

TAX INCREMENT DISTRICT NO. 12  
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is dated as of the \_\_\_\_ day of September, 2018, by and among McFleshman's Commons, LLC, a Wisconsin limited liability company ("Developer") and the City of Appleton, a Wisconsin municipal corporation (the "City").

RECITALS

Developer and the City acknowledge the following:

A. Developer owns the real property located at 115 South State Street, Appleton, WI more particularly described in Exhibit A, attached hereto (the "Property"). The Property is located within the City in Tax Increment District #12. Developer has proposed improvements to the Property (the "Project"). All references to the Project include the Property.

B. The City has determined that development of the Project on the Property will spur economic development, expand the City's tax base and create new jobs. Accordingly, the City has created the tax increment district encompassing the Property (the "District") and adopted a project plan (the "Project Plan") that provides for, among other things, the financial assistance set forth in this Agreement, pursuant to Section 66.1105, Wisconsin Statutes (the "Tax Increment Law"). The City has determined that such financial assistance is a Project Cost under the Tax Incremental Law.

C. The City has determined that the amount of financial assistance to be provided under this Agreement is the amount necessary to induce development of the Project. The Project will not proceed without the financial assistance set forth in this Agreement.

D. The City, pursuant to Common Council Action dated September 19, 2018 has approved this Agreement and authorized the execution of this Agreement by the proper City officers on the City's behalf.

E. The Developer has approved this Agreement and authorized the appropriate officers to execute this Agreement on the Developer's behalf.

F. All terms that are capitalized but not defined in this Agreement and that are defined under the Tax Increment Law shall have the definitions assigned to such terms by the Tax Increment Law.

## AGREEMENTS

NOW, THEREFORE, in consideration of the Recitals and the promises and undertakings set forth herein, the parties mutually agree and covenant as follows:

### ARTICLE I DEVELOPER ACTIVITIES

A. Developer's Project shall include further improvements to, and development of, the Property as set forth in Exhibit B that will result in an increase in the Property's assessed value. All aspects of the Project shall be in accordance with all applicable City zoning and building codes, ordinances and regulations. Developer warrants and represents to the City that the Developer's costs on the Project will be not less than \$65,000.

B. Project Costs ("Project Costs") shall include, without limitation, costs incurred after approval of this agreement for the construction of improvements (including infrastructure improvements), environmental remediation costs, demolition, interior remodeling and the clearing, grading and redevelopment of the Project. Developer shall submit satisfactory proof of Project Costs incurred to the City as improvements set forth in Exhibit B are completed.

C. Developer warrants and represents to the City that but for the assistance to be provided by the City under Article II, herein, Developer would not be able to proceed with the Project.

D. Developer and City acknowledge that several of the specific undertakings of the parties may require approvals from directors, boards or the City Council as applicable. The parties' agreements are conditioned upon the obtaining of all such approvals in the manner required by law. The parties cannot assure that all such approvals will be obtained; however, they agree to use their best good faith efforts to obtain them on a timely basis.

### ARTICLE II CITY OBLIGATIONS

A. City shall cooperate with Developer throughout the Project and shall promptly review and/or process all submissions and applications in accordance with applicable City ordinances.

B. Subject to all of the terms, covenants and conditions of this Agreement and applicable provisions of law, and as an inducement by the City to Developer to carry out the Project, upon the Developer creating \$284,400 in increment such that the Property's total assessed value is no less than \$537,900, the City will provide payments to Developer solely from future Tax Increments to assist with Developer's Project Costs. The City's payments to Developer shall not exceed Sixty Five Thousand Dollars (\$65,000) (the "Contribution").

The Contribution will be paid to Developer as follows:

1. The City shall pay the Contribution to Developer in installments on August 15<sup>th</sup> of each year. Each installment shall be equal in amount to ninety percent (90%) of the Tax Increments attributable to and actually received from the Property during each calendar year.

2. Payments under this Agreement shall be due in annual installments beginning on August 15 of the calendar year following the first tax year in which there the Property's assessed value is no less than \$537,900 and continuing on each August 15 thereafter until the Expiration Date (collectively the "Payment Dates") as described in Article II B., 3.

3. Payments under this Agreement shall cease upon the earlier to occur of (a) full payment of the Contribution; or (b) termination of this Agreement, as provided herein or (c) expiration of the TIF.

