

CITY OF FRANKLIN  
SPECIAL COMMON COUNCIL MEETING  
WEDNESDAY, APRIL 1, 2015, AT 6:00 P.M.

FRANKLIN CITY HALL COMMON COUNCIL CHAMBERS  
9229 WEST LOOMIS ROAD  
FRANKLIN, WISCONSIN

AGENDA

[The Community Development Authority of the City of Franklin, Wisconsin also has been scheduled to meet at such time and place and upon quorum and call to order, shall then meet concurrently with the Common Council upon the subject matter listed on this agenda only.]

- A. Call to Order and Roll Call.
- B. Citizen Comment Period.
- C. Business
  - 1. Waiver of Repurchase Rights under that certain Site Development Agreement Between VTLC [I] Development, LLC and the City of Franklin and the Community Development Authority of the City of Franklin, Wisconsin dated August 9, 2005, and that certain Amendment to the Site Development Agreement between and among such parties and VTLC Development II, LLC dated March 24, 2006 (3 W. World Packaging Circle & 4801 West Ashland Way and 4 W. World Packaging Circle & 4800 West Ashland Way).
- D. Adjournment.

Notice is given that upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information, please contact the Franklin City Clerk's office at (414)425-7500.

<b>APPROVAL</b>  <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>April 1, 2015</b>
<b>REPORTS AND RECOMMENDATIONS</b>	Waiver of Repurchase Rights under that certain Site Development Agreement Between VTLC [I] Development, LLC and the City of Franklin and the Community Development Authority of the City of Franklin, Wisconsin dated August 9, 2005, and that certain Amendment to the Site Development Agreement between and among such parties and VTLC Development II, LLC dated March 24, 2006 (3 W. World Packaging Circle & 4801 West Ashland Way and 4 W. World Packaging Circle & 4800 West Ashland Way)	<b>ITEM NUMBER</b>  <i>C.1.</i>

Attached are copies of correspondence from Attorney Bernard J. Kearney, representing property owners VTLC Development I, LLC and VTLC Development II, LLC in their conveyance of the properties supporting the Proteus Packaging and Transpak Corporation development in the Franklin Business Park. The correspondence includes the waiver documents referenced therein, an estoppel letter to be addressed administratively, and a map of the properties. The correspondence requests the waiver of repurchase rights (see attached Sections 9 and 13.01 of the Declaration of Protective Covenants for the Franklin Business Park and copy of the Memorandum of Agreement dated March 24, 2006). Lot 1 is 5.167022 acres. Lot 4 is 6.32443 acres. Tax Incremental District No. 2 is closed. Questions have been raised as to whether the repurchase rights have already expired over time. MLG Development, Inc. has executed the requested waiver. Attorney Kearney's correspondence states that the subject vacant lands are intended to be used for the expansion of the Proteus Packaging and Transpak facilities "in the immediate future". Staff will be present at the meeting to address questions on the subject matter.

### COUNCIL ACTION REQUESTED

Motion to waive any repurchase rights the City may have under the Declaration of Protective Covenants for the Franklin Business Park and prior agreements with the owners of Lot 1, Lot 2, Lot 3 and Lot 4 of Certified Survey Map No. 7638, and to authorize the Mayor, City Clerk and Director of Finance and Treasurer to execute such documents and instruments reasonably necessary to evidence the waiver of repurchase rights in such form as may be approved by the City Attorney.

