DRAFT

City of Menasha
Tax Increment District #12
Project Plan

April, 2011

INTRODUCTION

Wisconsin's Tax Incremental Financing law provides a mechanism that enables cities and villages to rehabilitate blighted areas, improve business areas, facilitate mixed-use development and/or develop industrial sites. The intent is to stimulate development that would not otherwise occur absent the infusion of resources from the TIF district. The cost of improvements in a Tax Incremental District (TID) is recovered from tax revenues generated by new development in the district.

Tax incremental financing enables the tax increment generated from private investment in the district to be applied to the repayment of obligations incurred by the municipality. When the cost of improvements has been recovered and the debt service and/or other obligations attributable to the district have been retired, the TID is dissolved and all taxing jurisdictions benefit from increased tax revenues on the same shared basis as before the creation of the TID.

Tax incremental financing provides benefits to all taxing entities, city, county, public schools, and technical college, by promoting development of new taxable value which otherwise would not occur. It provides a tool for municipalities to invest in projects using local financing sources to meet identified needs and fill legitimate public purpose roles. The law also recognizes that since municipalities do not share the investment risk with other tax entities, they are entitled within a prescribed period of time to receive all new tax revenues of the TID as the source of paying off all public investment costs. All other taxing entities continue to receive taxes on the value of the property as of the date of creation and will also receive benefits in the future from the increased tax base generated as a result of the city's investment in the TID.

PURPOSE

The City of Menasha is proposing the creation of Tax Increment District #12 to promote mixed-use development in proximity to STH 114 and CTH LP. Implementation of TID #12 Project Plan will stimulate residential and commercial development and provide necessary public facilities and amenities to support the development. Upon completion, the project is estimated to yield $46 million in new tax base and support and create opportunities for residential and commercial growth.

Tax increment financing is essential to the successful development of this property. Without accessing TIF resources, the land and improvement costs would result in sale prices for developed parcels that would exceed the asking price for comparable sites elsewhere in the market. The unavailability of utilities and street access are barriers to the growth and development of this area. TIF funding is proposed to install the necessary infrastructure and write down the purchase price of the improved parcels so that land acquisition costs for prospective homeowners and businesses will be competitive.

Developed parcels within the boundary of TID #12 have been marketed without success as there have been no lot sales in over three years. Land and improvement costs, and site access has likewise hampered the sale of vacant land. It is only through the leverage provided by TIF funds that the property can be expeditiously developed. Upon full development this project is projected to yield $46 million in new tax base and support over 170 new jobs while creating opportunities for about 200 new single and multi-family dwelling units. If the TID is not created, the undeveloped property will likely remain in an undeveloped state for many years. The city's

cost for carrying unimproved, tax exempt lands will continue to burden the city's general property tax. It is in the interest of all the taxing entities to bring about high quality, high value development of this property as rapidly as possible. Creating TID #12 provides the means for achieving this objective.

DISTRICT NAME

The name of the district is City of Menasha Tax Incremental District #12.

CREATION DATE

The date of creation for the purpose of establishing the base value of the TID #12 is January 1, 2011.

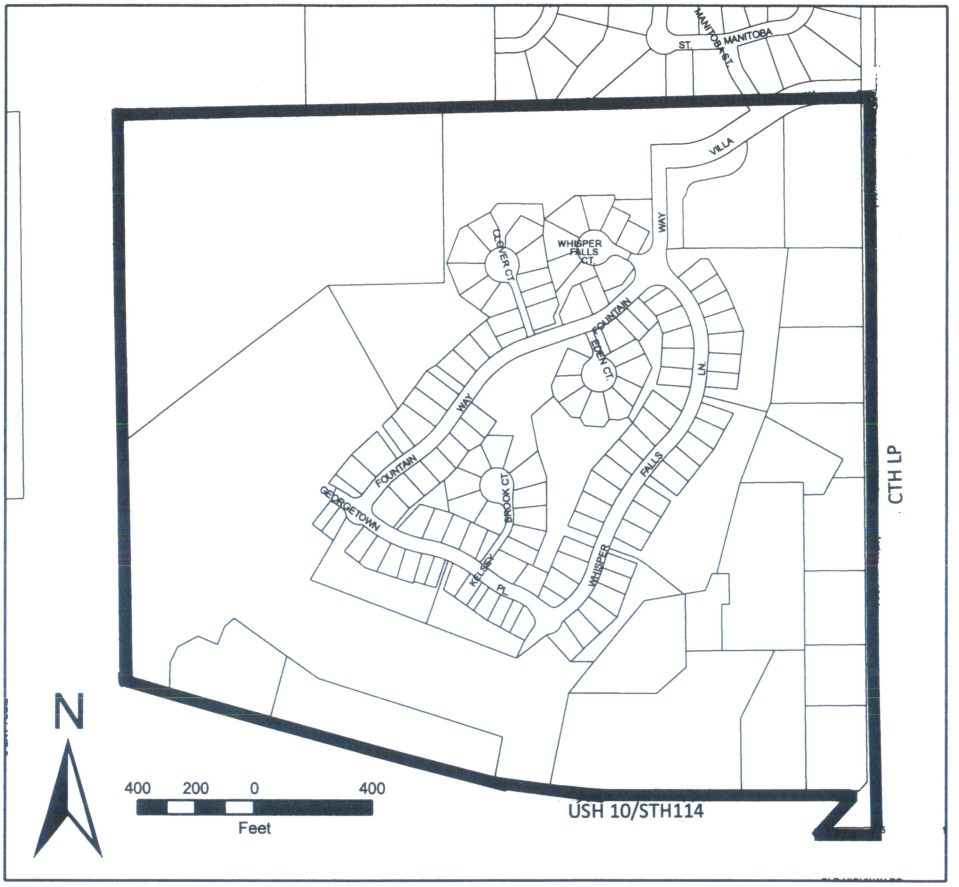
PROJECT LOCATION AND BOUNDARIES

TID #12 is located north of STH 114 and west of CTH LP (Lake Park Road). Map 1 depicts the site location and the boundaries of TID #12.

Map 1

City of Menasha

Proposed Tax Incremental District #12



PROPERTY CONDITIONS AND STATEMENT OF FINDINGS

Wisconsin Statute 66.1105(4)(gm)(4) provides that certain conditions must be present within the proposed district and that the city must find that these conditions are present for the area to be eligible for creating a tax increment district. The conditions within TID #12 were inventoried in April of 2011. The findings related to these conditions are as follows:

- Not less than 50 percent, by area, of the real property within the district is suitable for mixed-use development.
- The improvement of this area is likely to enhance significantly the value of substantially all the other real property in the district.
- The project costs relate directly to promote mixed use development.
- The equalized value of taxable property of the district plus the value increment of all existing districts does not exceed 12 percent of the total equalized value of taxable property within the city.
- Any real property within the district that is found suitable for industrial sites and is zoned for industrial use will remain zoned for industrial for the life of the tax increment district.
- The district is a mixed-use district based on the identification and classification of the property included within the district.

PROPOSED IMPROVEMENTS AND PROJECT COSTS

The costs of improvements made within the district include those financed by developers and those incurred by the city. Proposed improvements include approximately $2 million in developer-funded infrastructure improvements. TIF-funded improvements include land cost write-downs, incentive payments to developers, survey/engineering and real estate costs, the construction/repair of public streets and trails, the costs for landscape, streetscape and other amenities, administrative and other costs as listed in Table 1.

The project costs include land acquisition associated with the purchase of city-owned vacant lands by the Menasha Redevelopment Authority (RDA). The RDA will receive reimbursement for these costs through land sales to developers and subsequent tax increment payments. The land transfer is necessary to alleviate the financial distress the underperforming Lake Park Villas development has imposed on the city. The cost for development assistance in the form of incentive payments to developers is $4,175,000. Land write down costs through the RDA are $3.9 million. An additional $12.1 million is required for the installation of infrastructure and amenities. With administrative expenses and interest on debt, the total projected cost for implementing TID #12 is $11.35 million. These costs will be partially offset by $4.35 million in lot sales. Map 2 depicts the proposed land acquisition and project improvements. The project costs are listed in Table 1. The incentives made to developers are structured under the terms of the development agreements attached to the project plan. These expenditures are necessary to induce development and to ease pressures on the city's general property tax caused by the debt burden imposed by the Lake Park Villas development.

There are certain improvements outside of TID #12, including the extension of a bike/pedestrian trail along CTH LP that may be installed using TID #12 resources. The improvements or amenities are necessitated by the project plan for the district pursuant to Wisconsin Statute 66.1105(2)(K) and may be paid through grant funds, special assessments, or other sources of funding, if available.

NON-PROJECT COSTS

There are no anticipated non-project costs projected for TID #12.

RELOCATION

No persons or businesses are expected to be displaced as a result of the implementation of TID #12.

Table 1

TID #12
Project Expenditures

Year	Purpose		Amount
2011	Land Acquisition – City to Redevelopment Authority		$ 3,900,000
2011-2016	Developer Incentive		4,175,000
2013	Lake Park Square Street Extension		395,000
2011	Engineering/Survey/Environmental		12,000
2011	Real Estate Closing Costs/Commissions		62,000
2016	CTH LP Trail Design/Construction – STH 114-Manitowoc Road		195,000
2012	STH 114 Trail Construction		24,000
2012	Curbing and Roundabout Repairs		70,000
2016	Landscape/Streetscape/Lighting/Signage/Amenities		48,000
2011-2025	Administration		150,000
2011-2025	Interest on Debt		2,319,625
		Total	**$11,350,625**

TID #12
Project Revenues

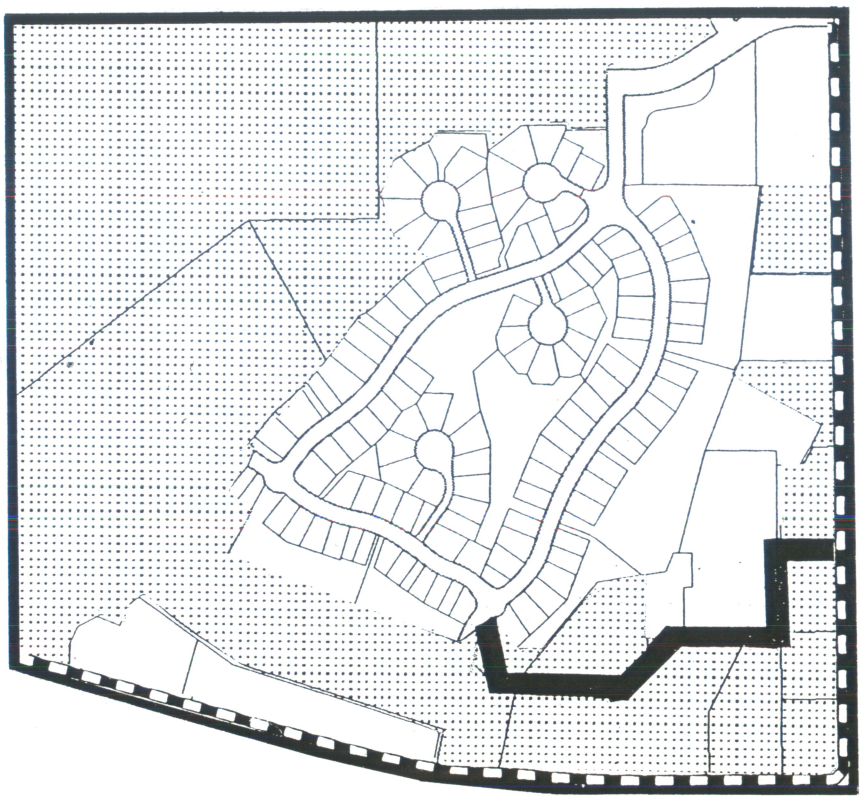
Year	Purpose		Amount
2011-2019	Land Sales to Developers		$ 792,237
2011-2023	Existing LPV HOA Lot Sales		2,205,000
2012-2023	Existing Lake Park Square Commercial Lot Sales		1,350,000
		Total	**$ 4,347,237**

Map 2

City of Menasha

Tax Incremental District #12

Proposed Improvements



Legend

- Land Acquisition - Menasha Redevelopment Authority
- Future Street (Public Funded)
- Future Bike/Pedestrian Trail

N

MASTER PLAN, ZONING, BUILDING AND OTHER CODE CONSIDERATIONS

The City of Menasha Year 2030 Comprehensive Plan adopted in 2008 suggests commercial, residential and single and multi-family land uses within the district. The existing land use of the area is shown in Map 3. Future land use is depicted in Map 4. The existing zoning includes R-1 Single Family Residential, C-1 Commercial and PUD Planned Unit Development classifications as shown in Map 5. Future zoning, shown in Map 6, proposes the same zoning classifications, with some reconfiguration to the zoning district boundaries. Multi-family uses are permitted as a Special Use in the C-1 Commercial district. The proposed development within the district is compatible with the land use pattern of the area and is consistent with the City of Menasha Year 2030 Comprehensive Plan and Zoning Ordinance. The goal for industrial development established by the comprehensive plan is to "Maintain and promote industrial development to achieve a balanced industrial base complementary to other areas of the community". "Industrial development" is an inclusive term that encompasses a wide range of economic activity under the National Industrial Classification System. The creation of TID #12 will also help implement the city's comprehensive housing plan. Specifically the project will assist with "Development of an adequate supply and a wide variety of housing types"; and with the creation of "Affordable home ownership opportunities".

