



DEVELOPMENT AGREEMENT FOR
A BUILDING PROJECT
LOCATED IN MILTON TIF DISTRICT NO. 10
FOR DEVELOPMENT PURPOSES
BY AND BETWEEN
CITY OF MILTON
"THE CITY"
AND
"Red Hawk Apartments of Milton LLC"

Dated as of August ____, 2019

(The "AGREEMENT")

I. PARTIES

A. The **CITY OF MILTON** is a Wisconsin Municipal Corporation located in the County of Rock, conducting its principal business at 710 S. Janesville St., Milton, WI 53563 ("**CITY**"),

B. **Red Hawk Apartments of Milton LLC**, is a Wisconsin Limited Liability Company doing business at 4945 Sumpter Drive, in the City of Janesville, County of Rock, State of Wisconsin, (hereinafter the "**DEVELOPER**") and is the **DEVELOPER** of certain real **PROPERTY** described below.

C. The **DEVELOPER** shall be and hereby is the beneficiary and recipient of the proceeds from a certain **LOAN** described below.

D. The **DEVELOPER** plans to construct an approximately 108 unit **APARTMENT COMPLEX** upon land owned by the **DEVELOPER**, known as the **PROPERTY**, with construction commencing no later than the 31st day of March 2020, and reaching full completion no later than the 31st day of March 2021 so that the increased real **PROPERTY** valuation and assessment of not less than \$12,600,000 shall be included in the assessment and equalized valuation set on January 1, 2022.

E. To these legitimate and beneficial ends and purposes, the **CITY** is able to lend to **DEVELOPER** and **DEVELOPER** shall borrow from and repay in full to the **CITY** in the amounts, and times set forth herein, the amount of \$2,520,000, known as the development incentive "**LOAN.**" The **DEVELOPER** shall use the **INCENTIVE** solely for the construction of the **APARTMENT COMPLEX** upon the **PROPERTY**.

F. As part of the consideration for the **CITY's LOAN**, the **DEVELOPER** promises to and shall create, achieve, and successfully construct the **APARTMENT COMPLEX** upon the **PROPERTY** as set forth and required below in this **AGREEMENT**.

II. DESCRIPTION OF THE PROPERTY

A. The **PROPERTY** is located along Parkview Drive, in the City of Milton, County of Rock, State of Wisconsin 53563 (Tax Parcel V-23-1462.12), and is contained within the CITY of Milton Tax Increment Financing District No. 10. The **PROPERTY** consists of approximately 12.61 acres of vacant land owned by the **DEVELOPER** legally described in **EXHIBIT A-1** attached hereto. The **PROPERTY** is graphically depicted on attached **EXHIBIT A-2**.

B. On the date of this **AGREEMENT**, the **PROPERTY** has a full equalized real property value in the amount of approximately \$11,685, (this amounts represent 12.61 acres of the overall 47.48 acre site V-23-1462.12, 2018 tax liability). The existing **PROPERTY** value shall be referred to herein as the **BASE YEAR PROPERTY VALUE**.

III. PURPOSE OF AGREEMENT

A. The described **PROPERTY** is located in City of Milton Tax Increment Financing District No. 10 and is intended to be used by the **DEVELOPER** as part of an overall development project in the City of Milton. The **DEVELOPER** shall construct an approximately 108-unit **APARTMENT COMPLEX** and certain improvements as described in this **AGREEMENT**. The **LOAN and APARTMENT COMPLEX** construction and associated improvements are each intended and anticipated to provide, foster, and encourage additional employment in the **CITY**; enhance the health, welfare, and benefit of the **CITY**; and add significantly to the economic and tax base of the **CITY** and to this part of Milton.

B. To these legitimate ends and purposes, the **DEVELOPER** is hereby entering into this **AGREEMENT** with the **CITY** in order to construct the **APARTMENT COMPLEX**, and to develop the **PROPERTY** consistent with such overall and particular **CITY** plans and in such manner as shall produce revenues to the **CITY** through increased assessed and equalized value of the **PROPERTY**, tax increments, tax payments, and /or other payments required under this **AGREEMENT** to repay the **LOAN** to the **CITY** and certain **CITY** tax increment financing expenditures and related costs and expenses within Tax Increment Financing District No. 10. Said arrangement is to the **CITY's** and the **DEVELOPER'S** benefit, as the tax increment financing taxation mechanism, terms of this **AGREEMENT**, and related business factors evince. All parties acknowledge that **DEVELOPER** and **CITY** will, by separate site plan review, agree upon all reasonable design standards that the **CITY** requires for the **APARTMENT COMPLEX**.

C. By approving and entering into this **AGREEMENT**, the governing body of the **CITY** finds the **AGREEMENT**, **LOAN**, and project are in the best interests and benefit of the **CITY** and community.

D. The further purpose of this **AGREEMENT** is to facilitate the construction and operation of the **APARTMENT COMPLEX** upon the **PROPERTY** by the **DEVELOPER**, which shall add jobs in the **CITY** and shall promote neighborhood stabilization and revitalization in the manner set forth in this **AGREEMENT**. The employment creation and neighborhood stabilization and revitalization purposes shall also more than adequately satisfy and greatly facilitate the intent and goals of the **CITY** and its land use and development plans for Tax Increment Financing District No. 10. The **DEVELOPER** acknowledges that the **CITY** is only able to reimburse certain development costs upon the **PROPERTY** through the Tax Increment Financing District No. 10 Project Plan, pursuant to applicable Wisconsin laws and statutes, which enable the **CITY** to receive and utilize specially designated and directed future real **PROPERTY** tax revenues from the **PROPERTY** as generated by the **APARTMENT COMPLEX** thereon, which increases the overall equalized value of Tax Increment Financing District No. 10. Further, by law, the **CITY** must use such increased incremental tax revenues generated by such development project(s) and **ADDITION(s)** located within Tax Increment Financing District No. 10 to repay its Tax Increment Financing District No. 10 development, related costs, and expenses. But for each party's payments, promises, representations and agreements herein, neither party would enter into this **AGREEMENT**. In entering into this **AGREEMENT**, each party has relied upon the representations, promises, and agreements of the other party.

