

TAX INCREMENT DISTRICT NO. 9
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is dated as of the ____ day of _____, 2014 by and between Union Square Apartments, LLC, a Wisconsin limited liability company (the “Developer”), and the CITY OF APPLETON, a Wisconsin municipal corporation (the “City”).

RECITALS

City and Developer acknowledge the following:

A. Developer owns or will acquire the parcel of real property located in the City and described on Exhibit A, attached hereto (the “Property”). The Property is comprised of a former industrial site that requires significant infrastructure improvements, demolition and environmental mitigation prior to development.

B. In 2013 the City created Tax Increment District No. 9 (the “District”) pursuant to Section 66.1105, Wis. Stat. (the “Tax Increment Law”) and approved a plan for the redevelopment of the District (the “District Plan”).

C. Subject to obtaining the financial assistance set forth herein, Developer intends to undertake a residential development of the Property (the “Development Project”) that will increase its value and provide other tangible benefits to the surrounding neighborhoods and to the City as a whole. The Development Projects are consistent with the District Plan for TIF 9.

D. The City desires to encourage economic development including the elimination of slum and blight, expand its tax base, and create new jobs within the City, the District and the Property. The City finds that the development 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 serve a public purpose in accordance with state and local law.

E. The City determined that the amount of financial assistance to be provided to 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.

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

G. The Developer has approved this Agreement and authorized Louie A. Lange III to execute this Agreement on the Developer's behalf.

H. All terms that are in upper case 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.

ARTICLE 1
PURPOSES - DEFINITIONS

1.1 Purpose of Agreement. The parties have agreed upon a plan for a residential development of the Development Area (the "Development"). The purpose of this Agreement is to formalize and record the understandings and undertakings of the parties and to provide a framework within which the redevelopment of the land will take place.

1.2 The terms listed below shall be defined for the purposes of this Agreement as follows:

1.2.1 **City** means the City of Appleton, a Wisconsin Municipal Corporation. The City may also be referred to as the City of Appleton.

1.2.2 **Contribution** means the Tax Increment Revenue Financing payment made to the Developer by the City pursuant to Section 4.4 upon the satisfactory completion, on the part of all parties, of all undertakings as specified in Articles 3 and 4 as related to the Development Projects and Development Plan.

1.2.3 **Development Projects** means the overall construction of the improvements and uses anticipated by the Development Plan and this Agreement for the Development Area.

1.2.4 **Development Area** means the sum of all property described in Exhibit B, and constitutes the total boundaries of the project for which this Agreement is provided.

1.2.5 **Development Plan** means the Development as shown on Exhibit C as improved by the site improvements further described by this Agreement.

1.2.6 **Developer** means Union Square Apartments LLC, a Wisconsin limited liability company.

1.2.7 **Minimum Contribution** means the minimum amount of the Contribution made by the City to a Project.

1.2.8 **Minimum Total Tax Value** means the minimum Tax Increment Value required for a Development Project to be eligible for a City Contribution.

1.2.9 **The Property Base Value** means the equalized value of Real and Personal Property of the Property depicted in Exhibit A upon the creation of TID #9 in 2013 as certified by the State. The base value at that time was \$278,600 for real estate plus \$37,800 in personal property value, for a total base value of \$316,400.

1.2.10 **Tax Increment Value** means the equalized value above the base established for the Development Project as determined by the City of Appleton assessor. The equalized value is calculated by taking the assessed value reported by the City of Appleton Assessor that is certified by the State Department of Revenue times the aggregate ratio.

1.2.11 **Tax Increment Revenue** means the personal and real property tax revenue (as defined in Section 66.105(2)(i) of the Wisconsin Statutes) generated by the tax increment value generated by a Project.

1.2.12 **Zoning Code** means Chapter 23 of the Code of Ordinances of the City of Appleton. The Zoning Code may also be referred to as the “Code”.

ARTICLE 2
DESCRIPTION OF DEVELOPMENT

2.1 Development Area. The Development includes the land area described and depicted in full in Exhibits A and B as previously defined in the Agreement as the Development Area. The Development Area will be redeveloped and improved with residential development, with site improvements as described and depicted in the attached Exhibit C, on a timetable and with estimated property valuation as described in the attached Exhibit D.

