

PLANNING OPTION AGREEMENT

This PLANNING OPTION AGREEMENT (this "Agreement"), made and entered into this March 1, 2020 (the "Effective Date"), by and between the City of Appleton having its office at 100 N. Appleton Street, Appleton, WI 54911 (hereinafter the "CITY"), and Merge, LLC, an Iowa limited liability company d/b/a Merge Urban Development Group, having its office at 604 Clay Street, Cedar Falls, Iowa 50613 (hereinafter "DEVELOPER").

WITNESSETH:

WHEREAS, the CITY owns property located at _____, in the City of Appleton, County of Outagamie, WI (Tax Parcel(s) 312027200, 312027201, 312027202, 312028101), and more fully described in the legal description, which is attached hereto and incorporated herein as Exhibit A (hereinafter "Project Site"); and

WHEREAS, the DEVELOPER has requested a planning option to allow time to complete all due diligence necessary to determine the physical and financial feasibility of constructing a mixed-use development with rental units and light- retail space; and

WHEREAS, CITY desires to see the Project Site developed in an active mixed-use development that generates economic activity and increases assessed land value, thereby generating additional property tax base for the community; and

WHEREAS, CITY is willing to negotiate a sale of the Project Site with the DEVELOPER upon a determination by both parties of the economic and physical viability of proposed future uses.

NOW, THEREFORE, for good and valuable consideration, the parties mutually agree and state as follows:

1. The CITY hereby grants to DEVELOPER an exclusive Planning Option for an initial term expiring nine (9) months after the Effective Date for the Project Site (the "Initial Term"). This period is required in order to complete all due diligence necessary to determine the physical and financial feasibility of proposed future uses. The Initial Term of this Agreement may be extended by mutual written agreement of the parties, and, if so, such extended term will be known and is hereinafter referred to as the "Extended Term").
2. To secure the Initial Term, DEVELOPER shall pay CITY a non-refundable payment in the amount of One Thousand Dollars (\$1,000.00). If DEVELOPER is awarded the Extended Term, DEVELOPER shall pay to CITY an additional non-refundable payment in the amount of Five Thousand Dollars (\$5,000.00).
3. CITY, during the Initial Term, or any Extended Term, shall provide that the Project Site shall not be sold/conveyed or leased to any other legal entity and hereby agrees to grant to the DEVELOPER exclusive negotiating rights for the purchase or lease of said real property during the Initial Term and any Extended Term.
4. CITY hereby grants DEVELOPER full access to the site for purposes of completing due diligence including, but not limited to, soil testing, engineering analysis, environmental assessments and inspections (including invasive assessments and inspections in the discretion of the DEVELOPER), other inspections and other needs for ingress and egress upon the land. This access is subject to any preexisting easements and licenses on the Project Site. However,

any such licenses will be terminated by CITY in the event the DEVELOPER determines that termination is reasonably necessary for completion of the due diligence necessary for this Agreement, and, in that event, DEVELOPER will be granted a day-by-day/day-to-day extension of the Initial Term or the Extended Term, if any, for the number of days that it takes for CITY to terminate such licenses.

5. CITY shall make available all known environmental reports and activity upon the Project Site. By entering into this Agreement, the DEVELOPER in no way assumes any responsibility or liability for site remediation.
6. During the pendency of this Agreement and upon determination of the feasibility of proposed future uses, the parties shall work in good faith to negotiate and execute a Development Agreement, and any other associated documentation, that shall provide for the acquisition and development of the Project Site to DEVELOPER. Such Development Agreement is subject to the approval of City of Appleton Common Council.
7. It is agreed and understood by the parties that all proposed future uses in the Development Agreement shall complement existing uses on adjacent properties and comply with City of Appleton Comprehensive Plan 2010-2030. The City of Appleton shall coordinate the public agency participation in planning, obtaining data from public records as may be available, reviewing and commenting on aspects of proposed future uses in a timely manner.
8. DEVELOPER shall demonstrate the ability to obtain financing for the proposed future uses prior to the expiration of this Agreement.
9. DEVELOPER understands that CITY shall approve any final design plans as a condition of receiving any financial assistance from CITY. CITY financial assistance may be in the form of Tax Increment Financing or other governmental grants paid to DEVELOPER in accordance with the Development Agreement.
10. If the parties agree upon and execute a Development Agreement prior to the expiration of this Agreement, CITY shall convey the Project Site to the DEVELOPER in accordance with the terms and conditions of the Development Agreement, and any associated documentation.
11. If a Development Agreement is not agreed to by the parties prior to the expiration of this Agreement, and no extension has been agreed to by the parties, this Agreement is hereby terminated and the DEVELOPER shall furnish to CITY all environmental reports and studies, and surveys relating to the Project Site.
12. In the event the DEVELOPER determines that the proposed use on the Project Site is not feasible during the pendency of this Agreement, DEVELOPER may terminate this Agreement and shall notify CITY in writing of the termination.
13. CITY and DEVELOPER shall pay all of their own legal fees, third party fees, customary closing costs and other costs related to this Agreement, the Development Agreement, and any lease or sale associated with this Agreement.

IN WITNESS WHEREOF,

this Agreement has been duly executed as of the Effective Date.

City of Appleton



Merge, LLC



Brent Dahlstrom, Manager

EXHIBIT A

Parcel 31-2-0272-00

Part of Lots One (1), Two (2) and Three (3), in Block Twenty-seven (27), APPLETON PLAT, City of Appleton, Outagamie County, Wisconsin, according to the recorded Assessor's Map of said City, bounded and described as follows: Commencing at the Northwest corner of said Lot 1; thence S 0°20'12" E, 34.06 feet along the East right of way line of Appleton Street to the point of beginning; thence N 89°33'28" E, 90.83 feet; thence N 0°26'32" W, 13.00 feet; thence N 89°33'28" E, 193.56 feet; thence S 0°22'55" E, 131.67 feet along the West right of way line of Oneida Street; thence S 89°36'00" W, 185.54 feet along the North right of way line of Midway; thence N 0°22'08" W, 65.17 feet; thence S 89°33'28" W, 98.89 feet; thence N 0°20'12" W, 53.36 feet along the East right of way line of Appleton Street to the point of beginning.

Parcel 31-2-0272-01

Lot One (1) of Certified Survey Map No. 2447, filed in Volume 13 of Certified Survey Maps on page 2447, as Document No. 1177602 of the Outagamie County Register of Deeds, City of Appleton, Outagamie County, Wisconsin.

Parcel 31-2-0272-02

Lot One (2) of Certified Survey Map No. 2447, filed in Volume 13 of Certified Survey Maps on page 2447, as Document No. 1177602 of the Outagamie County Register of Deeds, City of Appleton, Outagamie County, Wisconsin.

Parcel 31-2-0281-01

Being the North 97.17 Feet of Lots One (1) and Two (2) and the North 97.17 Feet of the West 30 Feet of Lot Three (3), Block Twenty-eight (28), Appleton Plat, City of Appleton, Outagamie County, State of Wisconsin, according to the Recorded Assessor's Map of said City.