

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

TAX INCREMENT DISTRICT NO. 11 (Development Area #4)

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“Amendment”) is dated as of the ____ day of _____, 2021 by and between ZUELKE FLATS LLC, a Missouri limited liability company, (the “Developer”) and CITY OF APPLETON, a Wisconsin municipal corporation (the “City”).

RECITALS:

The City and Zuelke Building, LLC, a Wisconsin limited liability company (“Prior Developer”) entered into that certain Development Agreement dated as of December 19, 2017 and recorded in the Outagamie County Register of Deeds Office on December 26, 2017 as Document No. 2123118 (“Development Agreement”).

The Development Agreement details the Prior Developer’s intended redevelopment of the historic Zuelke Building located at 103 West College Avenue, identified as Parcel #31-2-0070-00 and more particularly described on Schedule 1 hereto (the “Property”).

The Prior Developer and the Developer entered into a purchase and sale agreement to convey the Property to Developer.

The City and Developer desire to amend the Development Agreement as set forth herein.

AMENDMENT

I. Recital B is hereby amended and replaced as follows:

B. Developer has proposed to redevelop a portion of the area of the District identified as “Development Area #4”. Specifically, the Developer intends to undertake the following project that will increase the value of the Zuelke Building and provide other tangible benefits to the surrounding neighborhoods, the downtown, and the City as a whole:

1. Redevelopment of the historic Zuelke Building into a Class A Mixed Use Property including residential and retail uses (the “Project”).

2. The Project will include the modernization of the existing elevators serving the Project where applicable, and the development of 66 residential units on Floors 2-12 ranging in size from studio to two bedroom, two bathroom units and average square footages from 547 average square feet to 1,050 average square feet. Floor 1 will be redeveloped into a retail space approximately 749 square feet in size, and various tenant amenities including a leasing office, business center, game room, dog wash, and fitness center. Portions of the basement of the Project will be redeveloped into tenant storage, bicycle storage, and a television lounge for tenants’ use.

3. The Project will include a patio facing Houdini Plaza primarily for use by the Project's tenants but also accessible to the public, constructed in accordance with applicable building codes and accessibility requirements.

4. The Developer has represented that the construction cost of the Project is approximately \$17,608,407 which amount includes both hard and soft costs, and will create an anticipated property taxable value of not less than \$8,703,000. The Property's current base value is \$1,922,100.

II. Recital G is hereby amended and replaced as follows:

G. Developer desires to obtain a long term lease for a small portion of the right-of-way located in Houdini Plaza described as a portion of the public alley previously vacated pursuant to City of Appleton Final Resolution recorded by the Outagamie County Register of Deeds on September 17, 2019 as Document No. 2171080 in Block 5 of Appleton Plat (a/k/a Second Ward Plat) as more particularly described on Schedule 2 attached hereto (the "Vacated Alley"). The Developer agrees to execute any documents reasonably required by the City to reconvey the Vacated Alley to the City. Simultaneously with the reconveyance, Developer and City agree to enter into a mutually agreeable long term lease pursuant to which the Developer may occupy a portion of the Vacated Alley for the Project. A copy of the lease is included in Schedule 2 for reference.

III. Recital H is hereby amended and replaced as follows:

H. The City, pursuant to Common Council Action on July 21, 2021, will review, approve, and ratify this Amendment.

IV. Recital K is hereby amended and replaced as follows:

K. This Agreement shall be subject to, and contingent upon, the Appleton Common Council's review and approval on July 21, 2021.

V. Section 2.1 references an Exhibit B. Exhibit B of the Development Agreement is hereby amended and replaced with Schedule 3 attached hereto and incorporated herein by reference.

VI. Section 3.2 is hereby amended and replaced as follows:

3.2 As the sole source for payment of the City Investment, the City agrees to pay Developer annually by August 15 of each year for a period of fifteen (15) years commencing on August 15, 2024 and ending on August 15, 2038 (the "Expiration Date"), an amount equal to ninety percent (90%) of the property taxes paid on the incremental value created by the development (the "property tax increment") and any City portion of a Payment in Lieu of

Taxes (PILOT) Agreement contributions attributable to the Property pursuant to any such PILOT Agreement. The City may extend the Expiration Date for any good faith reason upon written notice to Developer in the event the City is unable to pay to Developer any portion of the annual installment of the City Investment on August 15 of any year on or prior to the Expiration Date provided the Expiration Date shall not be extended past August 15, 2044 and the total period for which the City Investment is made is no less than fifteen (15) years. The foregoing notice shall state the good faith reason why City cannot make the City Investment for such year and confirmation of the date which City anticipates resuming its payment of the City Investment to Developer.

