment.

SECTION 3.02 Survival of AGREEMENT. The terms of this AGREEMENT shall survive closing on the lots. Any provision of this AGREEMENT which has not been fully performed prior to transfer of possession shall not be deemed to have been terminate, but shall survive unless expressly waived in writing, and shall be in full force and effect until performed.

SECTION 3.03 No Subordination. The RDA shall not subordinate any interest it has in this AGREEMENT for any reasons, unless it is determined to be in the best interests of the RDA.

SECTION 3.04 Severability. If any provisions of this AGREEMENT shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

### ARTICLE V

#### CERTIFICATE OF COMPLETION

Upon completion of the improvements by Cypress and review of the improvements by RDA, the RDA will provide Cypress with an appropriate instrument certifying that the improvements have been made in accordance with this AGREEMENT.

IN WITNESS WHEREOF, the parties have duly executed this AGREEMENT, or caused it to be duly executed, as of the \_\_\_\_\_ day of December, 2014.

THE REDEVELOPMENT AUTHORITY OF THE  
CITY OF MENASHA

By:

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Phillip K. Vanderhyden  
Chairman

CYPRESS HOMES, INC.

By:

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Michael Blank  
Owner