4. The City may prepay the Contribution, in its sole discretion, at any time, with no prepayment penalty.

C. This Agreement fully evidences the City's obligation to pay the Contribution. No separate instrument will be prepared to separately evidence the City's obligation to pay the Contribution. The Contribution shall not be included in the computation of the City's statutory debt limitation because the Contribution is limited and conditional and no taxes will be levied or pledged for its payment. Nothing in this Agreement shall be deemed to change the nature of the City's obligation from a limited and conditional obligation to a general obligation.

D. The City covenants to Developer that until the Contribution has been paid in full the City shall not close the District prior to its statutory expiration date.

E. The City shall, upon Developer's request, provide to Developer an accounting of the status of the District including, but not limited to, the outstanding principal balance of the Contribution and annual Tax Increments received from the District.

F. Developer hereby acknowledges that, as a result of the special and limited nature of the City's obligation to pay the Contribution, Developer's recovery of the full amount of the Contribution depends on factors including, but not limited to, future mill rates, changes in the assessed value of the Property, the failure of the Property to generate the Tax Increments at the rate expected by Developer, reduction in Tax Increments caused by revenue-sharing, changes in the Tax Increment Law, and other factors beyond the City's and/or Developer's control.

ARTICLE III  
PAYMENT OF TAXES

A. As long as the District is in existence, the Property and all buildings and improvements thereon shall be owned and taxable for real estate tax and special assessment purposes. The City may waive any or all of the restrictions upon execution of a payment in lieu of taxes (PILOT) agreement on a form acceptable to the City.

B Throughout the duration of this agreement, all ad valorem property taxes properly assessed against the Property will be paid timely and in full.

C. In the event that any property owned by Developer within the District becomes exempt from ad valorem property taxes during the life of the District, then for the remaining life of the District, the Developer will make (or cause to be made) annual payments in lieu of taxes in amounts equal to what the ad valorem property taxes would have been for such other property had it not been exempt. If the Developer conveys the Property within the District to any party (related or unrelated), the terms of such sale shall impose as a covenant upon all successor owners of the property the foregoing obligation for payments in lieu of taxes during the life of the District. The City shall be a beneficiary of such covenant and entitled to enforce same against the successor owners.

ARTICLE IV  
NO PARTNERSHIP OR VENTURE

Developer and its contractors or subcontractors shall be solely responsible for the completion of the Project. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between the City and Developer or any contractor or subcontractor employed by Developer in the construction of the Project.

ARTICLE V  
CONFLICT OF INTEREST

No member, officer or employee of the City, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

ARTICLE VI  
WRITTEN NOTICES

Any written notice required under this Agreement shall be sent to the following individuals:

FOR THE CITY:

City of Appleton  
Community and Economic Development Department  
100 North Appleton Street  
Appleton, WI 54911-4799  
Attention: Karen Harkness

With a copy to:

City of Appleton  
City Attorney's Office  
100 North Appleton Street  
Appleton, WI 54911-4799  
Attn: James P. Walsh

FOR DEVELOPER:

McFleshman's Commons, LLC  
c/o Cindi L. Jackman  
P.O. Box 2274  
115 South State Street  
Appleton, WI 54911

#### ARTICLE VII ASSIGNMENT

No party to this Agreement may assign any of its interest or obligations hereunder without first obtaining the written consent of the other party.

#### ARTICLE VIII CONDITIONS TO PAYMENT; TERMINATION OF AGREEMENT

A. The City shall have no obligation to make any payment of the Contribution to Developer unless and until all of the following shall have occurred:

1. The Property's total value is greater than or equal to \$537,900.
2. Developer shall have submitted Project Costs in substantial compliance with the requirements of Article I, paragraph B of this Agreement.

B. This Agreement, and the City's obligation to make any further payments of the Contribution, shall terminate when either of the following shall have occurred:

1. The Contribution is paid in full.
2. The statutory life of the District expires (provided that the City fulfills its obligation under Article II, paragraph B.1.)
3. The Property's assessed value is less than \$537,900 by January 1, 2020.

ARTICLE IX  
MISCELLANEOUS

A. Under no circumstances shall any officer, official, director, member, manager, commissioner, agent, or employee of City or Developer have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

B. The laws of the State of Wisconsin shall govern this Agreement.

C. 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.

D. No modifications, alteration, or amendment of this Agreement shall be binding upon any party until such modification, alteration, or amendment is reduced to writing and executed by all parties to this Agreement.