IV. TIF DEVELOPMENT PROVISIONS

A. In consideration of the **CITY'S** performance of the **CITY'S** promises and obligations set forth herein, the **DEVELOPER** shall:

1. Prior to the start of any construction, foundation work, or installation of any structure or other improvement upon the **PROPERTY**, seek and obtain (i) site plan approval from the CITY Site Plan Review Coordinator and CITY Plan Commission;(ii) a conditional use permit; and (iii) approval from Milton Plan Commission of the exterior appearance of every structure and improvement proposed to be constructed by the **DEVELOPER** upon the **PROPERTY**.

2. Prior to the start of any site preparation work for the **APARTMENT COMPLEX** or other construction upon the **PROPERTY**, seek and obtain soil erosion and sediment control permits from the Wisconsin Department of Natural Resources

3. Unless otherwise provided for herein, arrange, at **DEVELOPER'S** cost, for the installation, connection, and lateral extension of water, sewer, storm drainage, natural gas and underground electrical utilities to the **APARTMENT COMPLEX**, as and if needed.

4. Complete or cause to be fully completed the 108-unit **APARTMENT COMPLEX** and obtain or cause to obtain a final certificate of occupancy for the **APARTMENT COMPLEX** from the **CITY**. The **APARTMENT COMPLEX** shall be completed no later than noon on March 31, 2021. Upon completion, the **APARTMENT COMPLEX** shall have an increased real **PROPERTY** valuation and assessment of not less than \$12,600,000 and shall be included in the assessment and equalized valuation set on January 1, 2022. This increased real **PROPERTY** valuation and estimate will be known as the "**Minimum PROPERTY Value Guarantee**."

5. In any year during the term of the agreement if the **Minimum PROPERTY Value Guarantee** is not met, the incentive paid by the **CITY** to the **DEVELOPER** shall be reduced proportionally. For example if the assessment in any year was \$11 million (12.70% less than the **Minimum PROPERTY Value Guarantee**), the incentive would be \$220,000 instead of \$252,000.

6. In consideration of the **DEVELOPER'S** performance of the **DEVELOPER'S** promises and obligations set forth herein, the **CITY** shall provide a **LOAN** to the **DEVELOPER** by paying to the **DEVELOPER** the total amount of \$2,520,000.00, in 10 annual equal installment payments. Said payments shall be due on or before August 31, 2023 and each successive August 31st until 2032 or until the full amount of principal owed has been paid, provided, however, that the amount of each annual installment payment shall be limited subject to the provisions of section IV. A. 5. but, in any event, the amount of each annual installment payment shall not exceed the amount of tax incremental revenue generated by the **PROPERTY** and **APARTMENT COMPLEX** for the prior year and due in the year of the installment payment. **DEVELOPER** will make expenditures applicable to the **PROPERTY** at least equal to the principal sum of \$2,520,000.00.

7. No part, portion, or whole of the **APARTMENT COMPLEX** or **PROPERTY**, during the life of Tax Increment Financing District No. 10, may, by the **DEVELOPER**, or anyone else, be sold, conveyed, transferred, leased, subleased, or in any other manner whatsoever alienated, assigned, or encumbered to any person, firm, corporation, partnership, association, joint or other venture, or other entity of whatsoever kind or nature, who/which would not be legally or otherwise required to pay, or who would not, could not, or does not pay in full the **PROPERTY** taxes agreed to be paid pursuant to this **AGREEMENT**. Notwithstanding the foregoing, the **DEVELOPER** shall be permitted to lease apartment units to residential tenants and such tenants shall not be obligated to pay **PROPERTY** taxes. Until the **TOTAL AGGREGATE DEVELOPER REPAYMENT OBLIGATION** (\$2,520,000.00) is satisfied in full, no sale, conveyance, or encumbrance of the **PROPERTY** or **APARTMENT COMPLEX** may occur without the prior written approval of the **CITY**, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the **DEVELOPER** shall have the right to mortgage the **PROPERTY** with a first priority lien, to the lender of its choice, to secure a construction loan for the project provided for herein as well as any subsequent refinancing thereof without first obtaining the written approval of the **CITY**. The **DEVELOPER** may collaterally assign to any lender that is also providing financing for the **APARTMENT COMPLEX** the **DEVELOPER'S** interests in this **AGREEMENT** as security for such lender financing, provided, however, that any actual transfer of the **AGREEMENT** pursuant to the terms of a collateral assignment shall require the consent of the **CITY**, which consent may not be unreasonably withheld, conditioned, or delayed.

8. The **DEVELOPER'S** performance under this **AGREEMENT** is subject to and contingent upon the **DEVELOPER** obtaining all of the following prior to March 31, 2020:

- a. All required approvals, including site plan, signage and exterior appearance, by all governmental agencies necessary for the design and construction of the **APARTMENT COMPLEX** on terms and conditions satisfactory to the **DEVELOPER**.
- b. Commitments for construction financing and permanent project financing for the **APARTMENT COMPLEX** upon terms and conditions satisfactory to the **DEVELOPER**.

9. The **CITY's** obligation to perform under this **AGREEMENT** is contingent upon the **CITY's** receipt of any and all waivers and satisfactions of contingencies required of the **DEVELOPER** under this **AGREEMENT**. Additionally, upon execution of the **AGREEMENT**, the **CITY** agrees to the following:

- a. Construction and installation of a sanitary sewer lift station and sanitary sewer force main by December 31, 2020, which will serve the **PROPERTY** and the surrounding area.
- b. To promptly review and reasonably consider for approval all submittals from **DEVELOPER**.