**Sandi Wesolowski**

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**From:** Jesse Wesolowski [jweslaw@aol.com]  
**Sent:** Monday, March 30, 2015 6:31 PM  
**To:** Sandi Wesolowski  
**Cc:** Steve Olson  
**Subject:** Fwd: waiver  
**Attachments:** S15009R0ALT.pdf; ATT00001.htm

Begin forwarded message:

**From:** "Kearney, Bernard J. (MKE x1355)" <Bernard.Kearney@quarles.com>  
**Subject:** waiver  
**Date:** March 26, 2015 at 5:45:48 PM CDT  
**To:** "'jweslaw@aol.com'" <jweslaw@aol.com>

Jesse,

Hopefully the attached will help:

"VTLC Development I LLC and VTLC Development II LLC (collectively, "VTLC") own four parcels of land in Franklin: Lots 1, 2, 3, and 4 of Certified Survey Map No 7638 (collectively, the "Property"). Two of the parcels are leased to Proteus Packaging and two of the parcels are leased to Transpak Corporation. VTLC has entered into a purchase agreement to sell the Property to Elmtree Net Lease Fund II LLC. Lot 2 and Lot 3 have buildings on them. Lot 1 and Lot 4, while not yet developed, are part of the property leased to Proteus Packaging and Transpak Corporation and the tenants, affiliates of Quad Graphics, intend to use such land for additional expansion of these facilities in the immediate future."

Thanks so much for your help on this. As you know, it is VTLC's opinion that the repurchase rights have expired in any event, but I greatly appreciate all of your efforts in putting together the meeting. Let me know if you need anything else.

All the best,

Bernard

**Bernard J. Kearney**  
**Quarles & Brady LLP**  
411 East Wisconsin Avenue, Suite 2350  
Milwaukee, Wisconsin 53202-4426  
P: (414) 277-5355  
F: (414) 978-8737  
Bernard.Kearney@quarles.com  
[http://www.quarles.com/bernard\\_kearney](http://www.quarles.com/bernard_kearney)

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## Sandi Wesolowski

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**From:** Jesse Wesolowski [jweslaw@aol.com]  
**Sent:** Monday, March 30, 2015 6:31 PM  
**To:** Sandi Wesolowski  
**Cc:** Steve Olson  
**Subject:** Fwd: Waiver of Repurchase Rights

Begin forwarded message:

**From:** "Kearney, Bernard J. (MKE x1355)" <[Bernard.Kearney@quarles.com](mailto:Bernard.Kearney@quarles.com)>  
**Subject:** RE: Waiver of Repurchase Rights  
**Date:** March 25, 2015 at 1:25:34 PM CDT  
**To:** 'Jesse Wesolowski' <[jweslaw@aol.com](mailto:jweslaw@aol.com)>

Jesse,

We are trying to close by the end of next week. Is it possible to have a special meeting before then?

**Bernard J. Kearney**  
**Quarles & Brady LLP**  
411 East Wisconsin Avenue, Suite 2350  
Milwaukee, Wisconsin 53202-4426  
P: (414) 277-5355  
F: (414) 978-8737  
[Bernard.Kearney@quarles.com](mailto:Bernard.Kearney@quarles.com)  
[http://www.quarles.com/bernard\\_kearney](http://www.quarles.com/bernard_kearney)

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**From:** Jesse Wesolowski [<mailto:jweslaw@aol.com>]  
**Sent:** Monday, March 23, 2015 10:12 AM  
**To:** Kearney, Bernard J. (MKE x1355)  
**Cc:** Steve Olson; Nick Fuchs; Paul Rotzenberg; Mark Lubarda  
**Subject:** Re: Waiver of Repurchase Rights

Left you a voicemail message this morning. Please call me. Thanks.

*Jesse A. Wesolowski*

Jesse A. Wesolowski  
Wesolowski, Reidenbach & Sajdak, S.C.  
11402 West Church Street  
Franklin, Wisconsin 53132  
Phone: (414) 529-8900  
Facsimile: (414) 529-2121  
Email: [JWesLaw@aol.com](mailto:JWesLaw@aol.com)

*This is a communication from the law firm of Wesolowski, Reidenbach & Sajdak, S.C. and may contain information which is privileged, confidential, and protected by the attorney-client or attorney work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this communication is prohibited. If you have received this transmission in error, please destroy it and notify us as soon as practicable by telephone at 414-529-8900.*

On Mar 17, 2015, at 3:31 PM, Kearney, Bernard J. (MKE x1355) <[Bernard.Kearney@quarles.com](mailto:Bernard.Kearney@quarles.com)> wrote:

Jesse,

Thanks for your time today. As discussed, VTLC Development LLC and VTLC Development II LLC are selling the properties they own in the Franklin Business Park. The properties are currently leased to Transpak Corporation and Proteus Packaging. Attached, please find the (i) waivers of the CDA's right to repurchase, along with (ii) an estoppel letter regarding the Declaration. Please have these executed and returned. If you have any questions or concerns, please do not hesitate to call me.

