

**TAX INCREMENTAL FINANCING
DEVELOPER'S PERFORMANCE AGREEMENT
BETWEEN VILLAGE OF ALLOUEZ AND
MILLENAIRE LLC**

THIS TAX INCREMENTAL FINANCING DEVELOPER'S PERFORMANCE AGREEMENT (the "Agreement") entered into as of the date stated below is by and between the **VILLAGE OF ALLOUEZ**, a municipal corporation and political subdivision of the State of Wisconsin (the "Village"), on the one hand, and **MILLENAIRE LLC**, a Wisconsin limited liability company (the "Developer"), on the other hand. The Developer and Village are hereinafter referred to collectively as the "Parties" and individually referred to interchangeably as a "Party," as the case may be.

WITNESSETH:

WHEREAS, Wis. Stats. § 66.1105 provides the authority and establishes procedures by which the Village may undertake development projects within certain areas of the Village and finance such projects through the use of tax incremental financing; and

WHEREAS, on October 18, 2011, the Village's Board of Trustees adopted a Resolution Creating Tax Incremental District No. I (the "District") in the Village of Allouez; and

WHEREAS, on October 18, 2011, the Village Board adopted a project plan for the District (herein the "Project Plan"), which described a number of proposed projects for the development of said District; and

WHEREAS, on September 15, 2015, the Village Board approved an Amendment to the Project Plan and boundaries of the District; and

WHEREAS, Wis. Stats. § 66.1331 and § 66.1337 empowers villages to assist development projects by lending or contributing funds and performing other actions of a character which the Village is authorized to perform for other purposes; and

WHEREAS, Wis. Stats. § 66.1105 authorizes the Village to incur project costs at the discretion of its Board of Trustees, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans; and

WHEREAS, Developer wishes to construct an eighty-six (86) unit apartment building, as depicted on the site plan attached hereto as Exhibit A and made part of this Agreement ("Development"), located at 2050 Riverside Drive (Parcels AL-55 and AL-55-1) in the Village of Allouez, Brown County, Wisconsin ("Parcel"). A copy of the legal description for the Parcel is attached hereto as Exhibit B and made part of this Agreement

WHEREAS, the Village believes that the Development will promote the revitalization and economic stability of the Village and the Development would not proceed without the assistance set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Village of Allouez and the Developer agree as follows:

1.0 PURPOSES

1.01 Purpose of Agreement. The Parties have agreed upon a plan for the development of an eighty-six (86) unit apartment complex located within the Parcel. The purpose of this Agreement is to formalize and record the understandings and undertakings of the Parties.

2.0 UNDERTAKING OF THE PARTIES

2.01 Undertakings of Developer. The Developer agrees as follows:

A. Obtain Village approval of the Development as a Planned Development District, Chapter 475, Article VI, and per the Site Plan Design and Review requirements of Chapter 475, Article X, of the Village's Zoning Code and/or as a permitted general or conditional use as determined by the Village. These obligations are a condition precedent to the validity and effect of this Agreement. Prior to formal Village approval of this Agreement, Developer shall establish to the Village's reasonable satisfaction that Developer has the financial wherewithal to complete the Development. This condition may be satisfied by Developer permitting the Village to review (without copies being made) a loan commitment from a bank or lending institution verifying the existence of the necessary funds by loan or otherwise.

B. Developer shall complete construction of the Development no later than December 31, 2021 in accordance with all applicable Village zoning and building codes, ordinances and regulations.

C. Developer shall pay the 2019, 2020 and 2021 real estate taxes for the Parcel based on the Fair Market Value for the Parcel. For purposes of this Agreement, "Fair Market Value" means the assessed value of the Parcel, determined by the Village Assessor in accordance with the requirements of Chapter 70, Wis. Stats.

D. Developer agrees that as of January 1, 2022, the Fair Market Value of the Development shall be Sixteen Million Four Hundred Fifty Thousand Dollars (\$16,450,000.00) ("Guaranteed Value"). Developer further agrees that should the Fair Market Value of the Parcel as of January 1, 2022, and for each succeeding tax year thereafter for a period of twenty (20) years or until the District expires (including any extensions), whichever occurs first, be less than the Guaranteed Value, Developer shall make a payment in lieu of taxes to the Village ("Deficit Payment"). The Deficit Payment shall be calculated by taking the Guaranteed Value minus a base value of Six Hundred Seventy Six Thousand Dollars (\$676,000.00) established for the Parcel multiplied by the mil-rate of 21.67. The Village shall invoice the Developer for the Deficit Payment, if any, and such invoice shall be due and payable by Developer within thirty (30) days of receipt of the invoice. If Developer fails to pay the invoice within thirty (30) days, the Village is authorized to place the amount of Deficit Payment, together with statutory

interest and penalties, upon the tax roll for the Parcel. The Developer obligation to establish the Guaranteed Value and the making of Deficit Payment(s) shall run with the land and remain the obligation of Developer, its successors and assigns.