V. IMPROVEMENTS

A. Public Streets. The **DEVELOPER** hereby agrees:

1. To grade and surface all streets in the **PROPERTY** in accordance with the plans and specifications on file with the City Clerk's office as well as all applicable city ordinances, specifications, regulations and guidelines for the construction of roads in the **CITY** and as approved by the City Engineer. All streets are to be constructed with curb and gutter.
2. The streets will be completed and presented for preliminary acceptance by the **CITY** through installation of road base, curbs and gutters.
3. That the first lift of asphalt of the streets will be completed and presented to the **CITY** no later than one year after the initial commencement of road and street work or as extended by the City Council.
4. The final lift of asphalt of the streets will be completed and presented for acceptance by the **CITY** after at least one winter season, but not later than two years after the initial commencement of construction of the streets, unless extended by the Common Council. The final lift of asphalt shall be coordinated with the City Engineer to correspond with other street improvements off-site (Woodcrest Drive, Blanche Drive and Parkview Drive) but adjoining the **PROPERTY**.
5. To furnish "as-built" plans of all streets pursuant to the specifications on file with the **CITY** Clerk upon completion and acceptance thereof.
6. **DEVELOPER** shall maintain streets until accepted by resolution, adopted by the Common Council of the **CITY**, which acceptance may not be unreasonably delayed and which shall be done in accordance with Section VI(A).
7. The **DEVELOPER** shall be responsible for the design and upgrade of the portion of Parkview Drive that is directly contiguous from the development site from its current rural cross-section to an urban cross-section as outlined in City Ordinances.

B. Sanitary Sewer. The **DEVELOPER** hereby agrees:

1. To construct, furnish, install, and provide a complete sewerage system to serve the entire **PROPERTY** all in accordance with the plans and specifications, on file in the **CITY** Clerk's office and all applicable Federal, State and City of Milton ordinances, specifications, regulations and guidelines for the construction of sewerage systems in the **CITY** and as approved by the **CITY** Engineer.
2. To clean all sanitary sewers prior to acceptance of the improvements by the **CITY**.

3. To furnish as-built plans of the entire system including locations of laterals at the main and ten (10) feet beyond the lot lines, pursuant to specifications of the **CITY**.
4. To deflection test and low pressure air test the entire sanitary sewer collection system, repair any defects as determined by the **CITY** Engineer.
5. To televise the sanitary sewer system; repair any defects as determined by the City Engineer and supply a digital copy of the video to the **CITY**.
6. The **DEVELOPER** shall be responsible for their portion of the sanitary sewer lift station service area special assessment for the construction of the sanitary sewer lift station and sanitary sewer force main by the city pursuant to section IV. A. 9. a.

C. Water. The **DEVELOPER** hereby agrees:

1. To construct, install, furnish, and provide a complete system of water distribution throughout the entire **PROPERTY**, in accordance with the plans and specifications on file in the **CITY** Clerk's office and all applicable Federal, State and City ordinances, specifications, regulations and guidelines for the construction of water systems in the **CITY** and as approved by the **CITY** Engineer.
2. To furnish as-built plans of the entire system including hydrant valve locations and locations of laterals at the main and to ten (10) feet beyond the lot lines, pursuant to specifications approved by the **CITY** Engineer.
3. To pressure test, leakage test and obtain a clean water sample of the entire water system, repair any defects as determined by the City Engineer.
4. The final plat calls for the installation of 2-inch blow offs at the end of various water mains which will be extended in the future. The **DEVELOPER** shall remove these blow offs with the development of subsequent phases, or shall replace the blow off valves with permanent hydrants in the event that no subsequent phase of development occurs within 3-years of the recording of the final plat.

D. Surface Water Drainage. The **DEVELOPER** hereby agrees:

1. To construct, install, furnish, and provide adequate facilities for storm and surface water drainage throughout the entire **PROPERTY** and grading plan, in accordance with the plans and specifications on file in the City Clerk's office and all applicable Federal, State, and City ordinances, specifications, regulations and guidelines for the construction of storm and surface water drainage systems in the **CITY** and subject to the approval of the City Engineer.
2. That site grading and construction of surface and storm water drainage facilities will be completed and accepted by the **CITY**.

3. To provide facilities to transmit the existing surface drainage across the **PROPERTY** which shall be designed to accommodate the anticipated storm water flows resulting from development of the adjacent properties. **DEVELOPER** further agrees to provide proper facilities to transmit the surface drainage from the **PROPERTY** to a stream, waterway or dedicated easement that has adequate capacity to transmit the anticipated flows from the **PROPERTY** and adjacent property.
4. To maintain streets free from mud and dirt from construction of the **PROPERTY**.
5. That the **CITY** retains the right to require **DEVELOPER** to install additional storm and surface water drainage measures and erosion control measures as needed in accordance with generally accepted engineering standards prior to acceptance by the **CITY** of the storm and surface water drainage improvements.
6. The **CITY** encourages the use of native plantings in the construction of the storm and surface water drainage facilities required in this Paragraph D. **DEVELOPER** agrees to utilize to the extent reasonably possible such native plantings in a natural variety of species for such facilities subject to the review and acceptance of same by the City Engineer.

E. Landscaping. The **DEVELOPER** hereby agrees:

1. To preserve to the maximum extent possible existing trees, shrubbery, vines, and grasses not actually lying in public roadways, drainageways, building foundation sites, private driveways, soil absorption waste disposal areas, paths, and trails by use of sound conservation practices.
2. To remove and lawfully dispose of all barns, outbuildings, destroyed trees, bush, tree trunks, shrubs, and other natural growth and all left over construction materials, construction debris and rubbish. The **DEVELOPER** shall not bury any of the above in any portion of this **PROPERTY**.

F. Street Lamps. The **DEVELOPER** shall install a street lighting system within the **PROPERTY** subject to the reasonable approval of the **CITY**.

