



TIF DEVELOPMENT AGREEMENT FOR
A BUILDING PROJECT LOCATED WITHIN
MILTON TIF DISTRICT NO. 6
FOR DEVELOPMENT PURPOSES

BY AND BETWEEN

CITY OF MILTON

"THE CITY"

AND

CAPITAL ASSET INVESTMENTS LLC.

"THE DEVELOPER"

(The "AGREEMENT")

TIF 6 DEVELOPMENT 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. **CAPITAL ASSET INVESTMENTS, LLC** (hereinafter the "**DEVELOPER**") intends to purchase a 2.5 acre portion of the subject property located at 1181 Gateway Drive (Parcel # V-23-1466.001), which is located in the City of Milton, County of Rock, State of Wisconsin (hereinafter the "**PROPERTY**").

C. The **DEVELOPER** shall be and hereby is the beneficiary and recipient of the proceeds from a certain **LOAN**, described below that evinces and secures the indebtedness of the **DEVELOPER** to the **CITY** for the **LOAN**.

D. The **DEVELOPER** plans to construct an approximately 2,700 sq. ft. **FACILITY** upon the **PROPERTY**, with renovation reaching full completion by 31st day of December 2020 so that the increased real property valuation and assessment shall be included in the assessment and equalized valuation set on January 1, 2021.

E. To these legitimate and beneficial ends and purposes, the **CITY** is able to sell the **PROPERTY**, which is valued at \$87,500, to the **DEVELOPER** for \$1. The value of the property (\$87,500.00) shall be considered an **INCENTIVE** provided in the form of a forgivable **LOAN** and be repaid by the **DEVELOPER** in the amounts, and times set forth herein, The **DEVELOPER** shall use the **LOAN** solely for the construction of the **FACILITY** upon the **PROPERTY**.

F. As part of the consideration for the **CITY's LOAN**, the **DEVELOPER** promises to and shall create, achieve, and successfully provide and maintain the **FACILITY** upon the **PROPERTY** as set forth and required below in this *Agreement*.

II. DESCRIPTION OF THE PROPERTY.

A. The **PROPERTY** will be located within a portion of Tax Parcel ID# V-23.1466.001, and will be addressed as 1181 Gateway Drive, in the City of Milton, County of Rock, State of Wisconsin 53563. The **PROPERTY** is located within the City of Milton Tax Increment Financing District No. 6. The **PROPERTY** would consist of approximately 2.5 acres of land. The **PROPERTY** is graphically depicted as Lot 1 on the attached **EXHIBIT A** and legally described on the attached **EXHIBIT B**.

B. The **PROPERTY** has a real property assessed tax value of \$0.00 and the existing real property tax bill in the amount of \$0.00 shall be referred to herein as the **BASE YEAR PROPERTY TAX**.

III. PURPOSE OF AGREEMENT

A. The described **PROPERTY** is located within the City of Milton T.I.F. District No. 6 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 2,700 sq. ft. **FACILITY**. The **LOAN**, **FACILITY** construction, and job creation 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, tax, and industrial 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 **FACILITY**, 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 real property, tax increments, tax payments, other, and/or “tax equivalent” payments sufficient and required under this *Agreement* to repay to the **CITY** the **LOAN** and certain **CITY** T.I.F. expenditures and related costs and expenses within T.I.F. District No. 6. Said arrangement is to the **CITY**’s as well as to the **DEVELOPER**’s benefit, as the T.I.F. taxation mechanism, terms of this *Agreement*, and related business factors evince.

C. By approving and entering into this *Agreement*, the governing body of the **CITY** finds the *Agreement*, **LOAN**, and project are each in the best interest and benefit of the **CITY** and of benefit to the community.

D. The **DEVELOPER** acknowledges that the **CITY** is only able to reimburse certain development costs upon the **PROPERTY** through the T.I.F. District No. 6 Project Plan, pursuant to applicable Wisconsin laws and statutes, which allows the **CITY** to designate funds within one-half mile of T.I.F. District No. 6. Each party relied and relies upon such representations, promises, and agreements of the other party.

IV. THE AGREEMENT

A. In consideration of the **CITY**’S performance of the **CITY**’S promises and obligations set forth in paragraphs IV. B. and E., the **DEVELOPER** shall:

- a. Prior to the start of any construction, foundation work, or installation of any structure or other improvement upon the **PROPERTY**, seek and obtain approval from the City Site Plan Review Coordinator and City Plan Commission of the Site Plan for every structure, improvement, and implementation proposed by the **DEVELOPER** upon and/or for the **FACILITY** and **PROPERTY**.
- b. Prior to the start of any site preparation work for the **FACILITY** or upon the **PROPERTY**, seek and obtain soil erosion and sediment control permits from the Wisconsin Department of Natural Resources
- c. Fully complete or cause to be fully complete the **FACILITY** and obtain a Final Certificate of Occupancy for the **FACILITY**, and the **PROPERTY** from the **CITY**. The **FACILITY** shall be completed on or before December 31, 2020, so that the increased real property valuation and assessment shall be included in the assessment and equalized valuation set on January 1, 2021.
- d. Arrange, solely at **DEVELOPER**’s cost, for the installation, connection, and lateral extension of water, sewer, storm drainage, natural gas and underground electrical utilities from the Front Street right-of-way to the **FACILITY**.
- e. The **DEVELOPER** shall use the **LOAN** solely for the construction of the