2.2 Development Area is zoned PD/R-3 and the Development shall be consistent with that zoning designation.

ARTICLE 3
UNDERTAKINGS OF THE DEVELOPER

The Developer agrees that it shall:

3.1 Initiate, or cause to initiate by third parties, Development Project and complete same in accordance with all applicable City zoning and building codes, fire codes, ordinances and regulations. The general components of the Development Projects and the estimated timetable for completion of each component are set forth on Exhibit D, attached hereto. All project costs expended by Developer, after May 12, 2014, including costs incurred before the date of this Agreement, and which are eligible for funding pursuant to §66.1105 of the Wisconsin Statutes, are referred to as “Developer Costs”. Developer Costs shall include, without limitation, costs for the construction of improvements, including hard and soft construction costs, professional fees, architectural fees, construction period interest, civil engineering fees, general contractor fees, infrastructure improvements, environmental remediation

costs, demolition, public parking facilities, and the clearing, grading and construction of the Development Projects, and other costs permitted pursuant to Section 66.1105, Wis. Stat.

3.2 Developer shall construct on said site, the minimum of forty-three (43) and a maximum of fifty (50) apartment homes and townhouses in multiple buildings. Buildings shall be constructed in accordance with the schedule in Exhibit D.

3.3 Developer or others shall prepare site plans, specifications, development timetables, and budgets for redevelopment and construction work to be undertaken. Construction of Union Square Apartments shall commence by November 2014, with completion of all units by December 31, 2015. The total estimated Tax Increment Value of the Development Area is \$1,400,000 as of January 1, 2016.

3.4 The City recognizes that in the current economic environment, approval of a Tax Increment District and approval of a Development Agreement may be necessary prior to the Developer obtaining full financing for this project. For the purpose of facilitating this joint approval process, the City has approved the creation of Tax Increment District 9, and will approve this Development Agreement with the contingency that prior to the City incurring any obligation to the Developer pursuant to the terms of this Agreement, the Developer shall:

3.4.1 Cooperate with the City to facilitate the City's performance under Article 4.

3.4.2 Developer shall be responsible for obtaining all permits.

3.4.3 The Developer shall be solely responsible for complying with the State of Wisconsin's prevailing wage rates where applicable. If applicable, then Developer shall report compliance and share documentation with the Director of Community and Economic Development.

3.4.4 Developer shall provide to the City's Finance Director documentation from the Developer's bank and/or other funding sources confirming that the Developer has the ability to permanently finance each project of the development before it commences. Such approval shall not be unreasonably withheld.

ARTICLE 4
UNDERTAKINGS OF THE CITY

The City agrees that it shall:

4.1 Appropriate sufficient funds for the performance of its obligations under this Agreement as described in this section.

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

4.3 City has created Tax Increment District No. 9 (TID) to support the Development Project at the Development Area.

4.4 Subject to all of the terms, covenants and conditions of the Agreement and applicable provisions of law, and as inducement by the City to Developer to carry out the Development Project, the City will provide payments to the Developer to assist with the Developer Costs.

4.4.1 The Developer agrees that neither the Development Area nor any portion thereof, shall be sold to, leased or used by any party in a manner to permit discrimination or restriction on the basis of race, creed ethnic origin or identity, color, gender, religion, marital status, age, handicap, or national origin and that construction, redevelopment, improvement, and operation of the Development shall be in compliance with all effective laws, ordinances and regulations relating to discrimination or any of the foregoing grounds.

4.4.2 Developer Costs – Development Projects. Subject to all of the terms, covenants and conditions of the Agreement and applicable provisions of law, and as an inducement by the City to Developer to carry out Development Project, the City will provide payments to the Developer solely from future tax increments from the Development Area only to assist with Developer Costs. City and Developer agree that there will be no reimbursement for any activities prior to the creation of the TID. The City's total payment to the Developer shall not exceed \$200,000 plus interest thereon; provided

that payments to the Developer will be made only in years which the Tax Increment Value of the Development Project exceeds \$1,200,000. The City's Contribution may be prepaid at any time, but until paid in full, the payments will be provided to the Developer as follows: Each year over the life of the district, the City will pay to the Developer ninety percent (90%) of the Tax Increment Revenue received by the City with respect to the Development in that year. No payments will be distributed annually until the property taxes have been paid on the property.

4.5 As the sole source for payment of the City Contribution, the City agrees to pay Developer an amount that shall not exceed ninety percent (90%) of the property tax increment and any City portion of a Payment in Lieu of Taxes (PILOT) Agreement contributions attributable to the Property pursuant to this Agreement, based on taxes accrued through a date (the "Expiration Date") which shall be the earliest to occur of: (i) the date on which the City Contribution has been paid in full; or (ii) September 18, 2040.