ECONOMIC FEASIBILITY

TID #12 is financially feasible. Table 2 shows that the tax increment generated by new development within the project area will equal projected TID expenditures in the year 2025, well within the permissible 20 year term of a mixed-use TID.

PROJECT FINANCING

A total of $11.35 million will be required to implement the TID #12 project plan. These project costs will be funded by tax increment generated by the project and the sale of city-owned lands. All improvement costs associated with this project are expected to be incurred within five years of establishing the district. Under the proposed TID #12 financing schedule (Table 2), the obligations for project costs will be paid from tax increments as depicted in the schedule. The amortization of land acquisition costs associated with the transfer of vacant city owned land to the Menasha Redevelopment Authority is shown in Table 3.

TID #12 has the capacity to generate $16.6 million in tax increment if it were kept open over the entire 20 year life of the district permitted by state statute. However, it is expected that TID #12 will be terminated at 15 years, when its expenditures are projected to have been met. The amount of accumulated tax increment in the 15 year period is $10.6 million. This increment would be generated by the projected net increase of $46.5 million in tax base using a property tax rate of $25.612 per $1,000 of value. The collection of tax increments will commence in 2012 based on the taxes levied on the January 1, 2011 property values. Increments generated by the district will be used to repay TID #12 project costs.

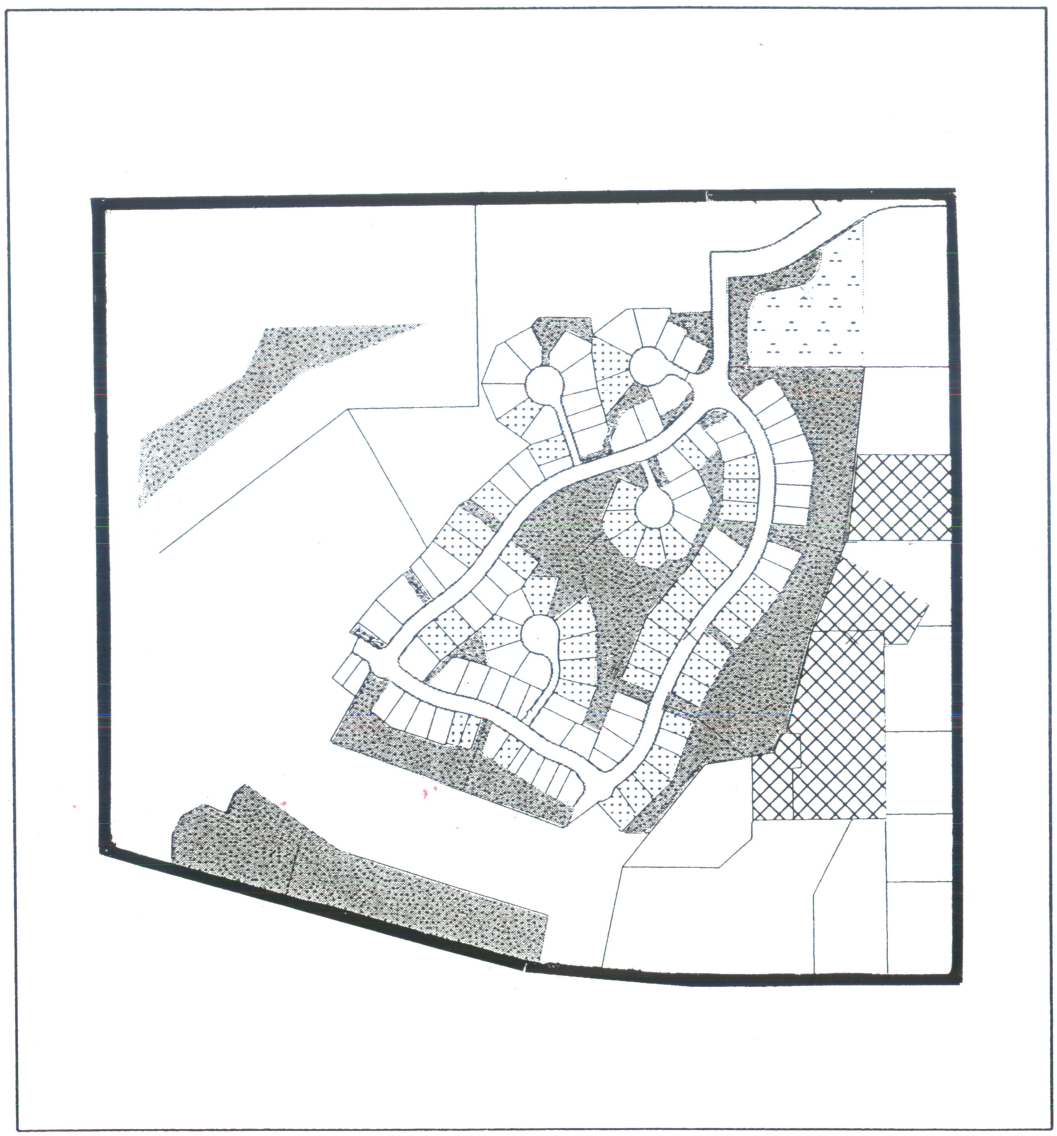
The property tax rate has been held constant over the life of the district for the purpose of projecting the increment that would be generated. Similarly, the value increment was calculated exclusive of any increases which may result from appreciation of property values. All increments generated by the district will be applied to the repayment of TID #12 project costs.

Map 3

City of Menasha

Tax Incremental District #12

Existing Land Use



Legend

- Vacant
- Commercial
- Single Family Residential
- Multi-Family Residential
- Open Space & Water

