

Memo

To: Village Board

Fr: Brad Lange, Trevor Fuller

Re: AMENDMENT TO DEVELOPERS AGREEMENT FOR OLD CHAPEL HILL, LLC. (FORMERLY BISHOP'S HILL, LLC.), LOCATED AT 1921 RIVERSIDE DRIVE

Date: 16 December 2016

Attached is a copy of the proposed amended developer's agreement with Old Chapel Hill, LLC. (formerly Bishop's Hill, LLC.) for the proposed 48-unit apartment development at 1921 Riverside Drive. The total developer incentive, the timeline to complete the entire development, the structure to pay the incentives (upon completion of each individual apartment building), and the guaranteed minimum annual real estate tax payment remains the same. The amended developer's agreement would eliminate the deadline for Phase I (January 1, 2017), but maintain that the deadline for completion of the entire project remain January 1, 2018 (current deadline for Phase II).

The Board is asked to approve the amended developer's agreement as presented.

AMENDED AND RESTATED
TAX INCREMENTAL FINANCING
DEVELOPER'S PERFORMANCE AGREEMENT
BETWEEN VILLAGE OF ALLOUEZ
AND OLD CHAPEL HILL, LLC

*Return to: Attorney Dennis Duffy
P.O. Box 488
Green Bay, WI 54305*

WHEREAS, the Developer's time table for the construction of six apartment buildings has changed and substantial completion and occupancy of the six apartment buildings will occur in 2017 creating new tax incremental values of Three Million Eight Hundred Thousand (\$3,800,000.00) Dollars no later than January 1, 2018; and

WHEREAS, this change in the construction schedule for the six apartment buildings requires that the previous TIF Agreement between the Village of Allouez and Old Chapel Hill, LLC dated June 16, 2016 be amended and restated.

THIS AMENDED AND RESTATED AGREEMENT ENTERED into as of the date stated below is by and between the VILLAGE OF ALLOUEZ, a municipal corporation and political subdivision of the State of Wisconsin (the "Village"), and OLD CHAPEL HILL, LLC, (the "Developer"). The Developer and Village are hereinafter referred to collectively as the "Parties" and individually referred to interchangeably as a "Party," as the case may be.

WITNESSETH

WHEREAS, Wis. Stats. §66.1105 provides the authority and establishes procedures by which the Village may undertake development projects within certain areas of the Village and finance such projects through the use of tax incremental financing; and

WHEREAS, on October 18, 2011, the Village's Board of Trustees adopted a Resolution Creating Tax Incremental District No. 1 (the "District") in the Village of Allouez; and

WHEREAS, on October 18, 2011, the Village Board adopted the "Project Plan" for the District (herein the "Project Plan"), which described a number of proposed projects for the development of said District; and

WHEREAS, on September 15, 2015, the Village Board approved an Amendment to the Project Plan and Boundaries of Tax Incremental District No. 1; and

WHEREAS, Wis. Stats. §66.1331 and §66.1337 empowers villages to assist development projects by lending or contributing funds and performing other actions of a character which the Village is authorized to perform for other purposes; and

WHEREAS, Wis. Stats. §66.1105 authorized the Village to incur project costs in the discretion of its Board of Trustees, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans; and

WHEREAS, Developer wishes to construct a Planned Development District, six (6) apartment buildings, one 12-unit, two 9-unit and three 6-unit buildings for a total of forty-eight (48) units, at the corner of Riverside Drive and West St. Joseph Street in the Village of Allouez, Brown County Wisconsin. A copy of a Map and the legal description is attached hereto as Exhibit A and made part of this Agreement (collectively, the “Development Area”), in accordance with the Tax Incremental Finance District No. 1 Project Plan, the Village’s Site Plan Review Standards and the requirements of the Planned Development District from the Village’s Zoning Code.

WHEREAS, the Village and the Developer have agreed to the scope and type of improvements and to obligations of each for the Development; and

WHEREAS, the Village believes that the development more fully described in this Agreement and in the Preliminary Site/Development Plan so approved, will promote the revitalization and economic stability of the Village.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Village of Allouez and the Developer agree as follows:

1.0 PURPOSES AND DEFINITIONS

1.01 **Purpose of Agreement.** The Parties have agreed upon a plan for the development of six (6) apartment buildings, one 12-unit, two 9-unit and three 6-unit buildings for a total of forty-eight (48) units located within the Development Area. The purpose of this Agreement is to formalize and record the understandings and undertakings of the Parties and to provide a framework within which the construction of the six (6) apartment buildings within the Development Area will take place consistent with the Project Plan.