Thanks again for your help on this.

All the best,

Bernard

**Bernard J. Kearney**  
**Quarles & Brady LLP**  
411 East Wisconsin Avenue, Suite 2350  
Milwaukee, Wisconsin 53202-4426  
P: (414) 277-5355  
F: (414) 978-8737  
[Bernard.Kearney@quarles.com](mailto:Bernard.Kearney@quarles.com)  
[http://www.quarles.com/bernard\\_kearney](http://www.quarles.com/bernard_kearney)

CONFIDENTIALITY NOTICE: This electronic mail transmission and any attachments are confidential and may be privileged. They should be read or retained only by the intended recipient. If you have received this transmission in error, please notify the sender immediately and delete the transmission from your system.<Waiver of Repurchase Rights (Trans-Packaging) (K0035661xD9C7F).docx><Waiver of Repurchase Rights (Pro-Packaging) (K0035668xD9C7F).docx><Franklin Business Park estoppel certificate Quad Graphics.doc (K0035551x.....docx>

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## WAIVER OF REPURCHASE RIGHTS

THIS WAIVER OF REPURCHASE RIGHTS (the "Waiver") is made and entered into effective as of the \_\_\_\_ day of March, 2015 (the "Effective Date"), by **THE COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF FRANKLIN**, (the "CDA") and **MLG DEVELOPMENT, INC.** (the "Declarant") for the benefit of **ET FRANKLIN TRANS-PACKAGING, LLC**, and its successors and assigns (the "Purchaser").

WHEREAS, VTLC Development, LLC ("Seller") and Purchaser are parties to that certain Purchase Agreement dated January 22, 2015, as amended (the "Purchase Agreement"), whereby Seller agreed to sell and Purchaser agreed to purchase that certain property located in the City of Franklin, State of Wisconsin and legally described on Exhibit A attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Property is subject to that certain Declaration of Protective Covenants for Franklin Business Park, dated March 2, 1994 and recorded on March 8, 1994, as Document No. 6918359 with the Milwaukee County Register of Deeds, as amended (the "Declaration"); and

WHEREAS, Section 9 of the Declaration grants the Declarant and the CDA rights to repurchase the Property in certain circumstances; and

WHEREAS, as a condition to Purchaser acquiring the Property, Purchaser is requiring that Seller obtain a waiver from the Declarant and the CDA of their respective rights to repurchase the Property; and

WHEREAS, the Declarant and the CDA have agreed to waive their respective rights to repurchase the Property.

NOW, THEREFORE, in consideration of the promises and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CDA and the Declarant agree as follows:

1. All capitalized terms not defined herein shall have the meaning given to them in the Declaration.
2. The CDA and the Declarant acknowledge that Seller has conveyed or will convey the Property to Purchaser. In order to facilitate the conveyance of the Property from Seller to Purchaser, the Declarant and the CDA hereby forever waive any and all of their right, title and interest to repurchase the Property pursuant to Section 9 of the Declaration. This waiver shall run with the Property and shall benefit Purchaser and its successors and assigns.
3. In the event of any inconsistencies between the terms and provisions of this Waiver and the terms and provisions of the Declaration, the terms and provisions of this Waiver shall control. Except as expressly amended herein, the terms and provisions of the Declaration are hereby ratified and shall remain in full force and effect.
4. This Waiver shall inure to the benefit of Purchaser and its successors and assigns and shall be binding on the Declarant and the CDA and their respective representatives, successors, and assigns.