E. Any captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any of the provisions of this Agreement.

F. If any provisions of this Agreement shall be held or deemed to be inoperative or unenforceable as applied in any particular case in any jurisdiction because it conflicts with any other provision or provisions of this Agreement or any constitution or statute or rule of public policy, or for any other reason, then 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. To the maximum extent possible, this Agreement shall be construed in a manner consistent with the powers of the City, including but not limited to, the City's powers under the Blight Elimination and Slum Clearance Law and the Tax Increment Law, to achieve its intended purpose. Reference is made to Section 66.1333(17) of the Wisconsin Statutes and Chapter 105, Laws of 1975 § 4, which provide that the Blight Elimination and Slum Clearance Law and the Tax Increment Law should be construed liberally to effectuate their purposes.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF APPLETON:

By: \_\_\_\_\_  
Timothy M. Hanna, Mayor

ATTEST:

By: \_\_\_\_\_  
Kami L. Lynch, City Clerk

STATE OF WISCONSIN        )  
  : ss.  
OUTAGAMIE COUNTY        )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2018, Timothy M. Hanna, Mayor and Kami L. Lynch, City Clerk, of the City of Appleton respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is/expires: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
**James P. Walsh, City Attorney**  
\\Coalaw\cycom\WPDocs\D013\P001\McFleshmans Commons LLC - Dev Agmt 08-14-2018.doc  
Dated Updated: August 14, 2018  
By: Christopher R. Behrens  
City Law A18-0605

DEVELOPER:

McFleshman’s Commons, LLC

By: \_\_\_\_\_  
\_\_\_\_\_, Principal

STATE OF WISCONSIN        )  
  : ss.  
OUTAGAMIE COUNTY        )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2018,  
\_\_\_\_\_, Principal, to me known to be the person who executed the  
foregoing instrument and acknowledged the same in the capacity and for the purposes therein  
intended.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is/expires: \_\_\_\_\_

## SCHEDULE OF EXHIBITS

- A. Legal Description of Property
- B. Proposed Project Improvements and Estimated Costs

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

CSM 7174 Lot 1 (Doc 2072010) BEING ALL OF LOT 16 & PART OF LOT 17 BLK 52, GRAND CHUTE PLAT, LOC IN SW1/4 SW1/4 SEC26 T21N R17E

Tax Key Nos. 31-3-0986-00

EXHIBIT B

Improvements from Sept 1 - Dec 31, 2018; prepared for City of Appleton; updated 7/5/18

	item	material cost \$410,900	labor cost \$221,800	total cost \$632,700
1st floor				
2nd floor-public	sheetrock/tape bed	\$4,500	\$4,500	\$9,000
	trim/cabinets	\$4,000	\$4,000	\$8,000
	paint	\$4,000	\$4,000	\$8,000
	floors	\$4,000	\$3,000	\$7,000
	(4) bathrooms	\$10,000	\$10,000	\$20,000
	events equipment	\$2,000	\$1,500	\$3,500
2nd floor-production	wall covering	\$1,500	\$1,500	\$3,000
	framing	\$2,000	\$1,500	\$3,500
	wine display / storage	\$1,500	\$800	\$2,300
beer garden	excavation	\$2,000	\$2,000	\$4,000
	pavers	\$2,000	\$2,000	\$4,000
	prep pack / underfill	\$1,000	\$1,000	\$2,000
	staircase	\$3,000	\$3,000	\$6,000
	stage	\$1,000	\$1,000	\$2,000
	roof	\$1,500	\$1,000	\$2,500
equipment	(4) horizontal tanks	\$80,000	\$1,500	\$81,500
	(5) fermenters	\$100,000	\$5,000	\$105,000
	open fermenter	\$5,000	\$1,500	\$6,500
	release tank	\$5,000	\$1,500	\$6,500
	cool ship	\$1,500	\$1,500	\$3,000
lab	(6) microscopes	\$1,500	\$0	\$1,500
	(4) stirplates	\$400	\$0	\$400
	autoclave	\$1,000	\$0	\$1,000
	refrigerator	\$500	\$0	\$500
	laminar hood	\$2,000	\$0	\$2,000
phase 2	4800 sq ft expansion	\$170,000	\$170,000	\$340,000