E. In association with the construction and completion of the Development, the Village may, at the Village's sole cost, commission third party independent inspections of various aspects of the work for things such as storm water retention and utilities. Developer shall provide the Village access and cooperate with said inspections. This provision shall not apply concerning Village cost to any standard inspections or permitting requirements that the Village routinely undertakes and performs as part of development projects within the Village such as building permits, utility hook-ups, erosion control permitting and inspections and storm water maintenance and inspection agreements, in which events Developer shall be responsible for the standard fees and charges of the Village.

2.02 Undertakings of the Village. The Village agrees as follows:

A. The Village agrees to commit the maximum sum of Two Million Dollars (\$2,000,000.00) for all infrastructure costs incurred by Developer, including, but not limited to, foundations, footings, sitework, concrete, grading, masonry, retaining walls and related drainage structures, actually and reasonably incurred on the Parcel for development purposes. This commitment shall not apply to "soft" infrastructure costs such as engineering and architectural expenses. Developer agrees to design the Development and to construct the infrastructure in such a manner as to reasonably limit or mitigate the Village's financial commitment hereunder. The Village's financial commitment will be paid as follows: (i) Two Hundred Fifty Thousand Dollars (\$250,000.00) upon final approval of this Agreement; (ii) One Million Five Hundred Thousand Dollars (\$1,500,000.00) *pari passu* with the distributions of the construction loan during the construction of the Development; and (iii) Two Hundred Fifty Thousand Dollars (\$250,000.00) within thirty (30) days after a certificate of occupancy is issued by the Village for the Development. Prior to the Village making the payment in this Section 2.02(A), Developer shall establish to the Village's reasonable satisfaction that Developer has the financial wherewithal to complete the Development. Developer shall grant to the Village at the time of the first payment hereunder a mortgage on the Parcel in the amount of Two Million Dollars (\$2,000,000.00) to secure the maximum commitment. The Village will satisfy this mortgage once a certificate of occupancy is issued for the Development, provided that Developer is not then in default of any of its financial commitments to the Village required under this Agreement. The Village shall subordinate its mortgage to that of the primary lender for the Development.

B. Starting the first year in which the Village starts collecting the real estate taxes based upon the Tax Increment and for nine (9) years thereafter (a total often (10) years), the Village shall make payment to the Developer in an amount equal to sixty-five percent (65%) of the Tax Increment (as defined below) and Deficit Payments, if any, not to exceed Two Hundred Fifteen Thousand Dollars (\$215,000.00) per year and not to exceed total payments by Village to Developer of Two Million Dollars (\$2,000,000.00). For purposes of this Agreement, "Tax Increment" means the real estate taxes generated

from the additional Fair Market Value created by the Development over the Base Fair Market Value. For purposes of this Agreement, the "Base Fair Market Value" for the Parcel is Six Hundred Seventy-Six Thousand Dollars (\$676,000.00). Payments shall be made on August 15th of each calendar year.

C. The Village shall rezone the Parcel as necessary for the Development, provided that the Development receives the necessary approvals by the Village.

3.0 MISCELLANEOUS

3.01 Restrictions on Sale of the Development Area. Any lands or parcels comprising the Parcel may not be sold, transferred or conveyed in any manner which would under law in effect on the date of this Agreement or as later amended render any portion of the Parcel exempt from property taxation without the express written consent of the Village. This tax-exempt condition shall run with the land and bind Developer, its successors and assigns unless expressly waived by the Village in writing. Developer may not otherwise sell, transfer or convey the Parcel without the Village's written consent until such time as the Development is completed.

3.02 Utility Easements. In the event additional easements are necessary prior to the completion of and for purposes of the Development for utilities, including, but not limited to, sewer, water, lighting, gas or electricity, Developer shall dedicate the easements at no cost to the Village.