**Exhibit A**

**Legal Description of the Property**

Lots 1 and 2 of Certified Survey Map No. 7683, recorded on July 29, 2005 as Document No. 9058273.

## WAIVER OF REPURCHASE RIGHTS

THIS WAIVER OF REPURCHASE RIGHTS (the "Waiver") is made and entered into effective as of the \_\_\_\_ day of March, 2015 (the "Effective Date"), by **THE COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF FRANKLIN**, (the "CDA") and **MLG DEVELOPMENT, INC.** (the "Declarant") for the benefit of **ET FRANKLIN PRO-PACKAGING, LLC**, and its successors and assigns (the "Purchaser").

WHEREAS, VTLC Development, LLC ("Seller") and Purchaser are parties to that certain Purchase Agreement dated January 22, 2015, as amended (the "Purchase Agreement"), whereby Seller agreed to sell and Purchaser agreed to purchase that certain property located in the City of Franklin, State of Wisconsin and legally described on Exhibit A attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Property is subject to that certain Declaration of Protective Covenants for Franklin Business Park, dated March 2, 1994 and recorded on March 8, 1994, as Document No. 6918359 with the Milwaukee County Register of Deeds, as amended (the "Declaration"); and

WHEREAS, Section 9 of the Declaration grants the Declarant and the CDA rights to repurchase the Property in certain circumstances; and

WHEREAS, as a condition to Purchaser acquiring the Property, Purchaser is requiring that Seller obtain a waiver from the Declarant and the CDA of their respective rights to repurchase the Property; and

WHEREAS, the Declarant and the CDA have agreed to waive their respective rights to repurchase the Property.

NOW, THEREFORE, in consideration of the promises and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CDA and the Declarant agree as follows:

1. All capitalized terms not defined herein shall have the meaning given to them in the Declaration.
2. The CDA and the Declarant acknowledge that Seller has conveyed or will convey the Property to Purchaser. In order to facilitate the conveyance of the Property from Seller to Purchaser, the Declarant and the CDA hereby forever waive any and all of their right, title and interest to repurchase the Property pursuant to Section 9 of the Declaration. This waiver shall run with the Property and shall benefit Purchaser and its successors and assigns.
3. In the event of any inconsistencies between the terms and provisions of this Waiver and the terms and provisions of the Declaration, the terms and provisions of this Waiver shall control. Except as expressly amended herein, the terms and provisions of the Declaration are hereby ratified and shall remain in full force and effect.
4. This Waiver shall inure to the benefit of Purchaser and its successors and assigns and shall be binding on the Declarant and the CDA and their respective representatives, successors, and assigns.





**Exhibit A**

**Legal Description of the Property**

Lots 3 and 4 of Certified Survey Map No. 7683, recorded on July 29, 2005 as Document No. 9058273.

## DECLARATION ESTOPPEL CERTIFICATE

Property: 1, 2, 3 & 4 W. World Packaging Circle, Franklin, Wisconsin (the "Property")  
Purchaser: ET Franklin Pro-Packaging, LLC; ET Franklin Trans-Packaging, LLC; and its lender and their respective successors and assigns (collectively the "Purchaser")  
Date: April \_\_, 2015

In order to induce Purchaser to purchase the Property and its lender to make a loan (the "Loan") to Purchaser, secured by a first mortgage lien on Purchaser's interest in the Property, the undersigned hereby certifies, warrants, represents and agrees, as of the date hereof, as follows:

The following document is referred to herein as the "Agreement":

A. Declaration of Protective Covenants for Franklin Business Park ("Declaration") recorded as Document 6918359, as amended by Amendment to Protective Covenants for Franklin Business Park recorded on April 11, 1996, as Document No. 7202871, and as amended by Supplement to Protective Covenants for Franklin Business Park recorded on November 17, 2000 as Document No. 7990721.