1.02 The terms listed below shall be defined for the purposes of this Agreement as follows:

A. **Village:** means the Village of Allouez, a Wisconsin municipal corporation. The Village may also be referred to as the Village of Allouez.

B. **Development:** means the overall construction of six (6) apartment buildings, one 12-unit, two 9-unit and three 6-unit buildings for a total of forty-eight (48) units in a Planned Development District. Each apartment unit shall have two bedrooms and two baths and approximately 1200-1300 square feet, attached garages, direct access from garage to apartment, ceramic tile floor, custom made cabinets, deluxe counter tops, stainless steel appliances. The 12-unit building shall have four (4) loft apartments. Each 9-unit building shall have three (3) loft apartments. Each 6-unit building shall have two (2) loft apartments.

- C. **Development Area:** means the sum of all property legally described and depicted in Exhibit A, and constitutes the total boundaries of the project for which this Agreement is provided. The Development Area may also be referred to herein as the "Parcel."
- D. **Preliminary Site/Development Plan:** means the construction a Planned Development District of six (6) apartment buildings, one 12-unit, two 9-unit and three 6-unit buildings for a total of forty-eight (48) units within the Development Area and other site improvements as approved by the Village as a Planned Development District, Sec. 11.25 and Site Plan Design and Review, Sec. 11.29 of the Allouez Zoning Code. A Preliminary Site/Development Plan is attached hereto as Exhibit B and made part of this agreement. The Village approvals are incorporated herein by reference as though more fully set forth and made part of this Agreement.
- E. **Developer:** means Old Chapel Hill, LLC.
- F. **Minimum Annual Real Estate Tax Payment:** means the total amount of real estate taxes paid as stated on the annual tax bill issued by Brown County, Wisconsin as it relates to the Development (currently known as Parcel AL-56-2.)
- G. **Parcel Value:** means the Assessed Value of the Parcel, determined by the Village Assessor in accordance with the requirements of Chapter 70, Wis. Stats.
- H. **Planned Development District:** Section 11.25 of the Allouez Zoning Code which is incorporated herein by reference as though more fully set forth and made part of this Agreement.
- I. **Site Plan Design & Review:** Section 11.29 of the Allouez Zoning Code which is incorporated herein by reference as though more fully set forth and made part of this Agreement.
- J. **Tax Increment:** means the additional Fair Market Value for real estate tax assessment purposes created by the apartment building construction identified in the Preliminary Site/Development Plan and described in this Agreement. For purposes of this Agreement, the base Fair Market Value for the Development Area is Five Hundred Ninety-Eight Thousand (\$598,000.00) Dollars. The Tax Increment is the excess of the additional Fair Market Value created for real estate tax assessment purposes over the base Fair Market Value.

2.0 DESCRIPTION OF DEVELOPMENT

- 2.01 **Development Area.** The improvements within the Development Area will be the construction of six (6) apartment buildings, one 12-unit, two 9-unit and three 6-unit buildings for a total of forty-eight (48) units as particularly described and depicted in the Preliminary Site/Development Plan and as approved by the Village of Allouez.

3.0 UNDERTAKINGS OF THE PARTIES

- 3.01 **Undertakings of Developer.** The Developer agrees that it shall:
- A. Obtain Village approvals for the development as a Planned Development District, Section 11.25, and per the Site Plan Design and Review requirements of Sec. 11.29, of the Village's Zoning Code.
 - B. Complete construction of six (6) apartment buildings, one 12-unit, two 9-unit and three 6-unit buildings for a total of forty-eight (48) units within the Development Area per the Preliminary Site/Development Plan sufficient to create Tax Increment of Three Million Eight Hundred Thousand (\$3,800,000.00) Dollars no later than January 1, 2018.
 - C. **Guarantees.** The real estate tax assessment for the parcel shall be determined through the Assessor's office based on land value plus the value of improvements per Chapter 70, Wis. Stats. as of January 1, 2018.
 - D. **2018.** For nine (9) consecutive years, Developer guarantees a Minimum Annual Real Estate Tax Payment for the Development Parcel of not less than Ninety-Two Thousand (\$92,000.00) Dollars which includes the current annual real estate taxes paid on Development Area (Now known as AL-56-2) and future annual real estate taxes owed on the Tax Increment of Three Million Eight Hundred Thousand (\$3,800,000.00) Dollars commencing with the 2018 tax year with real estate taxes due and payable by January 31, 2019 and each year thereafter for nine (9) years, through and including the tax year 2027 with real estate taxes due and payable by January 31, 2028. This guaranteed Minimum Annual Real Estate Tax Payment is based upon the Development Area (Parcel AL-56-2) having additional Fair Market Value for real estate tax assessment purposes of not less than Three Million Eight Hundred Thousand (\$3,800,000.00) Dollars equating to total Fair Market Value for the Development Area of Four Million Four Hundred Thousand (\$4,400,000.00) Dollars, as of January 1, 2018 and for each year thereafter through 2027 for a period of nine (9) years in order for the Village to recover the costs for the undertakings as set forth in Section 3.02.