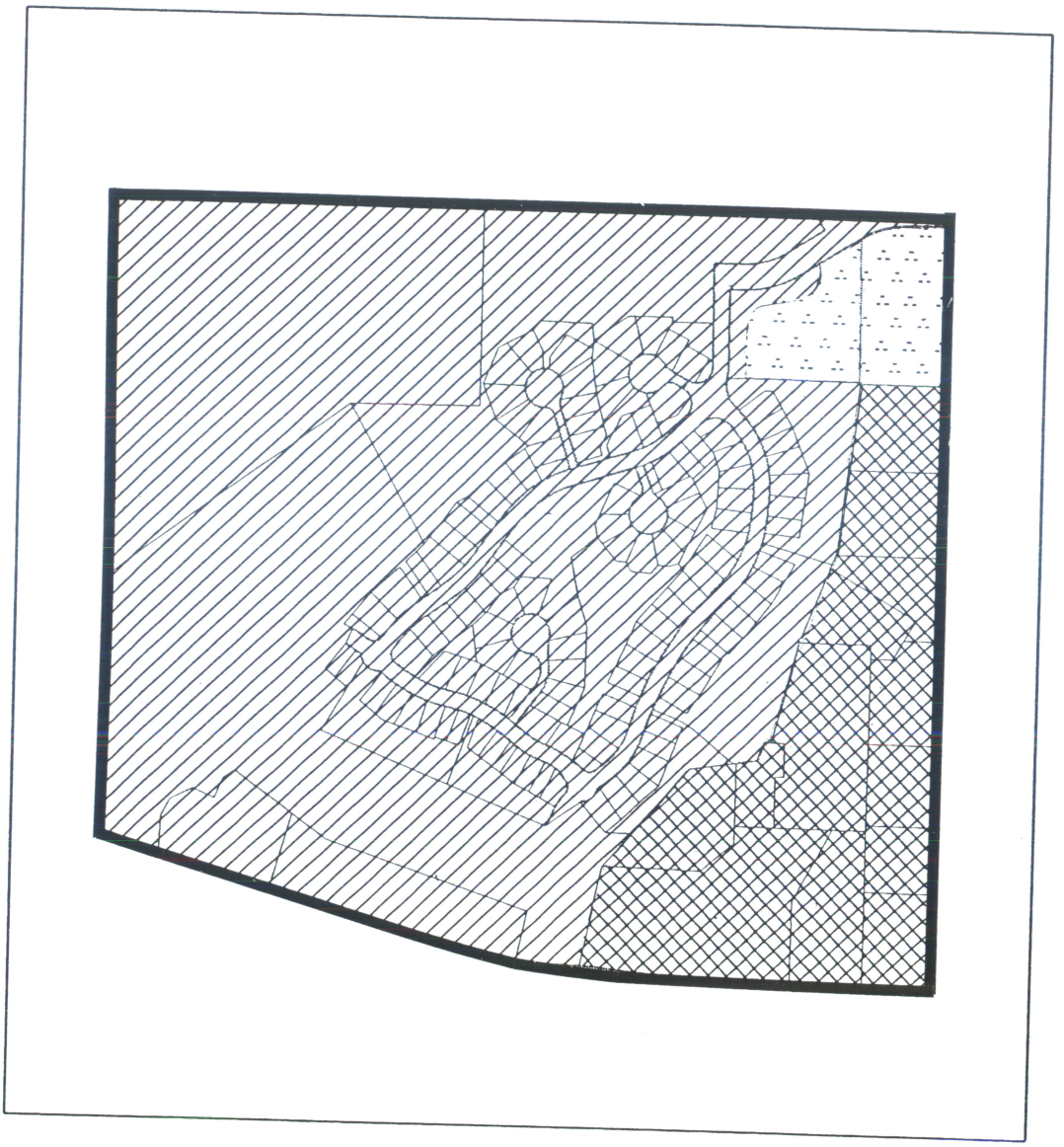
N

Map 4

City of Menasha

Tax Incremental District #12

Proposed Land Use



Legend

- Commercial
- Single Family Residential
- Multi-Family Residential

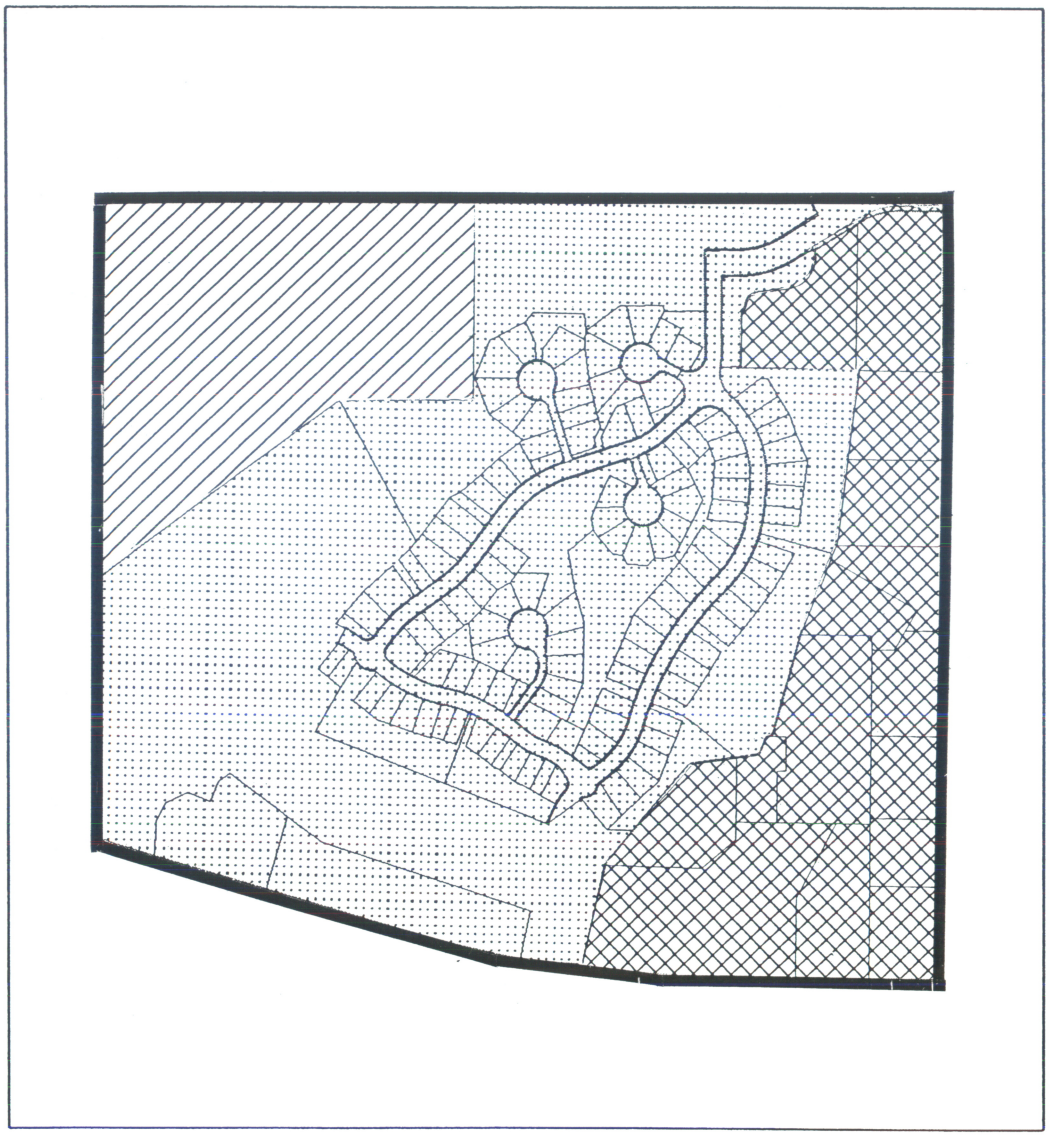
N

Map 5

City of Menasha

Tax Incremental District #12

Existing Zoning



Legend

- C-1 General Commercial
- R-1 Single Family Residential
- PUD Planned Unit Development

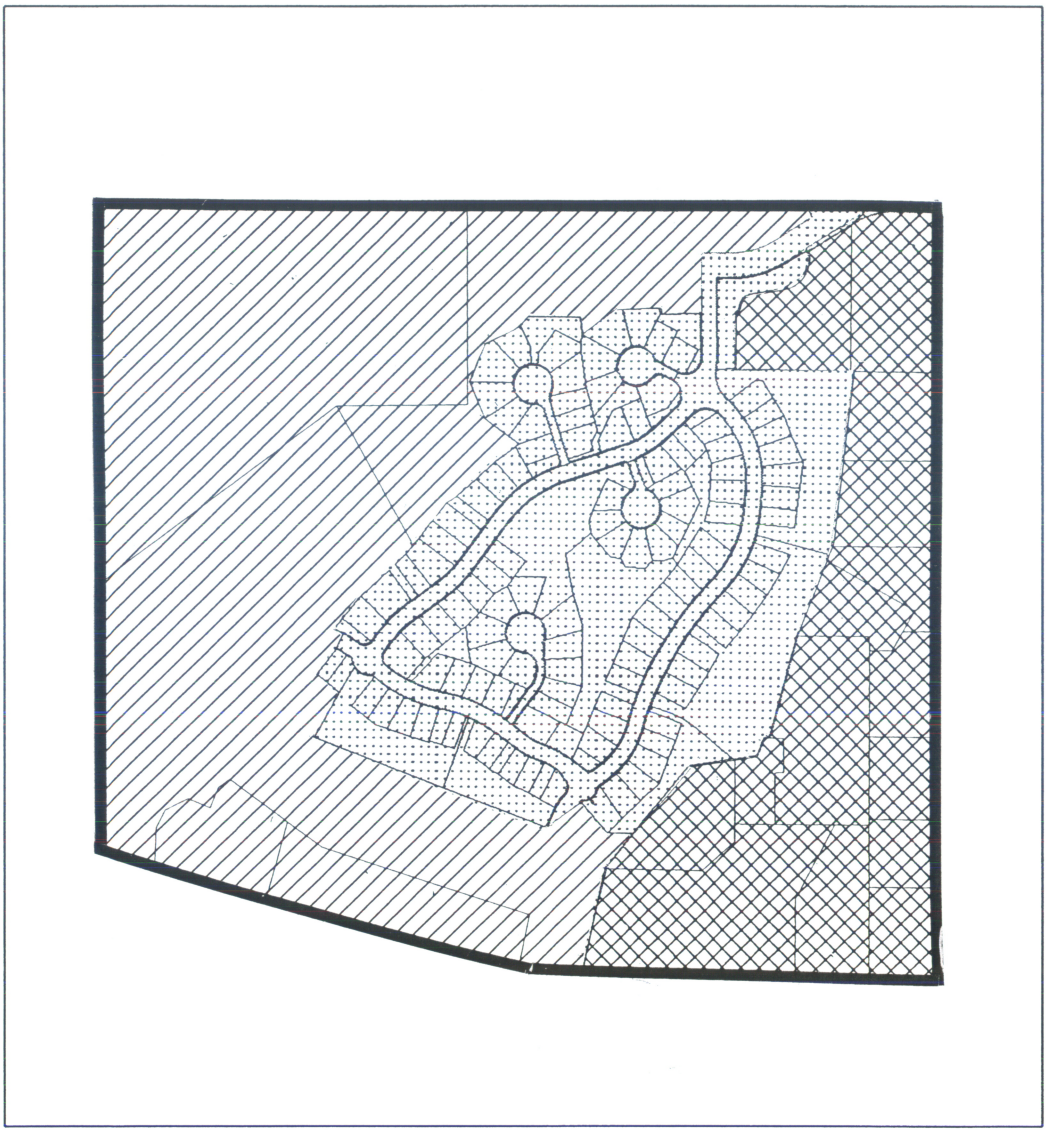
N

Map 6

City of Menasha

Tax Incremental District #12

Proposed Zoning



Legend

- C-1 General Commercial
- R-1 Single Family Residential
- PUD Planned Unit Development

N

DISSOLUTION

Financial projections indicate that TID #12 revenues will match expenditures in the year 2025. Upon close-out after this date, the district will be dissolved and all remaining unencumbered increments will be distributed among the taxing entities. Beginning in the year 2026 the taxes generated by the land and improvements within the district will directly benefit all of the taxing entities.

T.I.F # 12 (TIF # 12-Lake Park-Draft 3)
Date: 04/15/2011
Prepared by: City Comptroller/Treasurer

Table 2

PROJECTED

0.00

01/01 YEAR	TIF # 12 IMPROVE	TIF # 12 LOSSES	TIF # 12 NET	VAL INC	MILL RATE	01/01 TAX INC	LAND SALES	DEVELOPER INCENTIVES	LAND ACQUISITION INFRASTRUCTURE and ADMIN COST	CUMULATIVE INCOME
2010	$0		$0	$0	$25.612	$0		$0	$0	$0
2011	4,013,334	(2,868,000)	1,145,334	1,145,334	25.612	0	215,217 E	0	74,000	141,217
2012	6,367,501		7,512,835	7,512,835	25.612	29,334 E	392,055 E	0 E	313,780 E	248,826
2013	4,972,501		12,485,336	12,485,336	25.612	192,419 E	392,055 E	9,600 E	614,938 E	208,762
2014	4,972,501		17,457,837	17,457,837	25.612	319,774 E	392,055 E	32,370 E	220,101 E	668,120
2015	4,972,501		22,430,338	22,430,338	25.612	447,130 E	372,505 E	55,140 E	220,269 E	1,212,346
2016	4,749,167		27,179,505	27,179,505	25.612	574,486 E	372,505 E	106,500 E	538,442 E	1,514,395
2017	4,562,500		31,742,005	31,742,005	25.612	696,121 E	372,505 E	315,678 E	341,495 E	1,925,848
2018	4,562,500		36,304,505	36,304,505	25.612	812,976 E	372,505 E	368,508 E	459,804 E	2,283,017
2019	2,097,500		38,402,005	38,402,005	25.612	929,831 E	315,835 E	406,588 E	496,243 E	2,625,852
2020	2,012,500		40,414,505	40,414,505	25.612	983,552 E	287,500 E	415,488 E	579,938 E	2,901,478
2021	2,012,500		42,427,005	42,427,005	25.612	1,035,096 E	287,500 E	431,808 E	633,139 E	3,159,127
2022	2,012,500		44,439,505	44,439,505	25.612	1,086,640 E	287,500 E	431,808 E	657,221 E	3,444,238
2023	2,012,500		46,452,005	46,452,005	25.612	1,138,185 E	287,500 E	431,808 E	678,559 E	3,759,556
2024			46,452,005	46,452,005	25.612	1,189,729 E	0 E	431,808 E	647,153 E	3,870,324
2025		(46,452,005)	0	0	25.612	1,189,729 E	0 E	431,808 E	640,754 E	3,987,491
2026			0	0	25.612	0 E	0 E	323,856 E	7,987 E	3,655,648
2027			0	0	25.612	0 E	0 E	0 E	8,227 E	3,647,421
2028			0	0	25.612	0 E	0 E	0 E	8,474 E	3,638,947
2029			0	0	25.612	0 E	0 E	0 E	8,728 E	3,630,219
2030			0	0	25.612	0 E	0 E	0 E	8,990 E	3,621,229
2031			0	0	25.612	0 E	0 E	0 E	9,260 E	3,611,969
2032			0	0	25.612	0 E	0 E	0 E	0 E	3,611,969
2033			0	0	25.612	0 E	0 E	0 E	0 E	3,611,969
2034			0	0	25.612	0 E	0 E	0 E	0 E	3,611,969
2035			0	0	25.612	0 E	0 E	0 E	0 E	3,611,969
2036			0	0	25.612	0 E	0 E	0 E	0 E	3,611,969
2037			0	0	25.612	0 E	0 E	0 E	0 E	3,611,969
2038			0	0	25.612	0 E	0 E	0 E	0 E	3,611,969
2039			0	0	25.612	0 E	0 E	0 E	0 E	3,611,969
2040			0	0	25.612	0 E	0 E	0 E	0 E	3,611,969
		TOTAL				$10,625,002	$4,347,237	$4,192,768	$7,167,502	

Table 3

DEBT SERVICE CALCULATION - Land Acquisition

$3,900,000

	PRINCIPAL	INTEREST RATE	INTEREST EXPENSE	PAYMENT	DECLINING BALANCE	TAXABLE INTEREST RATES	TAXABLE INTEREST CALCULATE
2011	$0	0	$0	$0	$3,900,000	0.00%	0
2012	0	5.50%	214,500	214,500	3,900,000	5.50%	0
2013	0	5.50%	214,500	214,500	3,900,000	5.50%	0
2014	0	5.50%	214,500	214,500	3,900,000	5.50%	0
2015	0	5.50%	214,500	214,500	3,900,000	5.50%	0
2016	75,000	5.50%	214,500	289,500	3,825,000	5.50%	4,125
2017	125,000	5.50%	210,375	335,375	3,700,000	5.50%	6,875
2018	250,000	5.50%	203,500	453,500	3,450,000	5.50%	13,750
2019	300,000	5.50%	189,750	489,750	3,150,000	5.50%	16,500
2020	400,000	5.50%	173,250	573,250	2,750,000	5.50%	22,000
2021	475,000	5.50%	151,250	626,250	2,275,000	5.50%	26,125
2022	525,000	5.50%	125,125	650,125	1,750,000	5.50%	28,875
2023	575,000	5.50%	96,250	671,250	1,175,000	5.50%	31,625
2024	575,000	5.50%	64,625	639,625	600,000	5.50%	31,625
2025	600,000	5.50%	33,000	633,000	0	5.50%	33,000
2026	0	5.50%	0	0	0	5.50%	0
2027	0	5.50%	0	0	0	5.50%	0
2028	0	5.50%	0	0	0	5.50%	0
2029	0	5.50%	0	0	0	5.50%	0
2030	0	5.50%	0	0	0	5.50%	0
2031	0	5.50%	0	0	0	5.50%	0
2032	0	5.50%	0	0	0	5.50%	0
2033	0	5.50%	0	0	0	5.50%	0
2034	0	5.50%	0	0	0	5.50%	0
2035	0	5.50%	0	0	0	5.50%	0
2036	0	5.50%	0	0	0	5.50%	0
2037	0	5.50%	0	0	0	5.50%	0
2038	0	5.50%	0	0	0	5.50%	0
2039	0	5.50%	0	0	0	5.50%	0
2040	0	5.50%	0	0	0	5.50%	0
TOTAL	$3,900,000		$2,319,625	$6,219,625			

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MENASHA, WISCONSIN,

AND

CYPRESS HOMES AND REALTY, INC.