1. The Agreement is in full force and effect.
2. Except as set forth above, the Agreement has not been modified, supplemented, or amended in any way.
3. There exists no default under, violation of, or failure to comply with the Agreement on the above-referenced Property, and no event has occurred that with the giving of notice or the lapse of time, or both, would constitute a default under, violation of, or failure to comply with the Agreement by any party thereto for the Property.
4. The undersigned has neither sent nor received any notice of default under the Agreement which has not been fully cured.
5. All amounts due to Franklin Business Park Association, Inc. ("Association") from the owner of the Property, or which may be due in the future, all assessments, including but not limited to general assessments, special assessments, fines and any other fees, are current.
6. There are not any planned special assessments or other liens or charges by the Association against the Property. There are no other assessments imposed by any other entities within the development.

7. There are no other charges or special requirements which are not covered in this Certificate.

8. None of the Repurchase rights identified in Section 9 of the Declaration are applicable to this transaction. Neither Declarant nor CDA have the option to repurchase the property.

9. The annual assessment fee due to the Association is \_\_\_\_\_, which is paid through \_\_\_\_\_, with respect to the Property.

10. All approvals, if any, required under the Agreement with respect to the Property have been obtained.

11. The undersigned has no claim of lien against the Property under the Agreement.

12. The undersigned is duly authorized to sign and deliver this Estoppel Certificate, and that no other signatures are required or necessary in connection with the execution and validity of this Estoppel Certificate.

13. This Estoppel Certificate shall have the effect of estopping the undersigned from making any assertions contrary to the contents hereof; and shall serve as a waiver of any claim by the undersigned to the extent that such claim is asserted against any person permitted to rely upon, and who has acted in reliance upon, this Estoppel Certificate.

14. This Estoppel Certificate shall inure to the benefit of Purchaser and its successors and assigns, and shall be binding upon the heirs, personal representatives, successors, and assigns of the undersigned.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be executed as of the day and year first written above.

Franklin Business Park Association, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Declarant

MLG Development, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Community Development Authority of the  
City of Franklin

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The "Landscape Easements" and the "Landscape, Drainage & Sidewalk Easements" are for the purpose of providing drainageways integrated with the municipal storm drainage system and pedestrian walkways connected to municipal sidewalks. The "Drainage Easements" are for the purpose of providing drainageways integrated with the municipal storm drainage system. No owner shall alter or remove any landscape structure, planting or soil from any Easement area; nor in any way add to, disturb or alter any Easement Area; nor cause any improvement to be made to any Easement area; without the prior written consent of the Association. No Owner shall alter any walkway or water drainage in the Easement areas without the prior written consent of the CDA.

If, in the opinion of the Association or the CDA, any Owner violates any of the foregoing restrictions, either the Association or the CDA or both may give Owner written notice and such Owner must, within thirty (30) days after such notice, perform any work necessary to restore the Easement area to its original condition in accordance with the notice. In the event that such Owner fails to perform such work within such 30-day period, the Association or the City shall have the right and power, but not the obligation, to perform such work. If the CDA performs such work, all costs incurred may be assessed to the Owner by the City of Franklin and added to the Owner's property tax bill for the site. If the Association performs such work and the cost of the work remains unpaid for 30 days after the Owner is billed therefor, such charges may be collected pursuant to the procedure set forth in Section 15. Notwithstanding anything in this Section 8.01 to the contrary, each Owner shall have the right and obligation to cut grass and control weeds as necessary in the Easement areas located on the Owner's Site.

#### 8.02 *Utility Easements:*

The Association shall have the right to grant easements for utilities within the building setback areas of any Site for the benefit of Owners of other Sites within the Park. Such easements shall be approved by a resolution of the Board of Directors and signed by officers of the Association and shall be recorded with the Register of Deeds for Milwaukee County, Wisconsin.

### 9. Construction Obligation and Repurchase Rights

#### 9.01 *Construction Obligation:*

Each Owner shall promptly begin, diligently pursue and ultimately complete construction of buildings and other improvements on its Site pursuant to approved Application Plans.