In the event the annual real estate taxes levied for the land and improvements for the Development Area are less than the guaranteed Minimum Annual Real Estate Tax Payment for any tax year, the Village

shall invoice the Developer for the difference which shall be due and payable by Developer within 30 days of receipt of the invoice.

If Developer fails to pay the invoice within thirty (30) days of billing from the Village, then the Village is authorized to place the amount of the invoice as a special charge together with statutory interest and penalties upon the tax roll for that subject parcel(s).

The guarantee of Fair Market Value and payment of a Minimum Annual Real Estate Tax Payment for the parcel(s) shall run with the land and remain the obligation of the Developer, its successors and assigns in interest.

3.02 Undertakings of the Village. The Village agrees that it shall:

The Village will pay a reducible cash incentive for each completed apartment building with the corresponding tax incremental value as follows and subject to the Village Assessor's determination and certification of new tax incremental value for the buildings.

One 12-unit apartment building with a new tax incremental value of \$950,000.00

A TIF incentive of \$120,000.00

Two 9-unit apartment buildings with a new tax incremental value of \$712,500.00 for each building

TIF incentive for each 9-unit apartment building: \$90,000.00

Three 6-unit apartment buildings with a new tax incremental value of \$475,000.00 for each building

TIF incentive for each 6-unit apartment building: \$60,000.00

In no event shall the TIF incentive for each apartment building exceed the TIF incentive identified hereinabove and further the total TIF incentives shall not exceed \$480,000.00 upon the completed construction of all six apartment buildings.

If the certified new tax incremental value for any apartment building is less than the tax incremental value set forth above, then the cash incentive will be reduced and paid on the basis of 12.6% of the tax increment actually generated over the base value.

Sec. 3.01 D of this Agreement shall be amended accordingly with the revised guaranteed tax assessed value and Minimum Annual Real Estate Tax Payment in the event the cash incentive is reduced. The amended Minimum Annual Real Estate Tax Payment shall be calculated by dividing

the total Fair Market Value of the Development Area by 1,000 and then multiplying by a tax rate of 20.92 per thousand dollars of value.

- 1) Conditions for payment of incentives:
 - A. the issuance of occupancy permits to Developer for each apartment building; and
 - B. within five (5) working days of the issuance of the certificate of occupancy for each apartment building, the Village Assessor's office shall make a determination and a certification of the additional tax incremental value of each apartment building for the Development.
 - 1) Upon certification of the new assessed value for each apartment building, the Village shall make payment of the cash incentive to Developer and Bank of Luxemburg within twenty (20) days as provided in Sec. 3.02 A.

4.0 MISCELLANEOUS

- 4.01 **Restrictions on Sale of the Development Area.** Without the express written consent of the Village, any lands or parcels comprising the Development Area may not be sold, transferred or conveyed in any manner which would under law in effect on the date of this Agreement render any portion of the Development Area exempt from property taxation; provided, however, that the Village's consent shall not be required in connection with the granting of any mortgage to finance or refinance lands or parcels comprising the Development Area or in connection with any sale or conveyance pursuant to or following any foreclosure (or acceptance of deed in lieu of foreclosure) of such mortgage. The covenants contained in this section shall bind and run with the lands and parcels comprising the Development Area.
- 4.02 **Utility Easements.** In the event additional easements are necessary for furtherance of the Development for utilities including but not limited to sewer, water, lighting, gas or electricity, Developer shall dedicate easements at no cost to the Village.