DATED AS OF MARCH____, 2011

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into as of the ___ day of March 2011, by and between the CITY OF MENASHA, Wisconsin, a Wisconsin municipal corporation with its principal offices located at 140 Main St., Menasha, Wisconsin 54952 (hereinafter "CITY"), and CYPRESS HOMES AND REALTY, INC., a Wisconsin corporation with its principal offices located at 1500 W. College Avenue, Ste A, Appleton, WI 54914 (hereinafter "DEVELOPER").

~~RECITALS~~

~~The Project to be undertaken by the DEVEOPER, as described herein, is of particular importance to the CITY and provides special benefits to the CITY because it promotes the physical and economic development of the CITY, increases the range of choice in the CITY's housing stock, accelerates sales of CITY-owned property and provides a means of paying the CITY's debt associated with land acquisition and improvements of the CITY-owned development known as Lake Park Villas.~~

ARTICLE I

SECTION 1.01 PURPOSE OF AGREEMENT. The parties hereto are entering into this Development AGREEMENT for the preparation and construction of a residential development within Lake Park Villas Project Area and proposed City of Menasha Tax Incremental District Number 12 (TID #12). The parties have worked cooperatively regarding initial planning, financing and feasibility of such a development. Further, the parties have reached an understanding regarding participation in the future development and intend to enter into this Development AGREEMENT to record the understandings and undertakings of the parties and to provide a framework within which the development may proceed.

SECTION 1.02 CERTAIN DEFINITIONS. As used in this AGREEMENT, the following terms shall have the meanings indicated:

"AVAILABLE TAX INCREMENT" – The amount of tax increment (as defined in Sec. 66.1105, Wis. Stats.) generated solely by the Development Property and Development Improvements as of January 1 of each calendar year.

"CONCEPT PLAN" – The conceptual plan, estimated schedule and value estimates for the contemplated development of the Development Property. It is attached as **EXHIBIT** [insert].

"DEVELOPMENT" – The Development Improvements and Infrastructure that constitute the planned development project that is the subject of this AGREEMENT.

"DEVELOPMENT AREA 'D'" – An area consisting of approximately 5 acres located in the NW ¼ of the NE ¼ of Section 17, T20N, R17E and proposed CITY of Menasha Tax Incremental Financing District # 12 attached as **EXHIBIT A**, the actual area of which is to be determined via a Certified Survey Map pursuant to Section 3.02.1

"DEVELOPMENT IMPROVEMENTS" - Means structures, buildings and accoutrements constructed by DEVELOPER in compliance with Implementation Plans comprised of the following:

- Residential condominium development within Development Area "D" comprised of not less than 16 single family residential units with an estimated improved value of $2.8 million.

"DEVELOPMENT PROPERTY" - means Development Area "D."

"DEVELOPMENT COSTS" — The hard and soft costs enumerated in the development budget set forth in **EXHIBIT** [insert].

"INFRASTRUCTURE" – Public and Private Infrastructure.

"IMPLEMENTATION PLAN" – Detailed plans, drawings, specifications and other information as required for the site plan review under CITY Ordinances regarding the construction of Private Infrastructure, Infrastructure and Development Improvements. A specific Implementation Plan must be submitted to and approved by the CITY prior to construction as provided by CITY Ordinance. Each specific Implementation Plan shall be attached to this AGREEMENT as an exhibit upon approval by the CITY.

"PERFORMANCE INCENTIVE" – Payment of Available Tax Increment to the DEVELOPER as provided in this AGREEMENT.

"PUBLIC IMPROVEMENTS" – The road improvements, curb and gutter, storm water drainage ponds and other public facilities normally provided by or required by local governments fronting the Development Property whether in place or to be constructed or upgraded in conjunction with the development contemplated in the Concept Plan, including storm water management ponds, but specifically excluding Infrastructure.

"PUBLIC INFRASTRUCTURE"– Those Public Improvements that will be the responsibility of the DEVELOPER as more particularly described in **EXHIBIT** [insert] (attached) and shall include, without limitation, improvements necessary to provide adequate access, sanitary sewer service, storm sewer, water mains and any appurtenances associated with these facilities, storm water drainage, street base course, temporary asphalt paving consisting of at least a two inch binder course, street lighting, pedestrian facilities, trails, sidewalks or other public utility improvements to the Development Property that have been constructed by DEVELOPER and dedicated to the CITY under this AGREEMENT.

"PRIVATE INFRASTRUCTURE" – Site grading in accordance with an approved grading and drainage plan, sanitary sewer laterals, potable water laterals and other facilities owned, constructed and maintained by DEVELOPER to service the Development Improvements from the Public Improvements or Private Infrastructure described more particularly in **EXHIBIT** [insert].

"TID # 12" means CITY of Menasha Tax Incremental District Number 12 and project plan created by CITY in accordance with Section 5.02.3 hereinafter.

ARTICLE II

OVERVIEW OF THE PROJECT

SECTION 2.01 The Project consists of residential condominium development resulting in the creation of not less than 16 single family residential units. Construction is to begin by June 1, 2011 with an expected completion date of December 31, 2017. Upon completion, the Development Improvements will have a value of at least $2.8 million.

ARTICLE III

DEVELOPER OBLIGATIONS

SECTION 3.01 Acquisition of Development Areas. Upon completion of the pre-closing conditions but in no case later than June 1, 2011, DEVELOPER shall acquire fee simple title to Development Area "D."

SECTION 3.01.1 CITY shall transfer the Real Estate to DEVELOPER by warranty deed for $17,000 per acre subject to the terms and conditions of this AGREEMENT and a separate Real Estate Purchase Agreement to be executed by the parties [insert condition/date]. The Real Estate Purchase Agreement shall provide that DEVELOPER shall pay 8% of the purchase price at closing and DEVELOPER shall execute a Promissory Note in favor of CITY in the amount of the purchase price less the 8% paid at closing. The terms of the Promissory Note shall be zero percent (0%) interest until paid in full, except that in the event DEVELOPER fails to make any installment payment when due, then interest shall be paid at 5% per annum of the remaining balance assessed from the date of closing. ~~with interest at 3.25%.~~ Equal installment payments on the Promissory Note shall be due 12/31/2011, 12/31/2012, 12/31/2013 and 12/31/2014.

SECTION 3.01.2 Title Insurance. The CITY shall obtain and pay for a title insurance commitment in the amount of the purchase price. 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. DEVELOPER may obtain additional title insurance at its cost. The CITY shall provide to DEVELOPER a preliminary commitment for title insurance not less than fifteen (15) days prior to the closing.

SECTION 3.01.3 Title. The CITY shall cooperate with DEVELOPER to clear up any defect in title that may be pertaining to the property; provided, however, the Real Estate shall be conveyed subject to (1) reasonable and customary easements and restrictions of record; (2) a reversion of title in accordance with this AGREEMENT; (3) requisite public and private utility easements; (4) CITY covenants, none of which may be removed or modified without City's approval; and (5) all other terms and conditions of this AGREEMENT.

SECTION 3.01.3 Closing Date. The closing date for the transfer of the Real Estate shall be on or before June 1, 2011 for Development Area "D" and shall be held at the office of the City Attorney, City Hall, 140 Main Street, Menasha, Wisconsin

or where the parties may otherwise agree.

SECTION 3.01.4 The Real Estate shall be conveyed "as is." The CITY is not responsible for any subsequent remediation, demolition, underground debris, or other clean up costs after conveyance.

SECTION 3.02 DEVELOPER's Covenant to Develop. DEVELOPER agrees and covenants to use its best efforts to proceed with due diligence to complete the Development substantially in accordance with the Concept Plan and Implementation Plans which plans and specifications shall be subject to such review and approval by the CITY as may be normal, customary or required in order to proceed with the Development in accordance with all applicable rules, codes, regulations, ordinances and laws. The DEVELOPER shall cause IMPROVEMENTS to the DEVELOPMENT AREAS to create a value of not less than $2.8 million. The cost for such improvements shall include Development hard and soft costs, site clearance and preparation and costs associated with the construction of single family condominium housing units. DEVELOPER shall be required to complete construction of the Development by December 31, 2017.

SECTION 3.03 Compliance with Codes, Plans and Specifications. DEVELOPER, at its own expense, shall obtain all approvals, permits and licenses as may be required by any governmental or non-governmental entity in connection with the Development. The building and other improvements to be constructed upon the Property, the construction thereof, and their uses shall be in compliance with all applicable codes and ordinances of the CITY, and with all pertinent provisions of this AGREEMENT, the Project Plan and the Plans and Specifications.

SECTION 3.04 Taxes. It is understood that the land, improvements and personal property resulting from the Development shall be subject to property taxes. DEVELOPER shall pay when due all federal, state and local taxes in connection with the Project and all operating expenses in connection with the Real Estate and Development.

SECTION 3.05 Public Infrastructure. DEVELOPER shall in connection with and during the construction of the Development undertake at its expense, design and construction of Public Infrastructure in accordance with City of Menasha specifications as furnished to the DEVELOPER by the Menasha Department of Public Works. The Public Infrastructure shall be undertaken consistent with the overall schedule of construction for the Development and shall be completed upon substantial completion of the Development. The Public Infrastructure shall be funded solely by the DEVELOPER. Improvements designed and constructed by the CITY such as curb and gutter and final paving ~~may~~ will be specially assessed or otherwise charged against the benefitting properties within the Development, including lots owned by the DEVELOPER~~ at the sole discretion of the CITY~~. DEVELOPER agrees to provide notice to each subsequent owner/purchaser of any real estate in Development Area "D" of the expected curb and gutter and final paving special assessment through a covenant recorded with the Calumet County register of deeds office.

SECTION 3.06 Private Infrastructure. DEVELOPER shall in connection with and during the construction of the Development undertake at its expense, design and construction of Private Infrastructure in accordance with the approved IMPLEMENTATION PLAN.

SECTION 3.07 Easements. DEVELOPER shall grant the CITY or any public utility such easements as reasonably necessary for public improvements, infrastructure, ingress or

egress, utilities, lighting or landscaping or any other need necessary to effectuate the Development in accordance with approved plans at no cost to the CITY.

SECTION 3.08 Record Retention. DEVELOPER understands and acknowledges that the CITY is subject to Public Records Law of the State of Wisconsin. As such, DEVELOPER agrees to retain all records as defined by Wisconsin Statute §19.35(2) applicable to this AGREEMENT for a period of not less than seven (7) years. DEVELOPER agrees to assist the CITY in complying with any public records request that they receive pertaining to this AGREEMENT. DEVELOPER agrees to indemnify and hold the CITY, their officers, employees and authorized representatives harmless for any liability, including without limitation, reasonable attorney fees relating to or in any way arising from DEVELOPER's actions or omissions which contribute to the Indemnified Party's inability to comply with the Public Records Law. In the event DEVELOPER decides not to retain its records for a period of seven (7) years, then it 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, ~~may~~ 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 10th 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.

SECTON 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 therewith, DEVELOPER shall have provided copies of the documents to be executed in connection with the construction loan to the CITY Comptroller. DEVELOPER shall provide to the CITY copies of all appraisals and market studies prepared in connection with the financial commitment.

SECTION 5.03.2 Prepare conceptual lot layouts and restrictive covenants for the Development which are acceptable to the CITY.