G. Grading, Erosion and Silt Control. The **DEVELOPER** hereby agrees:

1. Prior to commencing site grading, to submit for approval and execution by the **CITY** an Erosion and Silt Control Plan. The plan shall provide sufficient control of the site, to prevent siltation downstream from the site. The **DEVELOPER** shall provide to the **CITY** written certification from the **DEVELOPER'S** Engineer that the plan, in its execution, shall meet all Federal, State, County and local regulations, guidelines, specifications, laws and ordinances.
2. To cause all grading, excavation, open cuts, and site slopes and other land surface disturbances to be mulched, seeded, sodded or otherwise protected so that erosion, siltation, sedimentation and washing are

prevented in accordance with the plans and specifications on file with the **CITY** Clerk.

3. The **DEVELOPER** shall immediately place effective erosion control procedures along downslope areas and alongside slope areas as required to prevent or reduce erosion where erosion during construction will result in a loss of soil to waters of the state, public sewer inlets or off-site. During the period of construction at a site, all erosion control procedures necessary to meet the performance standards of Wisconsin Administrative Code SPS Section 321.125 shall be properly implemented, installed and maintained by the **DEVELOPER**, the building permits applicant and the subsequent landowner. If erosion occurs after building construction activities have ceased, some or all of the erosion control procedures shall be maintained until the site has been stabilized.
4. That all disturbed areas shall be restored to the reasonable satisfaction of the **CITY**.
5. This requirement shall apply to the construction of sewer main, water main, public streets and private streets and storm water management facilities. Further this requirement shall remain in effect until the completion of the above-named improvements and acceptance of the sewer and water main and public streets by the **CITY**.

H. Sidewalks. **DEVELOPER** hereby agrees:

1. To construct, furnish and install concrete sidewalks in the street right of way of all lots in accordance with plans and specifications on file with the **CITY** Clerk's office as well as all applicable **CITY** Ordinances, specifications, regulations and guidelines for the construction of sidewalks, and as approved by the **CITY** Engineer.

I. Plans and Specifications. All reference to the plans and specifications on file with the **CITY** Clerk for improvements specified in this section shall mean those plans and specifications submitted by the **DEVELOPER**, approved by the **CITY** Engineer. All as-built drawings shall be submitted by **DEVELOPER** both in paper and digital form.

J. Advertising Signs. The **DEVELOPER** agrees that any temporary signs placed anywhere in the **PROPERTY** to advertise the **PROPERTY** shall comply with all applicable provisions of the **CITY** Code of Ordinances, including, but not limited to the provisions of Article V. Division 4, Subdivision IV. of the Zoning Ordinance of the **CITY**.

K. Construction Trailers. Construction trailers may be located at the **PROPERTY** on a temporary basis during the construction of the above-described improvements.

VI. DEDICATION

A. Subject to all of the other provisions of this **AGREEMENT** and the Exhibits hereto attached, the **DEVELOPER** shall, without charge to the CITY, upon completion of all of the above-described public improvements, unconditionally give, grant, convey and fully dedicate the same to the **CITY**, its successors and assigns, forever, free and clear of all encumbrances whatever, together with, all structures, mains, conduits, pipes, lines, equipment and appurtenances which may in any way be part of or pertain to such improvements and together with any and all necessary easements for access thereto. After such dedication, the **CITY** shall be responsible for all maintenance and improvements to said facilities and shall have the right to connect or integrate other sewer or water facilities with those facilities provided hereunder as the **CITY** decides, with no payment or award to, or consent required of, the **DEVELOPER**. The **DEVELOPER** agrees to file with the **CITY** an Irrevocable Letter of Credit from a lending institution approved by the **CITY** issued in favor of the **CITY**, prior to the commencement of construction, in an amount equal to the costs of all public improvements set forth herein plus ten percent in a form approved by the City Engineer and City Attorney. No construction shall commence until such a Letter of Credit is on file with the **CITY**. The Letter of Credit shall be in an amount sufficient to pay any costs incurred by the **CITY** for completion of all public improvements (see Section V) to include all survey monuments in accordance with Section III herein. The Letter of Credit shall be released when the requirements set forth herein are fulfilled or within fourteen months after final completion of improvements, whichever comes later. The **DEVELOPER** agrees to provide the City Engineer with the Statement of Costs discussed in Section VII, which shall be approved by the City Engineer prior to furnishing the Letter of Credit. Dedication shall not constitute acceptance of any Improvement by the **CITY**. All improvements will be promptly accepted by the **CITY** by separate resolution at such time as said improvements conform to **CITY** specifications after the issuance of an appropriate letter of acceptance by the **CITY** Engineer. The **CITY** agrees to accept or reject any improvements within forty-five (45) days after the same are submitted to the **CITY** unless otherwise mutually agreed. The **DEVELOPER** agrees that the public improvements will not be accepted by the **CITY** until all outstanding charges to be paid by the **DEVELOPER** under the Ordinances have been paid in full and affidavits and lien waivers are received by the **CITY** indicating that all contractors (and subcontractors, laborers, materialmen, etc.) providing work, services or materials in connection with the public improvements have been paid in full for such work, services and materials.

B. If at any time:

1. The **DEVELOPER** is in default of any material term of this **AGREEMENT** following its right to cure as set forth in Section XIII.A hereof, or
2. The **DEVELOPER** does not complete the installation of improvements within one year after the commencement of the construction of the improvements (except for the final lift of asphalt as provided in Section V), unless extended by **AGREEMENT** or action of the Common Council, or
3. The **DEVELOPER** fails to maintain an adequate Letter of Credit with the **CITY** to pay the cost of uncompleted improvements in the **PROPERTY**, or
4. The Letter of Credit on file with the **CITY** is dated to expire within sixty (60) days and in the reasonable judgment of the City Engineer, the improvements will not be accepted by the **CITY** within such sixty (60) day

period and the same has not been extended, renewed or replaced upon the **CITY'S** request.

