

TAX INCREMENT DISTRICT NO. 11
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is dated as of the ____ day of _____, 2022, by and among Merge LLC, an Iowa 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 or will acquire the real property located on the southeast corner of East Washington Street and North Appleton Street, (Parcel 31-2-0272-00, 31-2-0272-01, 31-2-0272-02) Appleton, WI more particularly described in Exhibit A, attached hereto (hereafter the "Property").

B. The Property is located within the City in Tax Increment District #11 (the "District") which was created in 2017 pursuant to Section 66.1105, Wis. Stats. along with a plan for the redevelopment of the District (the "District Plan") that provides for, among other things, the financial assistance set forth in this Agreement.

C. Subject to obtaining the financial assistance set forth herein, Developer has proposed improvements to the Property to create a five story, mixed-use development that includes a mix of residential unit styles on floors 2-5 with the ground floor containing retail and micro-retail space as well as common space for residential and commercial tenants (the "Project"). All references to the Project include the Property.

D. The City has determined that the Project will spur economic development, expand the City's tax base and create new jobs; that such financial assistance is a Project Cost under the Tax Incremental Law; that the amount of financial assistance provided pursuant to this Agreement is the amount necessary to induce development of the Project; and, that the Project will not proceed without the financial assistance set forth in this Agreement.

E. Subject to obtaining financial assistance as set forth herein, Developer intends to undertake a redevelopment of the property that will increase the value of the Property and provide other tangible benefits to the surrounding neighborhoods and to the City as a whole, consistent with the District Plan. The City finds that this redevelopment of the Property and the fulfillment, generally, of the terms and conditions of this Agreement are in the vital and best interests of the City and its residents and serves a public purpose in accordance with state and local law.

F. The City, pursuant to Common Council Action dated _____, 2022 has approved this Agreement and authorized the execution of this Agreement by the proper City officers on the City's behalf.

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

H. The base value of the Property for purposes of this Agreement, including calculating increment generated by the Project, is Zero Dollars (\$0). The Developer estimates the project will create up to an additional Twelve Million Dollars (\$12,000,000) in incremental value.

I. 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.

AGREEMENT

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 UNDERTAKINGS OF THE DEVELOPER

1.1 Developer shall purchase the property for \$590,000 from the City within one year of execution of this agreement. Said sale of Property to Developer is contingent upon Developer fulfilling the terms and conditions of this Agreement and the City shall retain a right to repurchase the Property as more particularly set forth in Article IV.

1.2 Developer's Project is the second of two phases, is currently known as "URBANE" and shall include 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.

1.3 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 development of the project.

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

1.5 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 UNDERTAKINGS OF THE CITY

2.1 The City shall appropriate sufficient funds for the performance of the City's obligations under this Agreement.

2.2 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. In addition, the City agrees to work collaboratively with Developer in Developer's pursuit of various grant or similar funding opportunities.

2.3 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 completion of the Project (which shall be defined as issuance of occupancy permits for all floors of the Project (hereafter “completion”)) the City will provide payments to Developer solely from the future Tax Increments (derived from both real and personal property) to assist with Developer’s Project Costs. The City’s total payment of Tax Increment Revenue to the Developer shall not exceed the lesser of i) \$2,160,000 or ii) Eighteen percent (18%) of the Tax Increment Value as of January 1, 2025, plus interest thereon (the “Contribution”).

The Contribution will be paid to Developer as follows:

2.3.1 As the sole source for payment of the Contribution, the City agrees to pay the Developer an amount equal to ninety percent (90%) of the Tax Increment Revenue attributable to, and actually received from, the Property during the calendar year.

2.3.2 The first payment shall be made on August 15 of the year immediately after the Project’s completion. This first payment shall be based on the Property’s assessed value on January 1 of the year of completion. Thereafter payments under this Agreement shall be due in annual installments, on August 15, for a period of time described in Sec. 4.3.

2.3.3 Interest on the Contribution shall begin to accrue upon completion of the Project. The interest rate on the Contribution shall be lesser of 1) the interest rate paid by the Developer to the primary lender for the Project, as evidenced by the note indicating the loan amount; or, 2) four percent (4%).

