

It is expected that a Quorum of the Personnel Committee, Board of Public Works, and Administration Committee will be attending this meeting: (although it is not expected that any official action of any of those bodies will be taken)

**CITY OF MENASHA
Special Common Council
Third Floor Council Chambers
140 Main Street, Menasha
October 10, 2011
5:00 PM
AGENDA**

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE
- C. ROLL CALL/EXCUSED ABSENCES
- D. PUBLIC COMMENTS ON ANY MATTER LISTED ON THE AGENDA
(five (5) minutes time limit for each person)
- E. ACTION ITEMS
 - 1. [Collateral Assignment of Development Agreement Rights of Lender in the Event of Reversion of Title between the Ponds of Menasha, LLC, Community First Credit Union and City of Menasha. \(Recommendation of Administration Committee\)](#)
- F. ADJOURNMENT

"Menasha is committed to its diverse population. Our Non-English speaking population and those with disabilities are invited to contact the Menasha City Clerk at 967-3603 24-hours in advance of the meeting for the City to arrange special accommodations."

**COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT
RIGHTS OF LENDER IN THE EVENT OF REVERSION OF TITLE**

This Collateral Assignment of Development Agreement is entered into by and between The Ponds of Menasha, LLC (“DEVELOPER”), Community First Credit Union (“LENDER”) and the CITY of Menasha, Wisconsin (“CITY”).

WHEREAS, DEVELOPER and the CITY have entered into a certain Development Agreement dated September 7, 2011 (the “AGREEMENT”), whereby DEVELOPER is making improvements to certain property in return for the promise of certain payments from the CITY; and

WHEREAS, subject to the terms and conditions of the AGREEMENT, DEVELOPER will be entitled to certain incentive and performance payments under the AGREEMENT from the CITY (the “Payments”); and

WHEREAS, in connection with the AGREEMENT, LENDER is providing financing to DEVELOPER in the original principal amount of up to Nine Hundred Eighty Four Thousand One hundred Dollars (\$984,100.00) for the installation of infrastructure improvement to the property subject to the AGREEMENT and for the development of that property (the “Loan”); and

WHEREAS, as a condition of making the Loan, LENDER is requiring DEVELOPER to assign for collateral purposes the Payments.

NOW, THEREFORE, for valuable consideration, the parties agree as to the following:

1. Assignment of Payments. DEVELOPER assigns to the LENDER, for collateral purposes only as security for the Loan, the right, title and interest under the AGREEMENT, ARTICLE IV, to certain incentive and performance payments due DEVELOPER. If DEVELOPER defaults in any of its obligations to LENDER under the Loan, upon notice to the CITY by LENDER, LENDER shall be entitled to succeed to the rights of DEVELOPER under ARTICLE IV of the Agreement, to receive all Payments otherwise due DEVELOPER.
2. Advances Prohibited. DEVELOPER shall not request or receive any advance of any Payment.
3. Indemnity. LENDER and DEVELOPER shall each hold harmless, indemnify and defend the CITY of and from any demands, damages, costs, fees, including actual attorney fees, awards, judgments and all other sums due or claimed to be due and relating to the making of any Payment or any part of any Payment by the CITY to LENDER after demand by LENDER for receipt of Payment. The CITY may presume without investigation or any obligation to conduct any investigation or inquiry that DEVELOPER is in default of its obligations to LENDER if LENDER makes demand for a Payment. DEVELOPER shall have no right to contest with the CITY any such claim by LENDER for a Payment, all such recourse being exclusively to LENDER. DEVELOPER shall

have no right to reimbursement or recoupment of any Payment made by the CITY to LENDER pursuant to a demand for a Payment by LENDER hereunder.

4. Modification of Agreement. So long as the LENDER is owed any amount under its loans to the DEVELOPER secured by this assignment, the DEVELOPER and the CITY agree that the AGREEMENT will not be modified in any way without notice to the LENDER. In addition, so long as the DEVELOPER is obligated to the CITY under the AGREEMENT, the LENDER agrees to provide notice to the CITY of any default by the DEVELOPER under the LOAN.

5. Default under Development Agreement. If the DEVELOPER defaults under the Development Agreement with the CITY and the CITY exercises its right to reversion of undeveloped areas subject to said agreement, the CITY and DEVELOPER acknowledge that the mortgage of LENDER on said undeveloped areas is a first mortgage on said land with priority over any rights of the CITY as to all undeveloped areas located in Phase I of the development as defined in said Development Agreement. LENDER agrees that its loan to DEVELOPER in the original amount of \$984,100.00 shall not be modified or amended to increase the amount due LENDER from DEVELOPER so long as the CITY has the right of reversion under the Development Agreement without the express written consent of the CITY. If the CITY exercises its right of reversion as to any part of Phase I of the development, the LENDER shall be given notice of said exercise by the CITY and the LENDER shall be paid in full by the CITY for the balance due on said first mortgage upon acceptance of a deed from the DEVELOPER to the CITY.

6. Foreclosure of Property Subject to AGREEMENT. The parties agree that in the event that the DEVELOPER defaults under its obligations to the LENDER and the LENDER forecloses the property subject to this AGREEMENT, the LENDER shall be entitled to succeed to the rights and responsibilities of the DEVELOPER under the AGREEMENT provided the LENDER cures all defaults of the DEVELOPER to the satisfaction of the CITY. The LENDER may assign the rights to a third party purchaser after foreclosure so long as the CITY consents to said transfer prior to said transfer.

6. Miscellaneous Provisions.

- a. This document represents the entire agreement of the parties with respect to the matters set forth herein and supersedes any prior understanding whether written or oral.
- b. This agreement is binding upon the parties hereto, their respective successors and assigns.
- c. This agreement may only be modified in writing by a document executed by all parties hereto.
- d. This Agreement may be signed in counterparts.
- e. Facsimile signatures shall have the same effect as original signatures.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed this _____ day of September, 2011.

THE PONDS OF MENASHA, LLC

By: _____
Jeffrey T. Marlow, Managing Member

COMMUNITY FIRST CREDIT UNION

By: _____
Kim Van Osdol, Senior Vice-President

CITY OF MENASHA

By: _____
Donald Merkes, City Mayor

Deborah A. Galeazzi, City Clerk