SECTION 5.03.3 Financial Statements. DEVELOPER shall have provided to the City Comptroller, audited financial statements (if available, and if audited financial statements are not available, financial statements in a form reasonably acceptable to the City Comptroller) for fiscal years 2009 and 2010 plus two years complete tax returns, including all schedules for DEVELOPER and any successors or assigns or transferees of DEVELOPER and each of the members of any of the foregoing and each member of the Board of Directors (or equivalent) of any of the foregoing. The financial statements must show a financial condition acceptable to the CITY, in the judgment of the CITY Comptroller.

SECTION 5.03.4 DEVELOPER shall at its expense have obtained all necessary approvals and permits necessary to undertake the Development, including but not limited to, site plan review, zoning approvals, and any other local, state or federal approvals or permits.

SECTION 5.03.5 Within 120 days of the execution of this AGREEMENT, DEVELOPER will, at its own cost and expense, prepare and file with the appropriate City offices, a Condominium Plat or Preliminary Plat pursuant to ~~Sec. 14-1-4 of the~~ City of Menasha Code of Ordinances. DEVELOPER will prepare restrictive covenants regarding home and development standards for the Development Area subject to design and permitting requirements of the CITY.

ARTICLE VI

REPRESENTATIONS, WARRANTIES AND COVENANTS

DEVELOPER represents and warrants to and covenants with the CITY and the CITY represents and warrants to and covenants with DEVELOPER as respectively follows:

SECTION 6.01 Each of the parties will use its best efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this AGREEMENT.

SECTION 6.02 Each party shall give any notices to, make any filings with, and use its best efforts to obtain any authorizations, consents, and approvals of governments and governmental agencies in connection with the matters referred to in this AGREEMENT.

SECTION 6.03 DEVELOPER shall not engage in any practice, take any action, or enter into any transaction outside the Ordinary Course of Business and shall at its own cost and expense, maintain and preserve its business in accordance with prudent business practices.

SECTION 6.04 DEVELOPER will permit representatives of CITY (including legal counsel, accountants, inspectors and consultants) to have full access at all reasonable times, and in a manner so as not to interfere with the normal business operations of DEVELOPER, to all premises, properties, personnel, books, records (including tax records), contracts, and documents of or pertaining to DEVELOPER's business.

SECTION 6.05 CITY represents and warrants it is a municipality, duly organized and validly existing under the laws of the state of Wisconsin.

SECTION 6.06 DEVELOPER represents and warrants it is a corporation, duly organized and validly existing under the laws of the state of Wisconsin.

SECTION 6.07 CITY and DEVELOPER have full power and authority to execute and deliver this AGREEMENT and to perform their obligations hereunder.

SECTION 6.08 The execution and delivery of this AGREEMENT, the consummation of the transactions contemplated in this AGREEMENT, and the execution and delivery of the documents required to be executed, delivered or acknowledged by DEVELOPER at the closing will not violate any provision of DEVELOPER's articles or bylaws or any applicable statute, rule, regulation, judgment, order or decree of the state of Wisconsin or a court having jurisdiction over DEVELOPER or its properties.

SECTION 6.09 DEVELOPER represents and warrants it has timely filed all tax returns required by law, all tax returns of DEVELOPER are true and correct in all material respects, DEVELOPER has paid all taxes due, except those, if any, currently being contested by it in good faith.

SECTION 6.10 DEVELOPER represents and warrants there is no action, suit, proceeding, claim, arbitration against DEVELOPER, its activities or assets before any court or governmental agency except as disclosed in writing to CITY.

SECTION 6.11 DEVELOPER represents and warrants its balance sheets and statements of income provided for review hereunder are true, correct and complete, and fairly represent the financial condition of DEVELOPER at the date or dates therein indicated and the

results of operations for the period or periods therein specified and that there has not been any Material Adverse Change since the Balance Sheet Date.

SECTION 6.12 The Representations and Warranties set forth herein shall be true and correct in all material respects at and as of the Closing Date.

SECTION 6.13 DEVELOPER shall have a continuing obligation to immediately report any material adverse changes in its financial condition to the CITY from the Date of Closing through completion of construction.

ARTICLE VII

POST-CLOSING OBLIGATIONS OF DEVELOPER

SECTION 7.01 DEVELOPER will, at its expense, cause the Development Area to be platted.

SECTION 7.02 Public Infrastructure. DEVELOPER shall in connection with and during the construction of the Development Area undertake at its expense, design and construction of Public Infrastructure in accordance with City of Menasha specifications as furnished to the DEVELOPER by the Menasha Department of Public Works. The Public Infrastructure shall be undertaken consistent with the overall schedule of construction for the Development Area and shall be completed upon substantial completion of the Development Improvements. The Public Infrastructure shall be funded solely by the DEVELOPER. DEVELOPER agrees to provide either an Irrevocable Letter of Credit in favor of CITY or an escrow or other restricted account to be maintained, acceptable to the CITY, in an amount sufficient to cover all expenses associated with the construction of public infrastructure. DEVELOPER shall be responsible to ensure that Contractors installing such infrastructure comply with and pay prevailing wage rates as set forth by the Wisconsin Department of Workforce Development. Other improvements constructed by the City, including sidewalks, curb and gutter and final paving ~~may~~ will be specially assessed or otherwise charged against the benefitting properties within the Development, including lots owned by the DEVELOPER.

SECTION 7.03 DEVELOPER acknowledges that the costs of the public infrastructure contemplated by this AGREEMENT is approximately $150,000. DEVELOPER pledges that it shall complete the construction of the infrastructure shown on [insert plan name] on or before September 1, 2011. In the event the public infrastructure has not been completed by that date, the parties may either agree to an extension, ~~or~~ the CITY may complete the public infrastructure and assess the costs of the public infrastructure against those portions of the Development Area that are benefitted or the City may declare the DEVELOPER in default.

SECTION 7.04 Dedication of Public Infrastructure. The DEVELOPER shall dedicate the Public Infrastructure to the CITY without cost to the CITY under the following terms. The CITY shall accept dedication of Public Infrastructure upon (a) receipt of As-Built Drawings, and (b) inspection and satisfaction of CITY staff that the Public Infrastructure was constructed in accordance with the as-built drawings; and (c) DEVELOPER's contractors execute a guarantee, in the form normally required by the CITY for similar work, guaranteeing the workmanship, adequacy and fitness for purpose of the Public Infrastructure for at least 1 year(s) after conveyance to the CITY.

SECTION 7.05 Maintenance of Private Infrastructure. The DEVELOPER shall be responsible for the cost of maintenance of the Private Infrastructure and Development

Improvements.

SECTION 7.06 Failure to Dedicate Public Infrastructure. If the DEVELOPER does not timely dedicate the Public Infrastructure or the Public Infrastructure is not accepted by the CITY, the CITY shall give the DEVELOPER 30 days written notice to cure. Upon failure to cure the CITY may enter the Development Property and repair or reconstruct the Public Infrastructure to the CITY's satisfaction and assess the cost of the repair or reconstruction against benefitted properties or bring an action for specific performance or to otherwise compel compliance with this AGREEMENT.

SECTION 7.07 Except as may be mutually agreed by the CITY and DEVELOPER, the DEVELOPER will participate in FVHB Parade of Home events. [Need specificity here.]

SECTION 7.08 DEVELOPER will initiate construction of at least one (1) home no later than June 1, 2011 in Development Area "D" with an expected completion date of November 1, 2011. All Development Improvements must be completed by December 31, 2017.

SECTION 7.09 Standards of Construction. DEVELOPER shall see to it that all infrastructure and improvements are constructed in a good and workmanlike manner and consistent with prevailing industry standards for high quality construction in the area of the CITY. DEVELOPER shall perform all work in compliance with applicable laws, regulations, ordinances and permits and DEVELOPER shall at its own cost and expense obtain all necessary permits and licenses for such development.

ARTICLE VIII

BUDGET AND BUDGET RECONCILITATION; FINANCIAL REPORTS

SECTION 8.01 Attached hereto as **EXHIBIT** [insert] is the DEVELOPER's budget for the Development. The DEVELOPER agrees to maintain records such that its actual expenditures for the Development may be ascertained and reconciled against such budget. From time to time upon reasonable notice from the CITY, authorized representatives of the CITY, including the CITY Comptroller, shall be entitled to examine such records at the DEVELOPER's offices to verify construction costs during and after construction.

ARTICLE IX

ASSIGNMENT

SECTION 9.01 The rights, duties and obligations of the DEVELOPER hereunder may not be assigned by DEVELOPER without the written consent of the CITY to the assignment, which consent shall not be unreasonably withheld. Any assignee or purchaser or transferee of any portion of the Real Estate shall be bound by the terms and conditions of this AGREEMENT, which shall run with the land and be binding upon all such assignees, purchasers and transferees. Written evidence satisfactory to the CITY that such assignee or entity has agreed in writing to be bound by the terms of this AGREEMENT must be provided to the CITY. Any such sale, transfer or conveyance of any portions of the Real Estate shall not relieve the DEVELOPER of its obligations hereunder.

ARTICLE X

INDEMNITY

SECTION 10.01 DEVELOPER shall indemnify and hold harmless the CITY, its officers, employees and authorized representatives (Indemnified Party) from and against any and all

liabilities, including, without limitation, remediation required by any federal or state agency having jurisdiction, losses, damages, costs and expenses, including reasonable attorney fees and costs, arising out of any third-party claims, causes of action, or demands made against or suffered by the Indemnified Party on account of this AGREEMENT, unless such claims, causes of action, or demands: (a) relate to the Indemnified Party failing to perform its obligations to DEVELOPER; or (b) arise out of any willful misconduct of the Indemnified Party. At the Indemnified Party's request, DEVELOPER shall appear for and defend the Indemnified Party, at DEVELOPER's expense, in any action or proceeding to which the Indemnified Party may be made a party by reason of any of the foregoing.

ARTICLE XI

NOTICES

SECTION 11.01 All notices, demands, certificates or other communications under this AGREEMENT shall be sufficiently given and shall be deemed given when hand delivered or when mailed by first class mail, postage prepaid, property addressed as indicated below:

To the DEVELOPER:	Cypress Homes and Realty, Inc. 1500 W. College Ave., Ste A Appleton, WI 54914
With a copy to:	
To the CITY:	City of Menasha, Wisconsin City Hall 140 Main Street Menasha, WI 54952 Attn: CITY Clerk
With a copy to:	Greg Keil, Community Development Director City Hall 140 Main Street Menasha, WI 54952

Any party may, by written notice to the party (ies), designate a change of address for the purposes aforesaid.

ARTICLE XII

NONDISCRIMINATION

SECTION 12.01 In the performance of work under this AGREEMENT, the DEVELOPER agrees not to discriminate against any employee or applicant for employment nor shall the development or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age,

color, sex, sexual orientation, physical condition, disability, national origin or ancestry and that the construction and operation of the Development shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

SECTION 13.01 ENTIRE AGREEMENT. This document contains the entire AGREEMENT between DEVELOPER and the CITY and it shall inure to the benefit of and shall be binding upon the parties hereto and the respective heirs, executives, successors and assigns. This AGREEMENT may be modified only by a written Amendment signed by the parties, which Amendment shall become effective upon the recording in the Office of Register of Deeds for the County.

SECTION 13.02 SURVIVAL OF WARRANTIES, REPRESENTATIONS AND AGREEMENTS. Any warranty, representation or AGREEMENT herein contained shall survive the Closing. 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 13.03 DEFAULT. In addition to any remedies set forth within this AGREEMENT, the Parties shall have all rights and remedies available under law or equity with respect to said default. All remedies shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.

SECTION 13.04 FAILURE TO ENFORCE NOT A WAIVER. Failure of the CITY to enforce any provision contained herein shall not be deemed a waiver of the City's right to enforce such provision or any other provision in the event of a subsequent default.

SECTION 13.05 NO SUBORDINATION. The CITY shall not subordinate any interest it has in this AGREEMENT for any reason, unless it is determined to be in the best interests of the CITY.

SECTION 13.06 GOVERNING LAW. This AGREEMENT shall be governed by, enforced and construed in accordance with the domestic laws of the State of Wisconsin.