5.0 DEFAULT AND REMEDIES

- 5.01 **Notice of Default and Right to Cure.** In the event of any default in or any breach of this Agreement or any of its terms or conditions by any Party hereto, then in such event(s) the non-defaulting Party shall give written notice of the default to the other Party. The defaulting Party shall then remedy such default or breach within thirty (30) days after receipt of such notice. If not so cured within said applicable period of time, the non-defaulting Party may exercise any right or remedy provided for herein. In the event the particular breach or default (other than a monetary default) cannot be cured within said 30-day period, then so long as the defaulting Party commences to cure such default

within said period of time, diligently pursues the cure and does in fact cures the same within a reasonable time, there shall be deemed no default. This Section 5.01 shall not apply to Village TIF cash incentive payments to the Developer, payments made or required to be made for any real or personal property tax payments, special assessments payments or other monetary payments by Developer, which may or may not be secured by liens on the Parcel; and in such events, provisions of applicable law shall control.

- 5.02 **Developer Remedies.** Subject to the notice of default and opportunity to cure provisions of Section 5.01 hereof, in the event of any default in or breach of this Agreement by the Village, the Developer may exercise any rights or remedies provided for by law or equity.
- 5.03 **Village Remedies.** Subject to the notice of default and opportunity to cure provision of Section 5.01 hereof, in the event of a default in or breach of this Agreement by the Developer, the Village may pursue such rights and remedies as may be provided for in law or equity.
- 5.04 **Waiver.** Any delay by a Party in instituting or prosecuting any action or proceedings or otherwise asserting its rights under this article shall not operate as a waiver of such rights or to deprive it of or to limit such rights in any way (it being the intent of these provisions that such Party should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy providing in this Article because of concepts of waiver, laches or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the Project created by the default involved). No waiver in fact made by any Party with respect to any specific default by the other Party(ies) under this Article be considered or treated as the waiver of the rights of the non-defaulting Party with respect to any other defaults by such defaulting Party under this Article, or with respect to the particular default except to the extent specifically waived in writing.
- 5.05 **Rights and Remedies Cumulative.** The rights and remedies of each Party, whether provided by law, equity or provided by this Agreement, shall be cumulative; and the exercise of any one or more of such remedies shall not preclude the exercise at the same or different times of any other such remedies for the same event of default or breach or of any remedies for any other event of default or breach by either Party.
- 5.06 **Enforcement Costs.** In the event any proceeding is commenced as a result of a Party's default under this Agreement, the prevailing Party in such proceeding shall be entitled to recover its reasonable costs and expenses (including but not limited to reasonable attorneys fees) incurred in enforcing the terms of provisions of this Agreement.

6.0 ADDITIONAL PROVISIONS

- 6.01 **Conflicts of interest.** No member of the governing body or other officer of the Village shall have any financial interest, direct or indirect, in this Agreement, the Property, or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement

which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

- 6.02 **Headings.** Descriptive headings as used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 6.03 **Notice.** Any notice required under this Agreement shall be given in writing, signed by the Party giving notice, and personally delivered or mailed by first class mail, postage prepaid, to the Parties, and addressed as follows:

If to the Village:

Village of Allouez
Village Administrator
1900 Libal Street
Green Bay, WI 54301

If to the Developer:

Old Chapel Hill, LLC
Attn: Keith Garot
320 Main Avenue #300
DePere, WI 54115

Notice shall be deemed delivered, in the case of personal delivery on the date when personally delivered, or in the case of mail, on the date when said notice is deposited in the United States mail with sufficient postage to affect such delivery.

- 6.04 **Force Majeure.** If any Party hereto shall be materially delayed or hindered in or prevented from the performance of any act required to be performed by such Party by reason of Acts of God, strikes or walk outs, unavailability of materials, failure of power, riots, insurrections, terrorist acts, the act or failure to act of another party, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such Party's control, then the time for performance of such act shall be extended for a period of such delay provided that the Party whose performance is delayed, hindered, or prevented gives immediate written notice to the other Parties and takes all reasonable actions to overcome the condition affecting its performance as expeditiously as possible. At the request of any Party hereto, authorized representatives of all of the Parties to this Agreement shall meet to discuss any condition affecting performance hereunder and potential actions that might be undertaken to overcome such conditions.
- 6.05 **Entire Agreement.** This document contains the entire Agreement between the Parties with respect to the matter set forth herein, and shall inure to the benefit of and shall bind the Parties hereto, their respective heirs, executors, successors or assigns. This Agreement may be modified only in writing, with said written modification(s) signed by an authorized representative of all Parties.