The lending institution providing the Letter of Credit shall pay to the **CITY** any draw upon demand, and upon its failure to do so, in whole or in part, the **CITY** shall be empowered in addition to its other remedies, without notice or hearing, to impose special assessments in the amount of said completion, or satisfaction cost, upon each and every lot in the **PROPERTY** payable in the next succeeding tax roll.

C. The amount of the Letter of Credit will be reduced by resolution of the Common Council in an amount reasonably proportionate to the cost of the public improvements that are paid for by the **DEVELOPER**, provided that the remaining Letter of Credit is sufficient to secure payment for any remaining improvements required. The **DEVELOPER** agrees to provide the City Engineer with Statement of Costs of all improvements for all costs associated with the completion of the phase, which costs shall be approved by the City Engineer prior to the **CITY** agreeing to reduce the Letter of Credit. The Statement of Costs shall be deemed approved if the **CITY**, within thirty (30) days following delivery of said Statement of Costs, does not reject the same, or any portion thereof. The **CITY** acknowledges that the **DEVELOPER** will not pay bills for any improvement work without the approval of such work by the **CITY**. The **CITY** agrees to use its best efforts to inspect such work on a timely basis.

VII. MISCELLANEOUS REQUIREMENTS.

A. Grade. The **DEVELOPER** hereby agrees to furnish to the **CITY** Engineer a copy of the plan showing the street grades in front of the **APARTMENT COMPLEX** and the recommended top of foundation wall and finished yard grade. This information shall be provided prior to the issuance of building permits.

Reimbursement of Engineering and Inspection Costs.

1. The **DEVELOPER** agrees to reimburse the **CITY** for the following:

- a. Any reasonable and necessary costs and expenses for engineering and related inspections performed by outside consultants, or in the event the City Engineer shall provide said engineering and inspections, the **DEVELOPER** shall reimburse the **CITY** for the City Engineer's time at the rate of \$85.00/hour. For purposes of this Agreement and except for the hourly rate of the City Engineer, engineering and inspection fees shall not include any salaries or wages for **CITY** employees or any administration expenses of the **CITY**.
- b. Inspection and payout estimates shall be performed and prepared by the **CITY**. The final cost shall be based on the actual and reasonable cost of the **CITY** when all improvements are installed and accepted by the **CITY**.

C. Removal of Topsoil. The **DEVELOPER** agrees to submit a plan for the maintenance and disposition of onsite topsoil. The **DEVELOPER** agrees that topsoil can be only removed from the site without **CITY** permission once all lots have been restored to provide for the establishment of a residential lawn.

D. Statement of Costs. The **DEVELOPER** agrees to furnish the **CITY** with a statement of the total costs of public improvements and dedicated land in the **PROPERTY** in each of the following categories:

1. Streets, sidewalks and bicycle/pedestrian paths,
2. Sanitary sewers,
3. Water distribution system,
4. Surface water drainage system.

The **CITY** must collect this information for its accounting records and information it must report to State agencies such as the Public Service Commission.

E. Parkland Dedication: Every developer shall be required to dedicate land to the city for public sites, parks and/or open spaces, or make payments in lieu of such land. If the master plan, master neighborhood plan, or official map indicates that public lands are required for the land within the proposed land division, the developer shall dedicate such land to the city. Lands dedicated for the purposes of streets, greenbelts, or other stormwater management facilities shall not be considered part of, or replace the requirement to dedicate lands for public sites, parks, and open spaces. The city shall not compensate the developer for any land so dedicated.

If such dedications for public sites, parks, and open spaces is less than 5% of the total land within the proposed land division, the developer shall pay to the **CITY** a sum equal to 3% of the equalized value of all land within the total proposed land division area less any land so dedicated. The value shall be established by the **CITY** Assessor as the average per square-foot of equalized value of all residential land within the city at the time of the land division. The **CITY** may accept, in lieu of such sum, land within the proposed land division of equal value.

Notwithstanding the foregoing, DEVELOPER'S provision of private recreation space and community space as set forth in the site plan approved by the CITY will satisfy all requirements under this Section.

VIII. ROADS, SANITARY SEWER, WATER, & STORM WATER CORRECTION

The **DEVELOPER** shall correct defects due to faulty materials, or workmanship in any public improvement which appear within a period of one (1) year from the date of final completion of improvements, and shall pay for any damages resulting therefrom to city **PROPERTY**. The **CITY** may refuse to accept the improvements unless and until they substantially conform to generally accepted industry standards. All guarantees or warranties for materials or workmanship which extend beyond the aforementioned guarantee period shall be assigned by the **DEVELOPER** to the **CITY** as beneficiary.

IX. METHOD OF IMPROVEMENT

The **DEVELOPER** hereby agrees to engage contractors for all improvements other than the **APARTMENT COMPLEX** included in this **AGREEMENT** who are qualified to perform the work and who shall sign **EXHIBIT C** and file same with the **CITY** Clerk. The **DEVELOPER** further agrees

to use materials and make the various installations in accordance with the approved plans and specifications made a part of this **AGREEMENT** by reference and including those standard specifications as the **CITY** may have adopted at the time of construction.

X. CITY RESPONSIBILITY

The **CITY** will perform no repairs, maintenance or snow removal on the improvements until accepted by the **CITY**. The **CITY** agrees to maintain improvements once they have been accepted by the **CITY**.