2.3.4 The Contribution shall be a special and limited obligation of the City and not a general obligation. Payments shall first apply to accrued interest and then to the principal balance of the Contribution. Unpaid interest in any year shall be added to the principal balance of the Contribution and accrue interest. The City may prepay the Contribution, in its sole discretion, at any time, with no prepayment penalty.

2.4 This Agreement fully evidences the City’s obligation to pay the Contribution. No separate instrument will be prepared to 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.

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

2.6 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.

2.7 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

3.1 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, and with terms, acceptable to the City.

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

3.3 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 CONDITIONS TO PAYMENT; REPURCHASE OF PROPERTY; TERMINATION OF AGREEMENT

4.1 The City shall have no obligation to pay any portion of the Contribution to Developer unless and until all of the following conditions shall have been met:

4.1.1 The Project's completion on or before January 1, 2025.

4.1.2 The Property's assessed value is no less than Twelve Million Dollars (\$12,000,000) on or before January 1, 2025.

4.1.3 The conditions herein are subject to reasonable extensions, not to exceed six (6) months each, for Force Majeure which shall include, but not be limited to, any delays caused by pandemic or other acts beyond the reasonable control of the Developer. Such extensions shall be by mutual written agreement and, in considering any requested extension, the City and Developer agree that each will act in good faith, cooperate in expeditious and timely approvals, and said extensions shall not be unreasonably withheld, conditioned or delayed by City.

4.2 The City was induced to sell the real property described in Exhibit A to Developer based on Developer's proposed Project and construction of the same according to the terms of this Agreement. As such, the City shall retain and the Developer shall grant the City a right to repurchase the real property (hereafter "repurchase options"). This repurchase option shall be subject to the following:

4.2.1 The City's repurchase right shall terminate upon Developer obtaining approved buildings plans and a building permit for improvements to the real property consistent with the Project as described in this Agreement, and, commencement of the Project's construction.

4.2.2 The City shall refrain from executing the repurchase right if Developer is making reasonable timely progress toward commencement of the Project's construction in accordance with the terms of the Agreement.

4.2.3 The City shall provide Developer thirty (30) day's written notice of its intent to repurchase the Property unless Developer waives said notice. Thereafter Developer shall execute all necessary documents and transfer the Property's unencumbered title to the City. In exchange, the City shall pay Developer \$590,000 (or the actual amount paid by Developer to the City) less \$1,000 per calendar month calculated from the first day of the month after this Agreement is executed through the date of sale. The City and Developer agree that each will act in good faith to facilitate a timely repurchase if the City exercises its repurchase right.

4.3 This Agreement, and the City's obligation to make, or continue, any payments of the Contribution, shall terminate when any of the following shall have occurred:

4.3.1 The conditions in Section 4.1 are not met.

4.3.2 The Contribution is paid in full or August 15, 2039, whichever occurs first.

ARTICLE V CONFLICT OF INTEREST

5.1 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

6.1 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
Attn: Director

With a copy to:

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

FOR DEVELOPER:

Merge LLC
25 West Main Street, Suite 500
Madison, WI 53718
Email: info@mergeurbandevelopment.com

With a copy to:

Squire Patton & Boggs
Attn: Steven F. Mount
41 South High Street, Suite 2000
Columbus, OH 43215
Email: steven.mount@squirepb.com

ARTICLE VII ASSIGNMENT

7.1 Terms of this Agreement are not transferrable or assignable. No party to this Agreement may assign any of its interest or obligations hereunder without first obtaining the written consent of all other parties.

ARTICLE VIII NO PARTNERSHIP OR VENTURE

8.1 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 IX MISCELLANEOUS

9.1 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.

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

9.3 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.

9.4 No modification, 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.

9.5 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.