- 6.06 **Governing Law.** This Agreement shall be construed in accordance with the Laws of the State of Wisconsin.
- 6.07 **Cooperation.** The Parties hereto agree to cooperate in the prosecution of applications made by any Party for any governmental certificates, permits, or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or the use or occupancy of the Property. Without intending to limit the generality of the foregoing sentence, the Village may, within its authority, issue such permits (including but not limited to building permits and occupancy permits), adopt such resolutions and execute such documents as may be necessary to permit the Developer to carry out the Preliminary Site/Development Plan and use the improvements within the Development Area for the uses described in the Preliminary Site/Development Plan. The Parties agree at any time, or from time to time at the written request of another party, to sign and deliver other such documents as may be reasonably requested or may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.
- 6.08 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.
- 6.09 **Relationship with Parties.** Nothing contained in this Agreement shall be deemed or construed, either by the Parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between the Village and Developer.
- 6.10 **Further Assurances.** Village and Developer, each agree, at any time or from time to time at the written request of the other, to sign and deliver such other instruments, notices, conveyances, agreements or other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.
- 6.11 **No Liability of Village.** Village shall have no obligation or liability to the lending institute, architect, Developer's lessee, contractor, or subcontractor, or any other party retained by Developer in the performance of its obligations and responsibilities under the terms and conditions of this Agreement. Developer specifically agrees that no representations, statements, assurances or guarantees will be made by Developer to any third party or by any third party which are contrary to these provisions.
- 6.12 **Recording of Agreement.** The agreement and any and all subsequent modifications thereof or additions thereto may upon being duly executed, will be recorded by the Village with the Register of Deeds for Brown County, Wisconsin.
- 6.13 **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the Parties hereto as well as their respective successors, transferees and assigns. With the consent of the Village, which consent shall not be unreasonably withheld, the Developer may assign this Agreement, or any part thereof, from time to

time to any entity controlled or managed by the Developer, or to any person acquiring any portion or portions of the Development Area, provided that, in the event of any such transfer, the applicable terms and conditions of this Agreement shall run with the title of the property included in the portion of the Development Area so transferred. The Village may condition its consent upon the transferee expressly assuming all of the obligations of the Developer as contained in this Agreement. Upon any such transfer of the Developer's interest, the Developer initially named herein shall be released from its obligations hereunder.

- 6.14 **Construction of Agreement.** It is understood and agreed by the Developer and the Village that this Agreement shall be construed without regard to any presumption or other rule regarding construction against the Party causing the Agreement to be drafted. Each Party has had the opportunity to have the Agreement reviewed by their respective counsel or having waived their right to do so as evidence by their signature hereon.
- 6.15 **Severability.** In the event that one or more provisions of this Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be at all affected or impaired thereby.
- 6.16 **PRIOR AGREEMENT SUPERSEDED.** The undersigned parties who are parties to the Prior Agreement (Tax Incremental Financing Developer's Performance Agreement between the Village of Allouez and Old Chapel Hill, LLC entered into as of June 16, 2016 between the Village and Developer) hereby amend and restate the Prior Agreement to read in its entirety as set forth in this Agreement, all with the intent and effect that the Prior Agreement shall hereby be terminated and entirely replaced and superseded by this Agreement and shall be of no further force and effect.

[SIGNATURE PAGE FOLLOWS]

Dated this ___ day of _____, 2016

VILLAGE OF ALLOUEZ

James F. Rafter, Village President

Debra M. Baenen, Village Clerk

STATE OF WISCONSIN)
) ss
COUNTY OF BROWN)

Personally came before me this ___ day of _____, 2016, the above named James F. Rafter, Village President and, Debra M. Baenen, Village Clerk, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

*
Notary Public, Brown County, Wisconsin
My commission expires _____

Dated this ___ day of _____, 2016

OLD CHAPEL HILL, LLC

By: _____
Keith Garot, Member

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared, Keith Garot, Member, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Old Chapel Hill, LLC and that he executed the same as the act of said entity with full authority for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ___ day of _____, 2016.

*
Notary Public, Brown County, Wisconsin
My commission expires _____

Approved by the Village Board
of the Village of Allouez on