SECTION 13.07 COUNTERPARTS. This AGREEMENT may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECTION 13.08 AMENDMENTS AND WAIVERS. No amendment of any provision of this AGREEMENT shall be valid unless the same shall be in writing and signed by CITY and DEVELOPER. No waiver by any party of any provision of this AGREEMENT or any default, misrepresentation, or breach of warranty shall be valid unless the same shall be in writing and signed by the parties making such a waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

SECTION 13.09 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.

SECTION 13.10 RECORDING OF AGREEMENT. The parties hereto agree that the CITY may record this AGREEMENT or a memorandum of this AGREEMENT on the record title to the Real Estate. The DEVELOPER shall upon request of the CITY execute and deliver any such memorandum or other document in connection with such recording.

SECTION 13.11 NO PARTNERSHIP. This AGREEMENT specifically does not create any partnership or joint venture between the parties, or render any party liable for any debts or obligations of the other party.

SECTION 13.12 CONSTRUCTION. The parties have participated jointly in the negotiation and drafting of this AGREEMENT. In the event an ambiguity or question of intent or interpretation arises, this AGREEMENT shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this AGREEMENT.

SECTION 13.13 INCORPORATION OF EXHIBITS. The **EXHIBITS** identified in this AGREEMENT are incorporated herein by reference and made a part hereof.

IN WITNESS WHEREOF, the parties have duly executed this AGREEMENT, or caused it to be duly executed, as of the _____ day of _____, 2011

CYPRESS HOMES AND REALTY, INC.

By:_____

By:_____

CITY OF MENASHA

By:_____
Donald Merkes, Mayor

Attest:_____
Deborah Galeazzi, City Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF WINNEBAGO)

Personally came before me this _____ day of March 2011, the above named _____, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and the purposes therein intended.

_____
Notary Public, State of Wisconsin
My Commission: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF WINNEBAGO)

Personally came before me this _____ day of March 2011, the above named Donald Merkes, Mayor, and Deborah Galeazzi, City Clerk, of the City of Menasha, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and the purposes therein intended.

_____
Notary Public, State of Wisconsin
My Commission: _____

Countersigned pursuant to §62.09(10) Wis. Stats.

_____
City Comptroller

APPROVED AS TO FORM:

_____
Pamela A. Captain, City Attorney

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MENASHA, WISCONSIN,

AND

THE PONDS OF MENASHA, LLC

DATED AS OF MARCH____, 2011

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into as of the ___ day of March 2011, by and between the CITY OF MENASHA, Wisconsin, a Wisconsin municipal corporation with its principal offices located at 140 Main St., Menasha, Wisconsin 54952 (hereinafter "CITY"), and The Ponds of Menasha, LLC, a Wisconsin limited liability company with its principal offices located at 1300 N. Kimps Ct., Green Bay, Wisconsin 54313 (hereinafter "DEVELOPER").

RECITALS

The Project to be undertaken by the DEVEOPER, as described herein, is of particular importance to the CITY and provides special benefits to the CITY because it promotes the physical and economic development of the CITY, increases the range of choice in the CITY's housing stock, accelerates sales of CITY-owned property, provides a means of paying the CITY's debt associated with land acquisition and improvements of the CITY-owned development known as Lake Park Villas.

ARTICLE I

SECTION 1.01 PURPOSE OF AGREEMENT. The parties hereto are entering into this Development AGREEMENT for the preparation and construction of a residential development within Lake Park Villas Project Area and proposed City of Menasha Tax Incremental District Number 12 (TID #12). The parties have worked cooperatively regarding initial planning, financing and feasibility of such a development. Further, the parties have reached an understanding regarding participation in the future development and intend to enter into this Development AGREEMENT to record the understandings and undertakings of the parties and to provide a framework within which the development may proceed.

SECTION 1.02 CERTAIN DEFINITIONS. As used in this AGREEMENT, the following terms shall have the meanings indicated:

"AVAILABLE TAX INCREMENT" – The amount of tax increment (as defined in Sec. 66.1105, Wis. Stats.) generated solely by the Development Property and Development Improvements as of January 1 of each calendar year.

"CONCEPT PLAN" – The conceptual plan, estimated schedule and value estimates for the contemplated development of the Development Property. It is attached as **EXHIBIT** [insert].

"DEVELOPMENT" – The Development Improvements and Infrastructure that constitute the planned development project that is the subject of this AGREEMENT.

"DEVELOPMENT IMPROVEMENTS" - Means structures, buildings and accoutrements constructed by DEVELOPER in compliance with Implementation Plans comprised of the following:

- PHASE I – A single family residential development within Development Area "A" comprised of not less than 70 units at a density not less than three units per acre with an estimated improved value of $11,900,000.

- PHASE II – A single family residential development within Development Area "B" comprised of not less than 50 units at a density not less than three units per acre with an estimated improved value of $8.5 million.

- PHASE III– A multi-family residential development within Development Area "C" comprised of not less than 54 units with an estimated improved value of $2.7million (54 units @ $54,000 estimate = $2.7 million).

"DEVELOPMENT AREA A" – An area consisting of approximately 20 acres located in the NW ¼ of the NE ¼ of Section 17, T20N, R17E and proposed CITY of Menasha Tax Incremental Financing District # 12 attached as **EXHIBIT A**, the actual area of which is to be determined via a Certified Survey Map pursuant to Section 3.02.1

"DEVELOPMENT AREA B" - An area consisting of approximately 20 acres, excluding the area designated as a regional storm water pond, located in the NW ¼ of the NE ¼ of Section 17 T20N R17E and proposed CITY of Menasha Tax Incremental Financing District # 12 attached as **EXHIBIT B**, the actual area of which is to be determined via a Certified Survey Map pursuant to Section 3.02.1

"DEVELOPMENT AREA C" - An area consisting of approximately 3 acres, described as Lot 16 Lake Park Villas Plat and located in the proposed City of Menasha Tax Incremental Financing District # 12 attached as **EXHIBIT C**.

"DEVELOPMENT PROPERTY" - consists of Development Areas "A," "B," and "C."

"DEVELOPMENT COSTS" — The hard and soft costs enumerated in the development budget set forth in **EXHIBIT D**.

"EQUALIZED ASSESSED VALUE" – The value also known as "EAV" is defined as the estimated fair market value of land and buildings on the real estate tax bill for a particular parcel.

"INFRASTRUCTURE" – Public and Private Infrastructure.

"IMPLEMENTATION PLAN" – Detailed plans, drawings, specifications and other information as required for the site plan review under CITY Ordinances regarding the construction of Private Infrastructure, Infrastructure and Development Improvements. A specific Implementation Plan must be submitted to and approved by the CITY prior to construction as provided by CITY Ordinance. Each specific Implementation Plan shall be attached to this AGREEMENT as an exhibit upon approval by the CITY.

"PERFORMANCE INCENTIVE" – Annual payments of the Available Tax Increment, commencing in 2013 through 2031 to the DEVELOPER. Performance Incentive shall be

payable to DEVELOPER as provided in this AGREEMENT.

"PUBLIC IMPROVEMENTS" – The road improvements including final roadway street base course and four inch asphalt pavement, concrete curb and gutter, concrete sidewalks as well as sanitary sewer, water mains, storm water drainage, drainage ponds, and other public facilities normally provided by or required by local governments fronting the Development Property whether in place or to be constructed or upgraded in conjunction with the development contemplated in the Concept Plan, including storm water management ponds, but specifically excluding Infrastructure.

"PUBLIC INFRASTRUCTURE"– Consists of those Public Improvements that will be the responsibility of the DEVELOPER as more particularly described in Exhibit ____ (attached) and shall include sanitary sewer service, storm sewer, water mains, and two (2) inch binder temporary asphalt paving, street lighting, that have been constructed by DEVELOPER and dedicated to the CITY under this AGREEMENT.

"PRIVATE INFRASTRUCTURE" – Site grading in accordance with an approved grading and drainage plan, sanitary sewer laterals, potable water laterals and other facilities owned, constructed and maintained by DEVELOPER to service the Development Improvements from the Public Improvements or Private Infrastructure described more particularly in **EXHIBIT** [insert].

"TID # 12" means CITY of Menasha Tax Incremental District Number 12 and project plan created by CITY.

ARTICLE II

OVERVIEW OF THE PROJECT

SECTION 2.01 The Project consists of residential development to take place in three phases resulting in the creation of not less than 120 single family residential units and 54 multi-family units. The construction of at least ten (10) homes within Phase I is to begin by September 1, 2011 with an expected completion date of May 1, 2012. Projected completion dates are January 1, 2016 for Phase I, January 1, 2020 for Phase II. For Phase III, the projected completion date shall be thirty-six (36) months after the DEVELOPER acquires the Property. Upon completion, the entire project is expected to have a value of $23 million.

ARTICLE III

DEVELOPER OBLIGATIONS

SECTION 3.01 Acquisitions of Development Areas. Upon completion of the pre-closing conditions but in no case later than June ~~1~~30, 2011, DEVELOPER shall acquire fee simple title to Development Areas "A" and "B." Upon the City securing the purchase of Development Area "C" in accordance with Section 5.02.2 and before December 31, 2011, DEVELOPER shall acquire fee simple title to Development Area "C."

SECTION 3.01.1 CITY shall transfer the Real Estate for Phase I and Phase II to DEVELOPER by warranty deed for $17,000 per acre subject to the terms and conditions of this AGREEMENT and a separate Real Estate Purchase AGREEMENT to be executed by the parties. The Real Estate Purchase AGREEMENT shall provide that DEVELOPER shall pay $27,200 down at date of closing and shall execute a Promissory Note in favor of CITY in the amount of the balance of the Purchase Price. The terms of the Note shall be zero percent (0%) interest until paid in full, except that in the event DEVELOPER fails to pay in full before January 1, 2020, then interest shall be paid at five percent (5%) per annum of the remaining balance assessed from the date of closing. DEVELOPER shall be required to make a payment of $5,700 to CITY toward the outstanding balance of the Promissory Note for each Lot sold or transferred by DEVELOPER prior to or at the time of each closing using first proceeds for said payment. As security for said Promissory Note, the DEVELOPER shall give CITY a first mortgage position on the Real Estate Development Area "B" which CITY shall subordinate upon Phase I Development Improvements being completed and a second mortgage position on the Real Estate Development Area "A", second to the first mortgage position of the commercial lending institution approved by DEVELOPER in the approximate amount of $2,000,000 representing monies necessary for DEVELOPER's Public and Private Infrastructure obligations herein for Phase I and Phase II. Closing shall take place on or before June 30, 2011. Real estate shall be defined as the Development Area A and the Development Area B estimated to be approximately forty (40) acres of land (Purchase Price estimated to be $680,000 ($17,000 x 40)). CITY shall be responsible for any and all transfer taxes as well as preparation of any and all Certified Survey Maps. CITY shall further be responsible for obtaining the two separate legal descriptions, one description for each Development Area. Certified Survey Map and legal description shall be provided to DEVELOPER by CITY, at CITY's sole expense, at least thirty (30) days prior to closing. The AGREEMENT of sale shall also provide that the CITY shall update all wetland studies for the Real Estate and provide a copy of said wetland studies to DEVELOPER at least fifteen (15) days prior to closing. The AGREEMENT shall further provide that the AGREEMENT is contingent upon the CSM mappings allowing for the development of one hundred twenty (120) or more residential real estate lots, as approved by DEVELOPER, within the real estate areas known as Development Area A and Development Area B.

SECTION 3.01.2 Title Insurance. The CITY shall obtain and pay for a title insurance commitment in the amount of the purchase price. 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. DEVELOPER may obtain additional title insurance at its cost. The CITY shall provide to DEVELOPER a preliminary commitment for title insurance not less than fifteen (15) days prior to the closing.

SECTION 3.01.3 Title. The CITY shall cooperate with DEVELOPER to clear up any defect in title that may be pertaining to the property; provided, however, the Real Estate shall be conveyed subject to (1) reasonable and customary easements and restrictions of record; (2) a reversion of title in accordance with this AGREEMENT;

(3) requisite public and private utility easements; (4) CITY covenants which are attached hereto and fully incorporated herein, none of which may be removed or modified without CITY's approval (ATTACH COVENANTS AS EXHIBIT ____); and (5) all other terms and conditions of this AGREEMENT.

