

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: April 23, 2010

MEMORANDUM

TO: Mayor David J. Cieslewicz
Members of the Common Council

FROM: Joe Gromacki, TIF Coordinator
Anne Zellhoefer, Assistant City Attorney

RE: Tax Incremental Financing Loan to 309 W. Washington, LLC

Background

On November 21, 2006, the Common Council adopted RES-06-00986 authorizing a \$4,274,000 TIF loan to 309 W. Washington, LLC (Alexander Co.), "Developer," as financial assistance to construct 159 residential condominium units, 10,000 SF of commercial space and 258 parking stalls. Under the terms of the resolution, \$3,274,000 of the TIF loan was to become a grant if Developer sold seventy-one (71) residential condominium units to owner-occupants by July 15, 2008 and the remaining \$1,000,000 of the TIF loan was to become a grant if Developer sold an additional fifty-three (53) units by March 15, 2009. The development agreement provided that if Developer did not sell the required number of units by the two specified dates, Developer would repay the City the two respective amounts stipulated above.

On April 17, 2007, the Common Council adopted RES-07-0419 which extended the two sales dates to June 15, 2009 and May 15, 2010, respectively. Developer notified the City in 2009 that it would be unable to meet the June 15, 2009 unit sales threshold. At that time, it had sold 42 of the required 71 residential condominium units before June 15, 2009.

On January 2, 2008, the Common Council closed Tax Increment District (TID) #28, in which the 309 W. Washington project was located, after tax increments generated by the project and the TID were sufficient to fully recover the district's costs. Developer's tax increment guaranty was thereby satisfied. However, Developer's contractual obligation to complete the public purpose for which TIF assistance was provided (i.e. selling 124 owner-occupied residential units Downtown), was still in force.

On May 19, 2009, the Council adopted RES-09-00490 that amended both the unit sales and the sales dates. Under the amended agreement, the City credited Developer for the 42 units sold against the \$3,274,000 owed the City under the previous agreement. Thereafter, Developer must sell an additional twenty-nine (29) units to owner-occupants on or before December 31, 2011 or repay \$1,825,000 to the City, minus any amount credited for unit sales. Developer must also sell an additional fifty-three (53) units to owner-occupants on or

before December 31, 2013 or repay \$1,000,000 minus any credit for unit sales. Developer agreed not to seek further amendments or modifications to its loan repayment terms. Developer also agreed not to sue the City regarding the terms of the loan.

Status Report

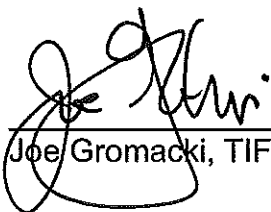
To date, Developer has sold 56 units. As stated earlier, forty-two (42) were sold prior to the amendment of the agreement. Three (3) units are not owner-occupied and must be subtracted. Therefore, Developer has sold eleven (11) of the twenty-nine (29) required on or before December 31, 2011. Developer states that four (4) offers are accepted and pending. Developer indicates that it is on track to meet the first unit sales threshold. A summary is shown below:

Date of Amendment	May 19, 2009
1 st Sales Threshold Deadline	December 31, 2011
Time Remaining:	Approximately 16 months


No. of Units Sold	56
Less: Units Credited	-42
Less: Non Owner-Occupied	-3
Units Sold Toward 1 st Threshold	11

Remaining Unsold Units Toward 1 st Threshold	18
Pending Sales	4

Units Remaining in 2 nd Sales Threshold	53
2 nd Sales Threshold Deadline	December 31, 2013



Joe Gromacki, TIF Coordinator



Anne Zellhoefer, Assistant City Attorney