3.03. Fox River Trail Easement. The Parties agree to negotiate in good faith a perpetual use, access and maintenance easement agreement in favor of the Village across the Parcel for public access across the Parcel for trail access to the Fox River trail system, which shall include alternate access and/or the right to relocate the easement upon written agreement of the parties. The easement will be at no cost to the Village. The Village shall construct and maintain the trail access easement pursuant to the easement agreement. The Parties shall agree and stipulate to the location of the easement concurrent with site plan approval. The easement must be ADA compliant and shall not exceed 10 feet in width.

4.0 DEFAULT AND REMEDIES

4.01 Notice of Default and Right to Cure. In the event of any default in or any breach of this Agreement or any of its terms or conditions by any Party hereto, the non-defaulting Party shall give written notice of the default to the other Party. The defaulting Party shall then remedy such default or breach within thirty (30) days after receipt of such notice. If the subject default is not cured within said thirty (30) day period, the non-defaulting Party may exercise any right or remedy provided for herein. In the event the particular breach or default (other than a monetary default) cannot be cured within said 30-day period, then so long as the defaulting Party commences to cure such default within said period of time, diligently pursues the cure and does in fact cure the same within a reasonable time, there shall be deemed no default. This Section 4.01 shall not apply to payments made or required to be made for any real or personal property tax payments, special assessments payments or other monetary payments, which may or may not be secured by liens on the Parcel; and in such events, provisions of applicable law shall control.

4.02 Developer Remedies. Subject to the notice of default and opportunity to cure provisions of Section 4.01 hereof, in the event of any default in or breach of this Agreement by the Village, the Developer may exercise any rights or remedies provided for by law or equity. Nothing herein shall affect or abrogate the Village's rights under Wis. Stats. § 893.80.

4.03 Village Remedies. Subject to the notice of default and opportunity to cure provisions of Section 4.01 hereof, in the event of any default in or breach of this Agreement by the Developer, the Village may pursue such rights and remedies as may be provided for in law or equity.

4.04 Waiver. Any delay by a Party in instituting or prosecuting any action or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or to deprive it of or to limit such rights in any way (it being the intent of these provisions that such Party should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Article because of concepts of waiver, laches or otherwise). No waiver in fact made by any Party with respect to any specific default by the other Party under this Article shall be considered or treated as the waiver of the rights of the non-defaulting Party with respect to any other defaults by such defaulting Party under this Article, or with respect to the particular default except to the extent specifically waived in writing.

4.05 Rights and Remedies Cumulative. The rights and remedies of each Party, whether provided by law, equity or provided by this Agreement, shall be cumulative; and the exercise of any one or more of such remedies shall not preclude the exercise at the same or different times of any other such remedies for the same event of default or breach or of any remedies for any other event of default or breach by either Party.

4.06 Enforcement Costs. In the event any legal proceeding is commenced as a result of a Party's default under this Agreement, the prevailing Party in such proceeding shall be entitled to recover its reasonable costs and expenses (including but not limited to reasonable attorneys' and experts' fees) incurred in enforcing the terms and provisions of this Agreement.

5.0 ADDITIONAL PROVISIONS

5.01 Conflicts of Interest. No member of the governing body or other officer of the Village shall have any financial interest, direct or indirect, in this Agreement, the Parcel, or the Development, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her

personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

5.02 Headings. Descriptive headings as used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

5.03 Notice. Any notice required under this Agreement shall be given in writing, signed by the Party giving notice, and personally delivered or mailed by first class mail, postage prepaid, to the Parties, and addressed as follows:

If to the Village: Village of Allouez
Attn: Village Administrator
1900 Libal Street
Green Bay, WI 54301

If to the Developer: Millenaire LLC
Attn: Christopher Battle or Bernard Van Eperen
2050 Riverside Drive
Green Bay, WI 54301

Notice shall be deemed delivered, in the case of personal delivery on the date when personally delivered, or in the case of mail, on the date when said notice is deposited in the United States mail with sufficient postage to affect such delivery.

5.04 Force Majeure. If any Party hereto shall be materially delayed or hindered in or prevented from the performance of any act required to be performed by such Party by reason of Acts of God, strikes or walk outs, unavailability of materials, failure of power, riots, insurrections, terrorist acts, the act or failure to act of another party, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such Party's reasonable control, then the time for performance of such act shall be extended for the period of such delay provided that the Party whose performance is delayed, hindered, or prevented gives immediate written notice to the other Party and takes all reasonable actions to overcome the condition affecting its performance as expeditiously as possible. At the request of any Party hereto, authorized representatives of all of the Parties to this Agreement shall meet to discuss any condition affecting performance hereunder and potential actions that might be undertaken to overcome such conditions.