SECTION 3.01.4 Closing Date. The closing date for the transfer of the Real Estate shall be on or before June ~~1~~30, 2011 for Development Areas "A" and "B" and shall be held at the office of the City Attorney, City Hall, 140 Main Street, Menasha, Wisconsin or where the parties may otherwise agree. The closing date for Development Area "C" shall be on or before December 31, 2011.

SECTION 3.01.5 The Real Estate shall be conveyed "as is." The CITY is not responsible for any subsequent remediation, demolition, underground debris, or other clean up costs after conveyance.

SECTION 3.01.6 Listing Contract. CITY had previously engaged a broker for listing Development Areas A and B and the CITY may owe a brokerage fee to said listing broker as a result of the sale of real estate contemplated herein. Said CITY shall be responsible for the payment of any brokerage fees associated with the sale of the real estate.

SECTION 3.02 DEVELOPER's Covenant to Develop. DEVELOPER agrees and covenants to use its best efforts to proceed with due diligence to complete the Development substantially in accordance with the Concept Plan and Implementation Plans which plans and specifications shall be subject to such reasonable review and approval by the CITY as may be normal, customary or required in order to proceed with the Development in accordance with all applicable rules, codes, regulations, ordinances and laws. The DEVELOPER shall cause IMPROVEMENTS to the DEVELOPMENT AREAS to create a value of not less than $23 million including Phase III / Development Area C. The cost for such improvements shall include Development hard and soft costs, site clearance and preparation and costs associated with the construction of single family and multi-family housing units. DEVELOPER shall be required to complete construction Phase I of the Development by January 1, 2016, Phase II by January 1, 2020 and Phase III within thirty-six (36) months after acquisition of Development Area C by DEVELOPER. DEVELOPER agrees not to create a condominium unless or until Cypress Homes Inc. has sold all condominium units constructed in accordance with its development agreement with the City.

SECTION 3.03 Compliance with Codes, Plans and Specifications. DEVELOPER, at its own expense, shall obtain all approvals, permits and licenses as may be required by any governmental or non-governmental entity in connection with the Development. The building and other improvements to be constructed upon the Property, the construction thereof, and their uses shall be in compliance with all applicable codes and ordinances of the CITY, and with all pertinent provisions of this AGREEMENT, the Project Plan and the Plans and Specifications.

SECTION 3.04 Taxes. It is understood that the land, improvements and personal property resulting from the Development shall be subject to property taxes. DEVELOPER shall pay when due all federal, state and local taxes in connection with the Project and all operating expenses in connection with the Real Estate and Development.

SECTION 3.05 Reversion of Undeveloped Portion of Development Property. Notwithstanding the foregoing, in the event that the DEVELOPER does not construct Phase 1 on or before January 1, 2016 or the Aggregate Increment does not reach $8.925 million by January

1, 2016, the CITY may, at its discretion demand the reversion of any property in the Development Areas that have not been improved by Development Improvements contemplated by the Concept Plan. Upon receipt of such demand, the DEVELOPER shall deliver by warranty deed the property identified by the CITY free and clear of any encumbrances within 60 days of the demand. The purchase price of the property so conveyed shall be $17,000 per acre. In the event that the DEVELOPER fails to timely deliver the property, the CITY may commence an action to enforce this provision without further cure.

SECTION 3.06 Public Infrastructure. DEVELOPER shall in connection with and during the construction of the Development undertake at its expense, design and construction of Public Infrastructure in accordance with City of Menasha specifications as furnished to the DEVELOPER by the Menasha Department of Public Works. The Public Infrastructure shall be undertaken consistent with the overall schedule of construction for the Development and shall be completed upon substantial completion of the Development. The Public Infrastructure shall be funded solely by the DEVELOPER. Improvements designed and constructed by the CITY such as sidewalks, curb and gutter and final street paving will be specially assessed or otherwise charged against the benefitting properties within the Development, including lots owned by the DEVELOPER, but, as pertaining to Development Area A, not before at least eighty percent (80%) of the Development Improvements within Development Area A have been constructed or January 1, 2017, whichever occurs first and as pertaining to Development Area B, not before at least eighty percent (80%) of the Development Improvements have been constructed or January 1, 2021, whichever occurs first. DEVELOPER agrees to provide notice to each subsequent owner/purchaser of any real estate in Development Area "D" of the expected curb and gutter and final paving special assessment through a covenant recorded with the Calumet County register of deeds office.

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SECTION 3.07 Private Infrastructure. DEVELOPER shall in connection with and during the construction of the Development undertake at its expense, design and construction of Private Infrastructure in accordance with approved IMPLEMENTATION PLAN.

SECTION 3.08 Easements. DEVELOPER shall grant the CITY or any public utility such easements as reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other need necessary to effectuate the Development in accordance with approved plans at no cost to the CITY.

SECTION 3.09 Record Retention. DEVELOPER understands and acknowledges that the CITY is subject to Public Records Law of the State of Wisconsin. As such, DEVELOPER agrees to retain all records as defined by Wisconsin Statute §19.35(2) applicable to this AGREEMENT for a period of not less than seven (7) years. DEVELOPER agrees to assist the CITY in complying with any public records request that they receive pertaining to this AGREEMENT. DEVELOPER agrees to indemnify and hold the CITY, their officers, employees and authorized representatives harmless for any liability, including without limitation, reasonable attorney fees relating to or in any way arising from DEVELOPER's actions or omissions which contribute to the Indemnified Party's inability to comply with the Public Records Law. In the event DEVELOPER decides not to retain its records for a period of seven (7) years, then it 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 3.10 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 sidewalk, curb and gutter and final street paving, which will not be constructed earlier than one (1) winter season following completion of the development project. The CITY will assess each property/lot owner the cost and expenses associated with these public improvements in accordance with CITY ordinances and state statutes, but, as pertaining to Development Area A, not until at least eighty percent (80%) of the Development Improvements within Development Area A have been constructed or January 1, 2017, whichever occurs first and as pertaining to Development Area B, not until at least eighty percent (80%) of the Development Improvements have been constructed or January 1, 2021, whichever occurs first.

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 $4 million. 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, which the CITY shall reimburse through financial incentive under the terms of this AGREEMENT, with funds to be made available upon verification of the Tax Increment increase as defined herein.

SECTION 4.02.2

- PHASE I
    - 16% of the Equalized Assessed Value (EAV) will be paid to the DEVELOPER for properties valued at $170,000 or less.
    - 18% of the Equalized Assessed Value (EAV) will be paid to the DEVELOPER for properties valued between $170,000 and $180,000.
    - 19% of the Equalized Assessed Value (EAV) will be paid to the DEVELOPER for properties valued greater than $180,000.

SECTION 4.02.3

- PHASE II
    - 17% of the Equalized Assessed Value (EAV) will be paid to the DEVELOPER for properties valued at $160,000 or less.
    - 18% of the Equalized Assessed Value (EAV) will be paid to the DEVELOPER for properties valued between $160,000 and

$170,000.

- 19% of the Equalized Assessed Value (EAV) will be paid to the DEVELOPER for properties valued greater than 170,000.

SECTION 4.02.4

- PHASE III
  - 10% of the EAV

SECTION 4.02.5 A total amount not to exceed $4 million of ACCUMULATED TAX INCREMENT may be distributed to the DEVELOPER according to the schedule set forth herein when and only when the threshold value of the Development Improvements reaches $2.5 million. The threshold value will be the equalized assessed value of the project on January 1, 2012.

- For four years beginning in 2013, 25% of the Available Tax Increment attributable to the Development Improvements will be distributed to the DEVELOPER payable on or before September 1 of each of the four years.

- Beginning in 2017 until termination of the City contribution, 80% of the Available Tax Increment attributable to the Development Improvements will be distributed to the DEVELOPER payable on or before September 1 of each year.

SECTION 4.02.6 CONDITIONS TO PAYMENT OF CITY CONTRIBUTION/SHORTFALL PROTECTION. If DEVELOPER has not constructed Development Improvement of a threshold EAV value of $2.5 million on January 1, 2012, the CITY may delay the commencement of payment of the Performance Incentive until the year following the attainment of a threshold EAV of $2.5 million, said EAV being measured as of January 1 of any particular year.

SECTION 4.02.7 If on or before January 1, 2016, the DEVELOPER has not completed Phase I, the DEVELOPER shall be required to pay in full, monies owed to the CITY for the purchase of Development Area "B."

SECTON 4.02.8 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 any portion of the Development Property which is under the ownership 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 improvements of each phase 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 for each said phase 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. DEVELOPER shall receive a reasonable extension on all time requirement deadlines set forth within this AGREEMENT due to approval delays by CITY.

SECTION 4.05 CITY REMOVAL OF SILOS. As and for additional consideration to DEVELOPER with respect to this AGREEMENT, CITY agrees that within one (1) year from the date of signing this AGREEMENT, CITY shall arrange for the removal of the two (2) silos within parcel Outlot 6 which lies adjacent to Development Area B ("Silo Parcel").

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:

> SECTON 5.02.1 The CITY, at its expense, causing Development Areas "A" and "B" 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.
>
> SECTON 5.02.2 As it relates to Development Area "C," DEVELOPER is not required to DEVELOP Development Area "C" unless and until CITY arranges for DEVELOPER to acquire Development Area "C" for not more than $165,000.
>
> SECTION 5.02.3 Creation of a Mixed Use Tax Incremental Financing District – Proposed TID#12 for twenty (20) years in duration.

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 for Public and Private Infrastructure of Phase I / Development Area A of not less than $_____, (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 therewith, DEVELOPER shall have provided copies of the documents to be executed in connection with the construction loan to the CITY Comptroller. DEVELOPER shall provide to the CITY copies of all appraisals and market studies prepared in connection with the financial commitment.

SECTION 5.03.2 Prepare conceptual lot layouts and restrictive covenants for the Development which are acceptable to the CITY and DEVELOPER.

SECTION 5.03.3 Financial Statements. Within five (5) business days of the execution of this Agreement, DEVELOPER, Lexington Homes and Jeffrey Marlow shall have provided to the City Comptroller, audited financial statements (if available, and if audited financial statements are not available, financial statements in a form reasonably acceptable to the City Comptroller) for fiscal years 2009 and 2010 plus three years complete tax returns, including all schedules. The financial statements must show a financial condition acceptable to the CITY, in the judgment of the CITY Comptroller.

SECTION 5.03.4 DEVELOPER shall at its expense have obtained all necessary approvals and permits necessary to undertake the Development, including but not limited to, site plan review, zoning approvals, and any other local, state or federal approvals or permits.

SECTION 5.03.5 Within 120 days of the execution of this AGREEMENT, DEVELOPER will, at its own cost and expense, prepare and file with the appropriate City offices, a Preliminary Plat pursuant to Sec. 14-1-4 of the City of Menasha Code of Ordinances. The Development Plan must allow for bike and pedestrian access to existing CITY bike / trail systems per map at Exhibit _____.

ARTICLE VI

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 6.01 DEVELOPER represents and warrants to and covenants with the CITY and the CITY represents and warrants to and covenants with DEVELOPER as respectively follows:

SECTION 6.02.1 Each of the parties will use its best efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this AGREEMENT.

SECTION 6.01.2 Each party shall give any notices to, make any filings with, and use its best efforts to obtain any authorizations, consents, and approvals of governments and governmental agencies in connection with the matters referred to in this AGREEMENT.

SECTION 6.01.3 DEVELOPER shall not engage in any practice, take any action, or enter into any transaction outside the Ordinary Course of Business and shall at its own cost and expense, maintain and preserve its business in accordance with prudent

business practices.

SECTION 6.01.4 DEVELOPER will permit representatives of CITY (including legal counsel, accountants, inspectors and consultants) to have full access at all reasonable times, and in a manner so as not to interfere with the normal business operations of DEVELOPER, to all premises, properties, personnel, books, records (including tax records), contracts, and documents of or pertaining to DEVELOPER's business.

SECTION 6.01.5 CITY represents and warrants it is a municipality, duly organized and validly existing under the laws of the state of Wisconsin.

SECTION 6.01.6 DEVELOPER represents and warrants it is a corporation, duly organized and validly existing under the laws of the state of Wisconsin.

SECTION 6.01.7 CITY and DEVELOPER have full power and authority to execute and deliver this AGREEMENT and to perform their obligations hereunder.