FACILITY upon the **PROPERTY**. The amount paid to the City on an annual basis, shall be referred to herein as the "**Property Break-Even Amount**". Beginning in tax year 2021 (payable in 2022), and for each year thereafter until the **TOTAL AGGREGATE DEVELOPER REPAYMENT OBLIGATION** (\$87,500.00) is satisfied in full, the **DEVELOPER** shall pay to the **CITY** the **higher** of:

- i. the actual real property taxes for the **PROPERTY** net of any State of Wisconsin property tax credits for that year; *or*
 - ii. a combination of: (1) such real property taxes for the **PROPERTY** actually levied and paid, net of any State of Wisconsin property tax credits, and (2) such additional sums of monies ("**tax equivalent payments**"), which together in the aggregate amount to not less than \$8,750.00 over the base year property tax.
- f. In the event that the **DEVELOPER**, in any and all years, is required to make a **tax equivalent payment** under the terms of this subsection, said **tax equivalent payment** shall be due and payable to the **CITY**, and the **DEVELOPER** agrees and shall make such payment, at the same time that the real property taxes for the **PROPERTY** become due and payable for each applicable property tax year. [Example: If a **tax equivalent payment** is owed for 2021, the **tax equivalent payment** shall be made when real property taxes for the **PROPERTY** are paid in 2022.] The purpose for such payments, and the intent and goal of this subsection, is to guarantee that the **CITY** fully recovers its proportionate share of T.I.F. District No. 6 expenditures from the **DEVELOPER** within the recovery time period provided by law, regardless of the actual assessed or other value of the **PROPERTY** or real property tax mill rate after the construction of the **FACILITY**.
- g. For all future real estate expansions that either stand alone or are an expansion of an existing **FACILITY** upon the **PROPERTY**, the **DEVELOPER** agrees to and shall fully comply with each and every provision of the **CITY's** Zoning Code.

B. In consideration of the **DEVELOPER's** performance of the **DEVELOPER's** promises and obligations set forth in paragraph IV. A. herein, the **CITY** shall:

- a. Sell the **PROPERTY** to the **DEVELOPER** for \$1.00 with the provisions as set forth in Section I (E) above.

C. No part, portion, or whole of the **FACILITY** or **PROPERTY**, during the life of T.I.F. District No. 6, 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 and/or guaranteed minimum payments agreed to be paid pursuant to this *Agreement*. Until the **TOTAL AGGREGATE DEVELOPER REPAYMENT OBLIGATION** (\$87,500.00) is satisfied in full, no sale, conveyance, or encumbrance of the **PROPERTY** or **FACILITY** may occur without the prior written approval of the **CITY**, which approval cannot be unreasonably withheld. 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**.

D. The **DEVELOPER's** performance under this *Agreement* is subject to and contingent upon the **DEVELOPER** obtaining all of the following prior to payment of the **LOAN** proceeds:

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

E. 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*.

V. 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. 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*.

C. The **DEVELOPER** acknowledges the **CITY** has informed the **DEVELOPER** of Wisconsin Statutes ss. 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.

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

- a. 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;
- b. Receive such discretionary authority or permission as necessary prior to any further obligation on the part of the **CITY**.

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

F. 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.

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

H. This *Agreement* shall remain in full force and effect until such time as the obligations of the **DEVELOPER** has been fully satisfied and discharged.

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

J. Any notice which is required in connection with this *Agreement* shall be mailed, certified mail with return receipt requested, emailed to the address below, 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
alhulick@milton-wi.gov

If to the **DEVELOPER**:

Capital Asset Investments LLC
Attn. Michael P. McKenna
4945 Sumpter Avenue
Janesville, WI 53545
mike@diamond-assets.com

with copy to:

Nowlan & Mouat, LLP
Attn. Attorney Timothy H. Lindau
PO Box 8100
Janesville, WI 53547
tlindau@nowlan.com

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.

K. 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.

L. 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.

M. The performance obligations of **DEVELOPER** as described in paragraph IV. A. will be secured by a first mortgage to **CITY** from **DEVELOPER**. **CITY** will subordinate its mortgage upon request of **DEVELOPER** to any loan **DEVELOPER** may need to obtain to undertake the development activities involved on the **PROPERTY**, pursuant to an inter-creditor agreement in a commercially reasonable form. **CITY**'s mortgage will be satisfied of record when the obligations of **DEVELOPER** as described above are completed and the **FACILITY** is assessed for tax purposes for such improvements.

This offer and *Agreement* are hereby accepted. The warranties and representations made herein survive the closing of this transaction. The undersigned hereby agree to the terms, contingencies, conditions, and obligations set forth, *supra*, and acknowledge receipt of a copy of this *Agreement*. This _____ day of _____, 2020.

CITY OF MILTON

BY: _____
Al Hulick
City Administrator

ATTEST: _____
City Clerk

State of Wisconsin)
) ss
Rock County)

Subscribed to before me personally by Al Hulick,
City Administrator, and Leanne Schroeder,
City Clerk, to me known to be the
same who signed above

this _____ day of _____, 2020.

Notary Public
Rock County, Wisconsin
My commission _____.

Exhibit 'A'
Map of the PROPERTY