In the event that construction of improvements has not been commenced within one (1) year after the date of closing of (a) the initial sale of a Site in the Declarant Land by Declarant, (b) the initial sale of a Site in the CDA Land by the CDA or (c) any resale by a subsequent Owner, then, until such construction is commenced, the Declarant shall have the option of repurchasing the Site from the Owner (the "Commencement Option"). Commencement of construction is defined to be construction of structural framing above ground level. To exercise the Commencement Option, the Declarant shall provide written notice of exercise of

1  
 option (the "Notice") to Owner at Owner's last known address, including the date of repurchase closing. Notice shall be deemed to be received two days after deposit of the notice, postage prepaid, in the U.S. mail. If the Declarant has not exercised the Commencement Option within one hundred eighty (180) days after the expiration of one (1) year after Owner's closing, the CDA may exercise the option to repurchase the Site in the same manner (the "CDA Commencement Option") for a period of sixty (60) days following the expiration of such 180-day period. The repurchase, as described in Section 9.02 below, shall occur within sixty (60) days after delivery of the Notice on the date specified in the Notice.

2  
 If after commencing construction work on any Site, construction ceases for a period of one hundred eight (180) consecutive days at any time before the completion of construction as provided in Owner's approved plans ("Cessation of Construction"), the Declarant shall have the option to repurchase the Site from the Owner at any time within one (1) year after cessation of construction (the "Construction Option"). To exercise the Construction Option, Declarant shall provide written Notice of Exercise of Option as described above. If the Declarant has not exercised its Construction Option within one (1) year after the date of Cessation of Construction, the CDA may exercise the option to repurchase the Site in the same manner (the "CDA Construction Option") for a period of sixty (60) days following the expiration of such one year period. Repurchase, as described in Section 9.02 below, shall occur within sixty (60) days after delivery of the Notice on the date specified in the Notice.

3  
 If Owner does not complete construction of the improvements as described in the approved plans and obtain an occupancy permit for the improvements within three (3) years after the date of closing of Owner's purchase of the Site from Declarant or a prior Owner, the Declarant shall have an option to repurchase the Site from the Owner (the "Completion Option"). To exercise the Completion Option, Declarant shall provide written Notice as described above. If the Declarant has not exercised its Completion Option within one hundred eighty (180) days after the expiration of the three (3) year period, the CDA may exercise the option to repurchase the Site in the same manner (the "CDA Completion Option") for a period of sixty (60) days following the expiration of such 180-day period. Repurchase, as described in Section 9.02 below, shall occur within sixty (60) days after deliver of the Notice on the date specified in the Notice.

4  
 The obligations to commence, continue and complete construction as described in this Section 9.01 do not apply to Sites owned by the Declarant or the CDA. In the event the Declarant is not in existence or does not have the legal authority to act at the time a right of repurchase arises under this Section, and there is no person or entity in existence as a successor or assign of the Declarant who may exercise the repurchase right, then the CDA shall have the right of repurchase without waiting for the expiration of the period of time for the Declarant's election to repurchase.

*9.02 Terms of Repurchase:*

If the Declarant or the CDA exercises any of the options described in Section 9.01 above, at repurchase closing the Owner shall tender a warranty deed free and clear of all liens and

encumbrances except municipal and zoning ordinances, recorded easements for public utilities and these Protective Covenants in exchange for a sum equal to Owner's purchase price for the Site less any unpaid real estate taxes, the proration for the then current year's real estate taxes, and the title insurance premium. Owner shall provide the party exercising the option with a title insurance policy for the full amount of Owner's purchase price.

In the event of repurchase as provided in this section, Owner shall also be liable to the Declarant or the CDA, as appropriate, for all reasonable costs and expenses incurred in retaking and restoring the Site to marketable condition, and such costs and expenses shall be deducted from the amount of the purchase price paid to the Owner. Owner shall be deemed to consent to enforcement of the options described in Section 9.01 on the above terms by specific performance.