9.6 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]

SCHEDULE OF EXHIBITS

- A. Legal Description of Property
- B. Proposed Improvements

DRAFT

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY
NEED TO UPDATE LEGAL FOR PHASE 2

DRAFT

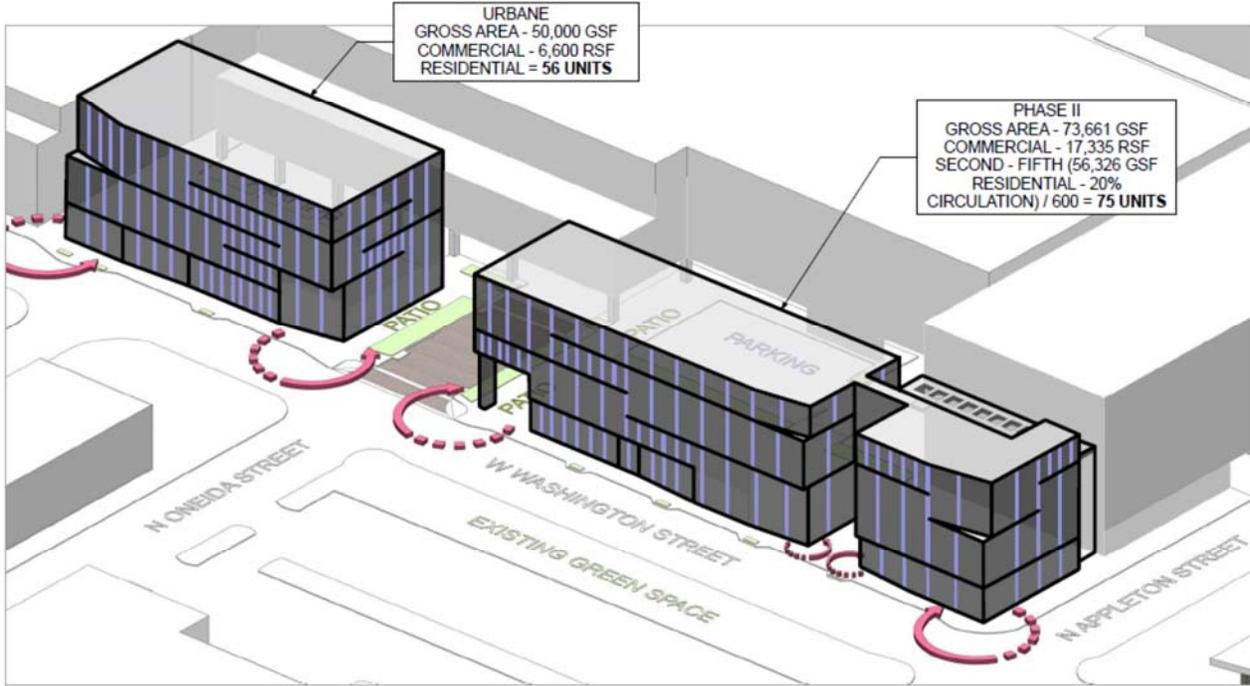
EXHIBIT B
PROPOSED IMPROVEMENTS
MAY NEED UPDATED PLANS/DESIGN FOR PHASE 2?

(Copy of Plans/Design docs follow)

DRAFT

APPLETON MIXED-USE

CONCEPT DIAGRAM



ONITSHOT
ARCHITECTURE

MERGE
URBAN DEVELOPMENT GROUP

2020.09.25

APPLETON MIXED-USE

TYPICAL UNIT DIAGRAM

ONE BEDROOM

- Walk-in closet
- Full kitchen
- Washer + dryer
- Bedroom with natural lighting
- Living and dining space

STUDIO UNITS

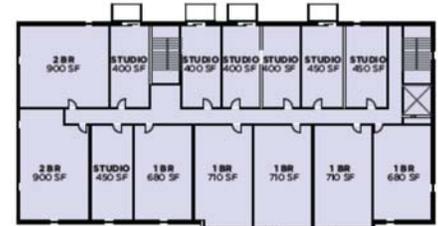
- Living room and dining area
- Built-in Murphy bed and sofa
- Ample cook and prep areas
- Built-in media center and desk work surface
- Dedicated laundry and closet space



1 BEDROOM TYPICAL PLAN
1/8" = 1' 0"



STUDIO TYPICAL PLAN
1/8" = 1' 0"



LEVEL 2-5 TYPICAL PLAN
1/32" = 1' 0"

APPLETON MIXED-USE

MICRO RETAIL



FEATURES

- 14' Min. Ceiling Heights
- Shared Restrooms
- Storefront
- 500 SQ.FT.



ON17SHOT
ARCHITECTURE

MERGE
URBAN DEVELOPMENT GROUP

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APPLETON MIXED-USE

VIGNETTE



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