XI. GENERAL INDEMNITY

In addition to, and not to the exclusion or prejudice of, any provisions of this **AGREEMENT**, or documents incorporated herein by reference, the **DEVELOPER** shall indemnify and save harmless the **CITY**, its trustees, officers, agent, independent contractors, and employees, and shall defend the same from and against any and all liability, claims, losses, damages, interests, action, suits, judgment, costs, expenses, attorney fees and the like to whomever owned and by whomever and whenever brought or maintained which may in any manner result from or arise in the cause of, out of, or as a result of the following acts or omissions of the **DEVELOPER**:

- A. Negligent performance of this **AGREEMENT**.
- B. Negligent construction or operation of improvements covered under this **AGREEMENT**.
- C. Violation of any law or ordinance.
- D. The infringement of any patent trademark, trade name or copyright.
- E. Use of road improvements prior to their formal dedication to their dedication to the **CITY**.
- F. In any case where judgment is recovered against the **CITY** for any one or more of the foregoing acts or omissions of the **DEVELOPER**, if notice and opportunity to defend has been delivered to the **DEVELOPER** of the pendency of the suit, within ten (10) days after the **CITY** has been served with the same, the judgment shall be conclusive of the **DEVELOPER** and not only as to the amount of damages, but also as its liability to the **CITY**, provided such judgment has become final and all rights of appeal have been exhausted, or if no appeal has been filed, all appeal periods have expired.
- G. During any period of construction of the public improvements required herein, the **DEVELOPER** shall name as additional insureds on its general liability occurrence insurance policy, the **CITY**, its trustees, officers, agents, employees and independent contractors hired by the **CITY** (including without limitation the City Engineer) to perform services with respect to this **PROPERTY** and give the **CITY** evidence of the same upon request by the **CITY**.
- H. The **DEVELOPER** shall furnish a completed **EXHIBIT C** from all contractors

prior to start of construction.

Notwithstanding any provisions of this **AGREEMENT** to the contrary (a) for so long as the **PROPERTY** is encumbered by a United States Department of Housing and Urban Development (“HUD”) insured mortgage, any indemnity obligations or payment obligations of the **DEVELOPER** hereunder shall be payable only from (i) available insurance proceeds, (ii) Surplus Cash (as defined in any HUD Regulatory Agreement between **DEVELOPER** and HUD to be recorded in the Rock County Recorder’s Office), or (iii) funds not derived from the **PROPERTY**, any proceeds of a HUD loan, and any reserve or deposit made with a HUD lender or any other party as required by HUD in connection with a HUD loan; and (b) in the event HUD acquires fee simple title to the **PROPERTY** or any interest in the **PROPERTY**, HUD shall not be subject to any indemnification obligations with respect to the **PROPERTY** to which HUD holds fee title or any other interest.

XII. RESERVATION OF RIGHTS

The **CITY** reserves the right to withhold issuance of any and all building permits, if **DEVELOPER** is in violation of this **AGREEMENT** beyond applicable notice and cure periods.

Heirs and Assigns. This **AGREEMENT** is binding upon the **DEVELOPER**, owners, their respective heirs, successors and assigns, and any and all future owners of the subject lands.

XIII. OTHER PROVISIONS

A. Time is of the essence as to the performance of this **AGREEMENT** and each obligation herein. In the event that the **CITY** is delayed for any reason in performing any of its promises as set forth in this **AGREEMENT**, all dates shall be extended for a reasonable period not to exceed thirty (30) days.

B. Before any failure of any party of this **AGREEMENT** to comply or perform its warranties, covenants or obligations under this **AGREEMENT** shall be deemed to be a breach of this **AGREEMENT**, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform the alleged failure and shall demand performance. No breach of this **AGREEMENT** may be found as occurred if performance is completed to the reasonable satisfaction of the complaining party within 60 days after receipt of such notice or, in the case of a failure by which its nature takes in excess of 60 days to cure, such longer period of time as may be reasonably necessary to cure same; provided that the curing party is pursuing said cure with diligence. **DEVELOPER’S** lenders shall have the right, but not the obligation, to exercise any cure rights on behalf of **DEVELOPER**. Upon the occurrence of an event of default under this **AGREEMENT**, each party shall be entitled to seek any and all remedies available at law or in equity, including but not limited to the filing of an action of proceeding at law or in equity, filing an action for injunctive relief (without having to post a bond), or for a specific performance of the covenants and agreements herein contained, filing an action seeking an award of damages for failure of performance of both, or may file an action to obtain rescission for repudiation or failure of performance.

C. The **CITY** warrants and represents that the Common Council for the City of Milton has lawfully authorized this transaction and has otherwise authorized the City Administrator to take

such steps, enter into negotiations, and draft, prepare, execute, file and/or record this and related agreements, documents, forms and other papers as the City Administrator may, from time to time, determine necessary and/or desirable to consummate and/or effectuate the transaction(s) set forth in, and intent and purposes of, this **AGREEMENT**. The **CITY** represents and warrants that Tax Increment Financing District No. 10 does not expire prior to December 31, 2033 and the **CITY** agrees not to terminate such district prior to said date.

D. The **DEVELOPER** acknowledges the **CITY** has informed the **DEVELOPER** of Wisconsin Statutes s. 66.1105(6c), as from time to time amended or renumbered, which requires any for-profit entity that operates within a TIF district for which the **CITY** has incurred TIF costs, to notify the Department of Workforce Development and the local private industry council of any position to be filled for a period of one year from the payment of such project costs.

E. The **CITY** shall provide to the **DEVELOPER** at or before closing certified photocopies of all necessary Common Council resolution(s) and/or minutes evincing said authorizations in a form suitable for filing with the Rock County Register of Deeds.

F. The word "**obtain**" as it appears throughout this **AGREEMENT** as it pertains to required performances by the **DEVELOPER** means that the **DEVELOPER** shall:

1. Seek to acquire such approval or permission as is required in this **AGREEMENT** and that granting such authority or permission is discretionary and not mandatory on the part of the **CITY** or any of its boards, commissions, bodies, or officials, but the **CITY**, and its boards, commissions, bodies, and officials will act reasonably and in good faith when considering any and all submittals by **DEVELOPER**;
2. Receive such discretionary authority or permission as reasonably necessary prior to any further obligation on the part of the **CITY**.