The Developer shall submit to the City's Director of Finance copies of original invoice documentation of eligible Developer Costs as defined in Section 3.1. Developer shall be entitled to interest on the tax contribution for expenses determined by the City to be eligible expenses. Interest on the City's Contribution shall begin to accrue effective on January 1st of the year following approval. *The interest rate on the City's Contribution shall be the lesser of 1.) the interest paid by the Developer to any lender, as evidenced by the note indicating the loan amount; or 2.) five percent (5%).*

4.6 Payments pursuant to this Agreement shall be made by August 15 each year solely from tax increments and any City portion of PILOT payments attributable to the property actually received by the City. The City Contribution, as evidenced by this Agreement, shall be a special and limited obligation of the City and not a general obligation.

4.7 Developer hereby acknowledges that, as a result of the special and limited nature of the City's obligation to pay the City Contribution, Developer's recovery of the full amount of the City

Contribution, plus interest thereon, depends on factors including, but not limited to, future mill rates, changes in the assessed value of a Development Project, the failure of the Development Project to generate the Tax Increment Revenue at the rate expected by Developer, reduction in Tax Increment Revenue caused by revenue-sharing, changes in the Tax Increment Law, and other factors beyond the City's and/or Developer's control.

4.8 City covenants to Developer that:

4.8.1 Until the City Contribution plus interest thereon has been paid in full, the City shall not close the District prior to the Expiration Date. Upon the Expiration Date, the City will be entitled to close the District and no liability shall remain from the City to the Developer upon expiration of the District.

ARTICLE 5
TAX STATUS

5.1 As long as the District is in existence, each Development Project including the land and all buildings and improvements thereon shall be owned and taxable for real estate tax, special assessment purposes and personal property taxes. The City may waive the above restriction upon execution of a payment in lieu of taxes (PILOT) agreement, on a form acceptable to the City, made between the City and the owner or lessee of an exempt Development Project.

ARTICLE 6
NO PARTNERSHIP OR VENTURE

6.1 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 7
CONFLICT OF INTEREST

7.1 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 8
WATER AND WATER RELATED PUBLIC IMPROVEMENTS

8.1 New watermains will be installed by the City, at City's sole expense, in Commercial Street and Winnebago Street by December 31, 2014. Connections to the watermain are at Developer's expense.

8.2 All plans and specifications for the design of the infrastructure and water improvements within the boundaries of the Development shall be subject to the approval of the City's Department of Public Works prior to the beginning of construction. Such approval shall not be unreasonably withheld.

8.3 In instances where this Agreement, or the ordinances of the City or the rules and regulations of the City do not set forth criteria for particular uses for the water supplied to the Development by the City, the criteria for uses may be proposed by Developer subject to the City's approval utilizing generally accepted criteria, which approval shall not be unreasonably withheld.

ARTICLE 9
SANITARY SEWER

9.1 The City has determined that existing sanitary sewer facilities are appropriately sized and available to serve the proposed Development Projects.

9.2 Under any of the circumstances set forth herein, the City shall permit the Owner/Developer to connect with the City's sanitary sewer system at such reasonably accessible and economically feasible locations as determined by the City.

9.3 The parties agree to cooperate fully in all matters concerning the development of the sanitary sewer system, including, but not limited to, securing of permits, implementation of augmentation plans and acquisition of all rights-of-way and easements. It is agreed that the providing of such rights-of-way and easements is the responsibility of the Developer within the Development area.

ARTICLE 10
STORMWATER MANAGEMENT

10.1 The Developer shall follow all applicable State and City Stormwater Ordinances. The Developer shall be solely responsible for installing and maintaining all on-site stormwater management practices. Stormwater management within the Development Area shall remain private.

10.2 The City has determined that existing storm sewer facilities are appropriately sized and available to serve the proposed Development Projects.

10.3 The City shall permit the Developer to connect with the City's storm sewer system at such reasonable accessible and economically feasible locations as determined by the City.

ARTICLE 11
WRITTEN NOTICES

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

FOR THE CITY:

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

With a copy to:

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

DEVELOPER:

Union Square Apartments, LLC
c/o Marissa Downs
54 East 1st Street
Fond du Lac, WI 54935

ARTICLE 12
ASSIGNMENT

12.1 No party to this Agreement may assign any of its interest or obligations hereunder without first obtaining the written consent of the other party except as otherwise provided for in this Agreement. Notwithstanding the foregoing, Developer may: (i) assign its rights and obligations under this Agreement to an entity that holds title to the Project and that is controlled by Developer or by one or more of the principals of Developer. The City shall not be bound to any such assignment until it has received written notice.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

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: _____
_____, City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2014, Timothy M. Hanna, Mayor and _____, 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

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

DEVELOPER:

Union Square Apartments, LLC

By: _____

STATE OF WISCONSIN)
 : ss.
_____ COUNTY)

Personally came before me this ____ day of _____, 2014,
_____, 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 Certified Survey Map
- B Development Area
- C Union Square Development Plan
- D Construction Timing and Estimated Property Valuation