

**FIRST AMENDMENT TO RED HAWK APARTMENTS OF
MILTON, LLC DEVELOPMENT AGREEMENT**

First Amendment to Red Hawk Apartments of Milton, LLC Development Agreement (“First Amendment”) is dated this 31st day of March, 2020, by and between the City of Milton (“the City”) and Red Hawk Apartments of Milton LLC, (“Developer”).

RECITALS

A. The City and Developer entered into that certain Development Agreement dated August 22, 2019, which was recorded in the Office of the Rock County Register of Deeds on September 23, 2019, as Document No. 2137009 (“Development Agreement”).

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

AGREEMENT

In consideration of the Recitals and the mutual promises set forth below, the parties hereby agree as follows:

1. **Recitals**. The foregoing Recitals are true and correct and are incorporated herein by reference.

2. **Amendment**. The Development Agreement is amended as set forth below:

a. **Performance Dates**. The following dates and deadlines set forth in the Agreement shall be updated as follows:

i. In Section I(D), the commencement date for construction shall occur on or before July 31, 2020 and the completion of the project shall occur on or before December 31, 2021, with the equalized valuation of the project being set on January 1, 2022.

ii. Section IV(4) shall be amended to provide that the **APARTMENT COMPLEX** shall be completed no later than December 31, 2021 and the value shall be included in the assessment on January 1, 2022.

iii. Section IV(8) shall be amended to provide that Developer’s deadline to comply with the requirements set forth therein is July 31, 2020.

- b. Dedication. Section VI is hereby deleted and replaced with the following:

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 provide a financial guaranty to 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, as security for **DEVELOPER'S** performance ("Security"). The Security may be in the form of an escrow account to which the **CITY** has access subject to agreed-upon criteria, a letter of credit or the posting of cash or Certificates of Deposit with the **CITY**. The form of any such Security must be in a format approved by the City Attorney. No construction shall commence until such Security is on file with and/or accepted by the **CITY**. The Security 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 Security 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 Security. 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 adequate Security with the **CITY** to pay the cost of uncompleted improvements in the **PROPERTY**, or
4. The Security for the financial guaranty of **DEVELOPER** 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 **CITY** may draw from or cash the guaranty instruments to complete the improvements. Further, in the event the Security is not sufficient to pay for completion of the improvements, 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 required Security for the financial guaranty 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 Security 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 Security. 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.

3. Miscellaneous.

a. Terms. Terms not otherwise defined herein shall have the meanings given to them in the Development Agreement.

b. Modifications. Except as specifically amended in this First Amendment, the terms of the Development Agreement remain unmodified and in full force and effect. In the event of any inconsistency between the terms of this First Amendment and the Development Agreement, the terms of this First Amendment shall control.

c. Signatures. This Agreement may be executed in several counterparts, each of which is deemed to be an original but all of which together shall constitute one in the same instrument. This First Amendment may be executed via email or facsimile transmission. All PDF (or similar electronic format) or facsimile signatures shall be deemed originals for all purposes.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF MILTON

Al Hulick, City Administrator

RED HAWK APARTMENTS OF MILTON LLC

Jeremy Yost, Manager