SECTION 6.01.8 The execution and delivery of this AGREEMENT, the consummation of the transactions contemplated in this AGREEMENT, and the execution and delivery of the documents required to be executed, delivered or acknowledged by DEVELOPER at the closing will not violate any provision of DEVELOPER's articles or bylaws or any applicable statute, rule, regulation, judgment, order or decree of the state of Wisconsin or a court having jurisdiction over DEVELOPER or its properties.

SECTION 6.01.9 DEVELOPER represents and warrants it has timely filed all tax returns required by law, all tax returns of DEVELOPER are true and correct in all material respects, DEVELOPER has paid all taxes due, except those, if any, currently being contested by it in good faith.

SECTION 6.01.10 DEVELOPER represents and warrants there is no action, suit, proceeding, claim, arbitration against DEVELOPER, its activities or assets before any court or governmental agency except as disclosed in writing to CITY.

SECTION 6.01.11 DEVELOPER represents and warrants its balance sheets and statements of income provided for review hereunder are true, correct and complete, and fairly represent the financial condition of DEVELOPER at the date or dates therein indicated and the results of operations for the period or periods therein specified and that there has not been any Material Adverse Change since the Balance Sheet Date.

SECTION 6.01.12 The Representations and Warranties set forth herein shall be true and correct in all material respects at and as of the Closing Date.

SECTION 6.01.13 DEVELOPER shall have a continuing obligation to immediately report to the CITY Comptroller any material adverse changes in its financial condition to the CITY from the Date of Closing through completion of construction.

ARTICLE VII

POST-CLOSING OBLIGATIONS OF DEVELOPER

SECTION 7.01 DEVELOPER will, at its expense, cause the Development Area to be platted.

SECTION 7.02 Public Infrastructure. DEVELOPER shall in connection with and during the construction of the Development Area undertake at its expense, design and construction of Public Infrastructure in accordance with City of Menasha specifications as furnished to the DEVELOPER by the Menasha Department of Public Works. The Public Infrastructure shall be undertaken consistent with the overall schedule of construction for the Development Area and shall be completed upon substantial completion of the Development Area. The Public Infrastructure shall be funded solely by the DEVELOPER. DEVELOPER agrees to provide either an Irrevocable Letter of Credit in favor of CITY or an escrow or other restricted account to be maintained, acceptable to the CITY, in an amount sufficient to cover all expenses associated with the construction of public infrastructure. DEVELOPER shall be responsible to ensure that Contractors installing such infrastructure comply with and pay prevailing wage rates as set forth by the Wisconsin Department of Workforce Development.

SECTION 7.03 DEVELOPER pledges that it shall complete the construction of the Public Infrastructure shown on [insert plan name] on or before December 31, 2017. In the event the public infrastructure has not been completed by that date, the parties may either agree to an extension, or the CITY may complete the public infrastructure and assess the costs of the public infrastructure against those portions of the Development Area that are benefitted.

SECTION 7.04 Dedication of Public Infrastructure. The DEVELOPER shall dedicate the Public Infrastructure to the CITY without cost to the CITY under the following terms. The CITY shall accept dedication of Public Infrastructure upon (a) receipt of As-Built Drawings, and (b) inspection and satisfaction of CITY staff that the Public Infrastructure was constructed in accordance with the as-built drawings; and (c) DEVELOPER's contractors execute a guarantee, in the form normally required by the CITY for similar work, guaranteeing the workmanship, adequacy and fitness for purpose of the Public Infrastructure for at least one (1) year after conveyance to the CITY.

SECTION 7.05 Maintenance of Private Infrastructure. The DEVELOPER shall be responsible for the cost of maintenance of the Private Infrastructure and Development Improvements.

SECTION 7.06 Failure to Dedicate Public Infrastructure. If the DEVELOPER does not timely dedicate the Public Infrastructure or the Public Infrastructure is not accepted by the CITY, the CITY shall give the DEVELOPER 30 days written notice to cure. Upon failure to cure the CITY may enter the Development Property and repair or reconstruct the Public Infrastructure to the CITY's satisfaction and assess the cost of the repair or reconstruction against benefitted properties or bring an action for specific performance or to otherwise compel compliance with this AGREEMENT.

SECTION 7.07 Except as may be mutually agreed by the CITY and DEVELOPER, the DEVELOPER will participate in FVHB Parade of Home events.

SECTION 7.08 DEVELOPER will initiate construction of at least ten (10) homes no later than September 1, 2011 in Development Area "A." with an expected completion date of May 1, 2012. Projected completion dates are estimated to be January 1, 2016 for Phase I, January 1 and

2020 for Phase II.

SECTION 7.09 Standards of Construction. DEVELOPER shall see to it that all infrastructure and improvements are constructed in a good and workmanlike manner and consistent with prevailing industry standards for high quality construction in the area of the CITY. DEVELOPER shall perform all work in compliance with applicable laws, regulations, ordinances and permits and DEVELOPER shall at its own cost and expense obtain all necessary permits and licenses for such development.

SECTION 7.10 If the DEVELOPER has not completed improvements on at least 75 % of the lots in Phase I by January 1, 2016, the CITY shall have the option to repurchase Development Area "B" (Phase II) for an amount of $17,000 per acre.

ARTICLE VIII

BUDGET AND BUDGET RECONCILITATION; FINANCIAL REPORTS

SECTION 8.01 Attached hereto as **EXHIBIT** [insert] is the DEVELOPER's budget for the Development. The DEVELOPER agrees to maintain records such that its actual expenditures for the Development may be ascertained and reconciled against such budget. From time to time upon reasonable notice from the CITY, authorized representatives of the CITY, including the CITY Comptroller, shall be entitled to examine such records at the DEVELOPER's offices to verify construction costs during and after construction.

ARTICLE IX

ASSIGNMENT

SECTION 9.01 The rights, duties and obligations of the DEVELOPER hereunder may not be assigned by DEVELOPER without the written consent of the CITY to the assignment, which consent shall not be unreasonably withheld. Any assignee or purchaser or transferee of any portion of the Real Estate shall be bound by the terms and conditions of this AGREEMENT, which shall run with the land and be binding upon all such assignees, purchasers and transferees. Written evidence satisfactory to the CITY that such assignee or entity has agreed in writing to be bound by the terms of this AGREEMENT must be provided to the CITY. Any such sale, transfer or conveyance of any portions of the Real Estate shall not relieve the DEVELOPER of its obligations hereunder.

ARTICLE X

INDEMNITY

SECTION 10.01 DEVELOPER shall indemnify and hold harmless the CITY, its officers, employees and authorized representatives (Indemnified Party) from and against any and all liabilities, including, without limitation, remediation required by any federal or state agency having jurisdiction, losses, damages, costs and expenses, including reasonable attorney fees and costs, arising out of any third-party claims, causes of action, or demands made against or suffered by the Indemnified Party on account of this AGREEMENT, unless such claims, causes of action, or demands: (a) relate to the Indemnified Party failing to perform its obligations to DEVELOPER; or (b) arise out of any willful misconduct of the Indemnified Party. At the Indemnified Party's request, DEVELOPER shall appear for and defend the Indemnified Party, at DEVELOPER's expense, in any action or proceeding to which the Indemnified Party may be

made a party by reason of any of the foregoing.

ARTICLE XI

NOTICES

SECTION 11.01 All notices, demands, certificates or other communications under this AGREEMENT shall be sufficiently given and shall be deemed given when hand delivered or when mailed by first class mail, postage prepaid, property addressed as indicated below:

To the DEVELOPER:	The Ponds of Menasha, LLC 1300 N. Kimps Court Green Bay, WI 54313
With a copy to:	
To the CITY:	City of Menasha, Wisconsin City Hall 140 Main Street Menasha, WI 54952 Attn: CITY Clerk
With a copy to:	Greg Keil, Community Development Director City Hall 140 Main Street Menasha, WI 54952

SECTION 11.02 Any party may, by written notice to the party (ies), designate a change of address for the purposes aforesaid.

ARTICLE XII

NONDISCRIMINATION

SECTION 12.01 In the performance of work under this AGREEMENT, the DEVELOPER agrees not to discriminate against any employee or applicant for employment nor shall the development or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry and that the construction and operation of the Development shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

SECTION 13.01 ENTIRE AGREEMENT. This document contains the entire AGREEMENT between DEVELOPER and the CITY and it shall inure to the benefit of and shall be binding upon the parties hereto and the respective heirs, executives, successors and assigns. This AGREEMENT may be modified only by a written Amendment signed by the parties, which Amendment shall become effective upon the recording in the Office of Register of Deeds for the

County.

SECTION 13.02 SURVIVAL OF WARRANTIES, REPRESENTATIONS AND AGREEMENTS. Any warranty, representation or AGREEMENT herein contained shall survive the Closing. 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 13.03 DEFAULT. In addition to any remedies set forth within this AGREEMENT, the Parties shall have all rights and remedies available under law or equity with respect to said default. All remedies shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.

SECTION 13.04 FAILURE TO ENFORCE NOT A WAIVER. Failure of the CITY to enforce any provision contained herein shall not be deemed a waiver of the City's right to enforce such provision or any other provision in the event of a subsequent default.

SECTION 13.05 NO SUBORDINATION. The CITY shall not subordinate any interest it has in this AGREEMENT for any reason, unless it is determined to be in the best interests of the CITY.

SECTION 13.06 MEDIATION OF DISPUTES REQUIRED. Except as expressly provided herein, prior to litigation and as a condition precedent to bringing litigation, any party deeming itself aggrieved under this AGREEMENT shall be obligated to request nonbinding mediation of this dispute. Mediation shall proceed before a single mediator. In the event the parties cannot agree, the aggrieved party may then commence an action. However, the parties will be bound to agree to alternative dispute resolution as ordered by the Court.

SECTION 13.07 GOVERNING LAW. This AGREEMENT shall be governed by, enforced and construed in accordance with the domestic laws of the State of Wisconsin.

SECTION 13.08 COUNTERPARTS. This AGREEMENT may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECTION 13.09 AMENDMENTS AND WAIVERS. No amendment of any provision of this AGREEMENT shall be valid unless the same shall be in writing and signed by CITY and DEVELOPER. No waiver by any party of any provision of this AGREEMENT or any default, misrepresentation, or breach of warranty shall be valid unless the same shall be in writing and signed by the parties making such a waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

SECTION 13.10 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.

SECTION 13.11 RECORDING OF AGREEMENT. The parties hereto agree that the CITY may record this AGREEMENT or a memorandum of this AGREEMENT on the record title to the Real Estate. The DEVELOPER shall upon request of the CITY execute and deliver any such memorandum or other document in connection with such recording.

SECTION 13.12 NO PARTNERSHIP. This AGREEMENT specifically does not create any partnership or joint venture between the parties, or render any party liable for any debts or obligations of the other party.

SECTION 13.13 CONSTRUCTION. The parties have participated jointly in the negotiation and drafting of this AGREEMENT. In the event an ambiguity or question of intent or interpretation arises, this AGREEMENT shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this AGREEMENT.

SECTION 13.14 INCORPORATION OF EXHIBITS. The **EXHIBITS** identified in this AGREEMENT are incorporated herein by reference and made a part hereof.

IN WITNESS WHEREOF, the parties have duly executed this AGREEMENT, or caused it to be duly executed, as of the _____ day of _____, 2011

THE PONDS OF MENASHA, LLC

By:_____

By:_____

CITY OF MENASHA

By:_____
Donald Merkes, Mayor

Attest:_____
Deborah A. Galeazzi, City Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF WINNEBAGO)

Personally came before me this _____ day of January 2011, the above named _____, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and the purposes therein intended.

_____
Notary Public, State of Wisconsin
My Commission: _____

STATE OF WISCONSIN)

) ss.
COUNTY OF WINNEBAGO)

Personally came before me this _____ day of, the above named Donald Merkes, Mayor, and Deborah A. Galeazzi, City Clerk, of the City of Menasha, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and the purposes therein intended.

_____
Notary Public, State of Wisconsin
My Commission: _____

Countersigned pursuant to §62.09(10) Wis. Stats.

_____
City Comptroller

APPROVED AS TO FORM:

_____
Pamela A. Captain, City Attorney