VII. Section 3.6 is hereby amended to state the following:

3.6 The City Investment that shall equal ninety (90%) of the property tax increment paid to City for each tax year for the period January 1, 2023 to January 1, 2037.

VIII. Section 3.7 is hereby deleted in its entirety.

IX. Section 4.1 is hereby amended and replaced as follows:

4.1 Developer will rehabilitate the Property into a Mixed Use Property including residential and retail uses.

X. Section 8.1 is hereby amended and replaced as follows:

FOR THE CITY:

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

With a copy to:

City of Appleton
City Attorney's Office
100 North Appleton Street
Appleton, WI 54911-4799
Attn: Attorney Christopher R. Behrens

FOR THE DEVELOPER:

Zuelke Flats LLC
P.O. Box 6331
Fishers, IN 46038
Attn: Matt Cremer

With a copy to:

Husch Blackwell LLP
511 North Broadway
Suite 1100
Milwaukee, WI 53202
Attn: Attorney Valerie A. Johnston

- XI. Definitions. Any capitalized terms not defined herein shall have the meanings ascribed in the Development Agreement.
- XII. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Amendment.
- XIII. Ratification. Except as expressly modified by this Amendment, all of the terms and conditions of the Development Agreement shall remain in full force and effect and binding upon the parties and the parties hereby ratify the Development Agreement as amended herein.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first written above.

CITY OF APPLETON:

By: _____
Jacob A. Woodford, Mayor

ATTEST:

By: _____
Kami Lynch, City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2021, Jacob A. Woodford, Mayor, and Kami 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.

Print Name: _____
Notary Public, State of Wisconsin
My commission is/expires: _____

APPROVED AS TO FORM:

Christopher R. Behrens, City Attorney
CityLaw A17-1014

This document was drafted by:
[Valerie A. Johnston, Husch Blackwell LLP]

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

DEVELOPER:

Zuelke Flats LLC

By: TD Zuelke MM, LLC, its Manager

By: TD Zuelke Investors, its Manager

By: _____

Name: _____

Its: _____

STATE OF _____)
: ss.
_____ COUNTY)

Personally came before me this ____ day of _____, 2021, the _____
of _____, 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.

Print Name: _____
Notary Public, State of Wisconsin
My commission is/expires: _____

SCHEDULE 1
Legal Description of the Property

[To be verified by City Surveyor prior to recording]

Part of Lot Three (3), Block 5, Appleton Plat (aka Second Ward Plat), all according to the recorded Assessor's Map of the City of Appleton, being located in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 26, Township 21 North, Range 17 East, City of Appleton, Outagamie, Wisconsin.

SCHEDULE 2

Legal Description of the Vacated Alley and Lease

[To be verified by City Surveyor prior to recording]

All of the East 60.48 feet of a 20 foot wide Alley, being a part of Lot Three (3), Block 5, Appleton Plat (aka Second Ward Plat), all according to the recorded Assessor's Map of the City of Appleton, being located in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 26, Township 21 North, Range 17 East, City of Appleton, Outagamie County, Wisconsin, containing 1,209 square feet of land m/l and being more fully described by:

Commencing at the Northeast corner said Lot 3;

Thence South 00°02'58" East 110.00 feet along the West line of Oneida Street and being coincident with the East line of said Lot 3 to the point of beginning;

Thence continue South 00°02'58" East 20.00 feet coincident with the East line of said Lot 3;

Thence South 89°59'06" West 60.48 feet coincident with the South line of said 20 foot wide Alley;

Thence North 00°02'58" West 20.00 feet to the North line of said 20 foot wide Alley;

Thence North 89°59'06" East 60.48 feet coincident with the North line of said Alley to the East line of said Lot 3 and the **point of beginning**.

[A copy of the signed Lease Agreement will follow]

Schedule 3