G. The **PARTIES** make no warranties or representations except as expressly set forth herein.

H. The **CITY** agrees to execute and deliver such other documents as counsel for the **DEVELOPER** may reasonably request to consummate the transaction contemplated herein. This **AGREEMENT** (which the parties agree shall also act as the promissory note) constitutes the entire **AGREEMENT** between the parties and no modification shall be binding unless amended and agreed to in writing and signed by the affected parties. In the event of a conflict between the language contained in this **AGREEMENT** and the language contained in any other document, this **AGREEMENT** shall control.

I. The **DEVELOPER**, by signing below acknowledges having read, fully understanding, and having personally received a copy of this **AGREEMENT**.

J. This **AGREEMENT** shall remain in full force and effect until such time as each and every of the obligations of the **DEVELOPER** and the **CITY** have been fully satisfied and discharged, whichever shall occur last.

K. All rights and remedies in this **AGREEMENT** for each party are cumulative and in addition to any and all others in law and equity.

L. Any notice which is required in connection with this **AGREEMENT** shall be mailed, certified mail with return receipt requested, or delivered by nationally recognized overnight carrier, or hand delivered,

If to the **CITY**:

Al Hulick, CITY Administrator
CITY of Milton
710 S. Janesville St.
Milton, WI 53563

If to the **DEVELOPER**:

Red Hawk Apartments of Milton LLC
4945 Sumpster Drive
Milton, WI 53563
Attn: Michael McKenna

And to its **ATTORNEY**:

Nowlan & Mouat, LLP
Attn. Timothy H. Lindau
100 S. Main Street
Janesville, WI 53547

The person or place of notice may be changed from time to time by any party notifying the other in writing duly served of the change.

M. This **AGREEMENT** survives any and all dates set forth above, runs with the land, may be recorded by the **CITY**, and shall be binding upon and inure to the benefit of the **DEVELOPER** and each and every of the **DEVELOPER'S** conveyees, purchasers, assigns, lessees, sub-lessees, transferees, mortgagees, and successors of whatsoever kind or nature.

N. This **AGREEMENT** is subject to, governed by, and shall be interpreted, construed, and applied in accord with, the Laws of the State of Wisconsin, with Rock County as the proper venue. Any provision set forth herein shall, to the extent permitted by law, take precedence and govern notwithstanding anything set forth in this subsection to the contrary.

O. This **AGREEMENT** constitutes the entire **AGREEMENT** and understanding among the parties hereto and supersedes any prior understandings or written or oral agreements among them respecting the subject matter hereof.

P. All provisions of the **CITY'S** ordinances are incorporated herein by reference, and all such provisions shall bind the parties hereto and be a part of this **AGREEMENT** as fully as if

set forth at length. This **AGREEMENT** and all work and improvements hereunder shall be performed and carried out in accordance with and subject to the provisions of said ordinances.

This offer and **AGREEMENT** are hereby accepted. The warranties and representations made herein survive the closing of this transaction. The undersigned hereby agrees to the terms, contingencies, conditions and obligations set forth above, and acknowledges receipt of a copy of this **AGREEMENT**.

Offered, agreed to, and entered into as of the date first written above.

DEVELOPER:

RED HAWK APARTMENTS OF MILTON LLC,
a Wisconsin limited liability company

By: _____
Jeremy Yost, Manager

STATE OF _____)
) ss:
_____ COUNTY)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO
HEREBY CERTIFY that Jeremy Yost who is personally known to me to be the same person
whose name is subscribed to the foregoing instrument as the manager of Red Hawk
Apartments of Milton LLC, a Wisconsin limited liability company, appeared before me this day
in person and acknowledged that he signed and delivered the said instrument as his own free
and voluntary act and as the free and voluntary act of said limited liability company for the uses
and purposes therein

Given under my hand and notarial seal this _____ day of _____, 2019.

Name: _____
Notary Public, State of _____
My Commission Expires: _____

This offer and **AGREEMENT** are hereby accepted. The warranties and representations made herein survive the closing of this transaction. The undersigned hereby agrees to the terms, contingencies, conditions and obligations set forth above, and acknowledges receipt of a copy of this **AGREEMENT**.

Offered, agreed to, and entered into as of the date first written above.

CITY:

CITY OF MILTON

By: _____
Name: _____
Its: City Administrator

Attest:

By: _____
Name: _____
Its: City Clerk

STATE OF WISCONSIN)
) ss:
ROCK COUNTY)

Subscribed to before me personally by _____,
City Administrator, and _____, City Clerk,
to me known to be the same who signed above.

this ____ day of _____, 2019.

Notary Public
Milton, Wisconsin
My Commission Expires: _____

EXHIBIT A-1

Legal Description of **PROPERTY**

LOT 1 OF A CERTIFIED SURVEY MAP RECORDED IN VOLUME 39, PAGES 280 THRU 284 OF CERTIFIED SURVEY MAPS OF ROCK COUNTY, WISCONSIN, AS DOCUMENT NO. 2121784 AND LOCATED IN NE 1/4 OF THE SW 1/4, SE 1/4 OF THE SW 1/4, NW 1/4 OF THE SE 1/4 AND SW 1/4 OF THE SE 1/4 OF SECTION 34, T.4N., R.13E., OF THE 4TH P.M., CITY OF MILTON, ROCK COUNTY, WISCONSIN.