5.05 Entire Agreement. This document contains the entire Agreement between the Parties with respect to the matter set forth herein, and shall inure to the benefit of and shall bind the Parties hereto, their respective heirs, executors, successors or assigns. This Agreement may be modified only in writing, with said written modification(s) signed by an authorized representative of all Parties.

5.06 Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Wisconsin. Any lawsuit related to this Agreement shall be exclusively venued in the Brown County, Wisconsin Circuit Court.

5.07 Cooperation. The Parties hereto agree to cooperate in the prosecution of applications made by any Party for any governmental certificates, permits, or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or the use or occupancy of the Parcel. The Parties agree at any time, or from time to time at the written request of another Party, to sign and deliver other such documents as may be reasonably requested or may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

5.08 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

5.09 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the Parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between the Village and Developer. Village shall have no obligation or liability to Developer's lending institution, architect, contractors, subcontractors, or any third party retained by Developer in the performance of its obligations under this Agreement. Developer specifically agrees that no representations, statements, assurances or guarantees will be made by Developer to any third party which are contrary to these provisions.

5.10 Further Assurances. Village and Developer, each agree, at any time or from time to time at the written request of the other, to sign and deliver such other instruments, notices, conveyances, agreements or other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

5.11 Recording of Agreement. This Agreement and any and all subsequent modifications thereof or additions thereto, upon being duly executed, will be recorded by the Village with the Register of Deeds for Brown County, Wisconsin.

5.12 Successors and Assigns. The terms of this Agreement shall be binding upon and inure to the benefit of the Parties hereto as well as their respective successors, transferees and assigns. With the written consent of the Village, which consent shall not be unreasonably withheld, the Developer may assign this Agreement, or any part thereof, from time to time to any entity controlled or managed by the Developer, or to any person acquiring any portion or portions of the Parcel, provided that, in the event of any such transfer, the applicable terms and conditions of this Agreement shall run with the title of the property included in the portion of the Parcel so transferred. The Village may condition its consent upon the transferee expressly assuming all of the obligations of the Developer as contained in this Agreement. Upon any such transfer of the Developer's interest, the Developer initially named herein shall be released from its obligations hereunder.

5.13 Construction of Agreement. It is understood and agreed by the Developer and the Village that this Agreement shall be construed without regard to any presumption or other

rule regarding construction against the Party causing the Agreement to be drafted. Each Party has had the opportunity to have the Agreement reviewed by their respective counsel or having waived their right to do so as evidenced by their signature hereon.

5.14 Severability. In the event that one or more provisions of this Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be at all affected or impaired thereby.

5.15. Default Rate. Any payments not made when due under this Agreement shall bear interest at a default rate of eighteen percent (18%) per annum.

(Signature Pages Follow)

Dated this ____ day of November, 2019.

VILLAGE OF ALLOUEZ

James F. Rafter, Village President

Debra M. Baenen, Village Clerk

STATE OF WISCONSIN }
 }ss.
COUNTY OF BROWN }

Personally came before me this ____ day of November, 2019, the above named James F. Rafter, Village President, and Debra M. Baenen, Village Clerk, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

*
Notary Public, Brown County, Wisconsin
My commission expires _____

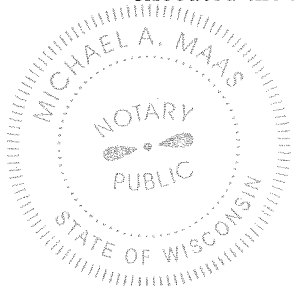
Dated this ____ day of November, 2019.

MILLENAIRE LLC
By: _____
Christopher Battle, Member

By: _____
Bernard Van Eperen, Member

STATE OF WISCONSIN }
 }ss.
COUNTY OF BROWN }

Personally came before me this 18th day of November, 2019, the above-named Christopher Battle and Bernard Van Eperen, Members of Millenaire LLC, to me known to be the persons who executed the foregoing instrument and acknowledge the same.



* MICHAEL A. MAAS
Notary Public, Brown County, Wisconsin
My commission expires IS PERMANENT

Approved by the Village Board
of the Village of Allouez on

EXHIBIT A
SITE PLAN

EXHIBIT B

LEGAL DESCRIPTION OF PARCEL