EXHIBIT A-2
Map of the PROPERTY
"Lot 1"

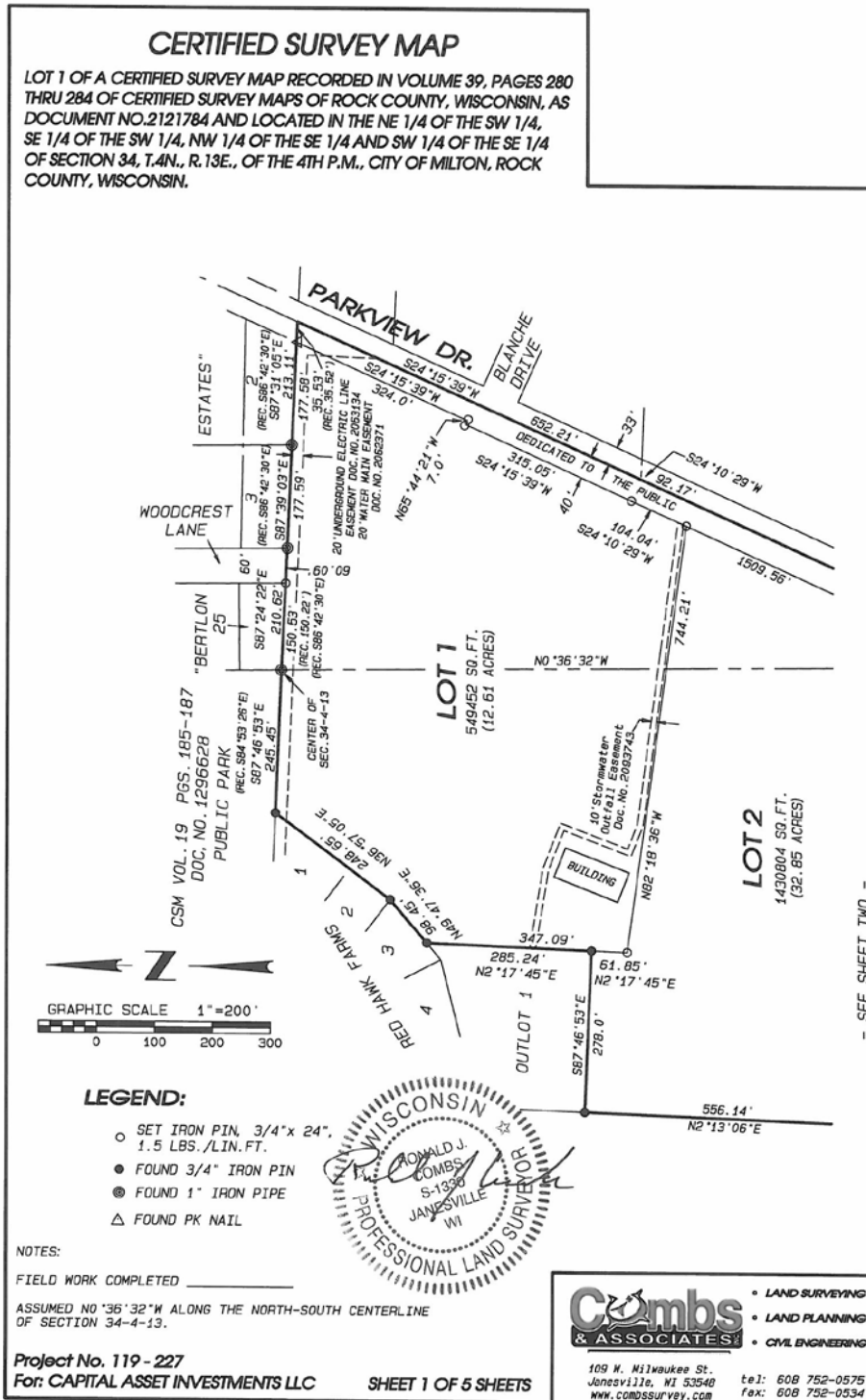


EXHIBIT C

AGREEMENT AS TO LIABILITY, INDEMNITY AND INSURANCE

DATE: _____

1. FOR VALUABLE CONSIDERATION, _____ (CONTRACTOR), hereinafter referred to as "Contractor," acknowledges that the work to be performed for construction of the underground Utilities and/or Streets (the "Work") in RED HAWK APARTMENTS OF MILTON, LLC DEVELOPMENT located in the City of Milton, hereinafter referred to as "City," will be conducted in accordance with the Standard Specifications for Sewer and Water Construction and/or Street Construction in Wisconsin, latest edition, City of Milton project plans and specifications as reviewed by the City's Engineers and as approved by the City and any other agencies having jurisdiction.

2. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and will provide protection from claims set forth below which may arise out of or result from CONTRACTOR'S performance furnishing of the Work and CONTRACTOR'S other obligations under the Contract Documents, for the Work whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable.

- A. Claims under worker's compensation, disability benefits and other similar employee benefits acts;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR'S employee;
- C. Claims for damages because of bodily injury, sickness, or disease, or death of any person other than CONTRACTOR'S employees;

- D. Claims for damages insured by customary personal injury liability coverage which are sustained: (1) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (2) by any other person for any other reason;
- E. Claims for damages, other than the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- F. Claims for damages because of bodily injury or death or any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The policies of insurance so required by this paragraph 2 above to be purchased and maintained shall:

With respect to insurance required by paragraph 2, inclusive, include as additional insured (subject to any customary exclusion in respect of professional liability) City and City's Engineers and include coverage for the respective officers and employees of all such additional insureds.

3. Indemnification. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless City and City's Engineers, and the officers, directors and employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including, but not limited to all fees and charges for engineers, architects, attorneys and other professionals and all court or arbitration or other dispute, resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claims, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable regardless of whether or not caused in part by any negligence or omission of a person or entity indemnification hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

4. In any and all claims against City or City's Engineers or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 3 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under worker's compensation acts, disability benefit acts or other employee benefit acts.

5. The indemnification obligations of CONTRACTOR under paragraph 3 shall not extend to that portion of liability of City's Engineers, and its officers, directors, employees or agents caused by the professional negligence, errors, or omissions of any of them.

6. CONTRACTOR further understands and agrees that the City, its officers, agents, employees and City's Engineers are not responsible for the CONTRACTOR'S means and methods of construction and that the CONTRACTOR has the sole responsibility and liability for project safety.

Dated: _____

By: _____

(Name)

By: _____

(Secretary)