*9.03 Right of First Refusal to Repurchase Vacant Land:*

In the event that any Owner shall wish to convey any vacant portion of a Site or a vacant Site (the "Vacant Site") at any time within three (3) years after closing acquisition of (a) a Vacant Site in the Declarant Land from Declarant or (b) a Vacant Site in the CDA Land from the CDA, it shall first give the Declarant the right to purchase the Vacant Site at Owner's original purchase price and on the same terms and conditions as Owner's purchase. Within thirty (30) days after receipt of written notice that Owner wishes to convey a Vacant Site, Declarant shall notify Owner of its decision concerning repurchase. If Declarant decides to repurchase, closing shall occur within sixty (60) days after Declarant's receipt of Owner's written notice. If the Declarant is repurchasing a portion of a Site, the purchase price shall be prorated to reflect the total buildable square footage of the Vacant Site as compared to the total original buildable square footage of the Site purchased by Owner. "Buildable" shall mean that part of a Site not located within a Greenspace as described in Section 6.08 above.

**10. Disclaimer of Liability**

Neither the Association, the Review Board nor the CDA shall be liable to any person or entity submitting Application Plans for approval, or seeking any other approval under these Protective Covenants, or to any other person or entity affected by these Protective Covenants, by reason of engineering, architectural or technical errors or omissions in the Application Plans or materials submitted for approval. The Association, Review Board and CDA shall not be deemed to provide architectural or engineering services in the review and approval of Application Plans, or in any other manner. Neither the Association, the Review Board nor the CDA shall be responsible for inspecting improvements during construction or for ensuring compliance with approved Application Plans.

12. Inspection

The Association and CDA may from time to time at any reasonable hour or hours, enter or inspect any Site or improvements to ascertain compliance with these Protective Covenants. The Association shall use its best efforts not to compromise security measures and shall strive not to interfere with normal conduct of business when inspecting property under this provision.

13. Enforcement

13.01 *By Legal Action:*

These Protective Covenants may be enforced at law or in equity by the Association, the CDA or the City of Franklin. However, if any Owner shall file with the Association a written petition for enforcement or commencement by the Association of proceedings to enforce these Protective Covenants and the Association shall fail to act accordingly within 30 days, or shall refuse such petition, then such petitioner may within a period of six months after filing such petition commence an action or proceeding against the violating Owner in law or in equity for enforcement or for damages arising from any violation of these Protective Covenants. Neither the Association, the CDA nor the City of Franklin shall be liable to any person or entity for failure or refusal to enforce any provision of these Protective Covenants.

13.02 *Association May Levy Fines:*

The Association may levy fines for continuing or flagrant violations of these Protective Covenants, including the parking provisions contained in Section 6. Fines shall be \$50 per violation or per day of continuing violation, until such time as a different fine schedule is adopted by the Board of Directors. Fines shall be assessed by written notice from the Board of Directors. Fines for continuing violations shall not commence earlier than 48 hours prior to delivery of written notice to the Owner. Such fines and penalties, if they remain unpaid for 30 days, may become a lien against the Site pursuant to the procedures set forth in Section 15.

13.03 *Right to Act on Owner's Behalf:*

In addition to the foregoing remedies, the Association may undertake the obligations of any Owner arising under Section 5.14 Section 6.10 or Section 11 of these Protective Covenants. The right to act on Owner's behalf shall arise if the Owner has not acted to correct a violation of 5.14, concerning sediment and erosion control, Section 6.10, concerning parking and landscaping, or Section 11, concerning maintenance, after receipt of notice of violation from the Association and an opportunity to cure the violation, both as provided in Section 5.14, Section 6.10 and Section 11, respectively.

5

*Handwritten signature/initials*

MEMORANDUM OF AGREEMENT

DOCUMENT NO.

This Memorandum of Amendment is made as of the 24 of March, 2006 by and between the Community Development Authority of the City of Franklin ("CDA"), the City of Franklin, Wisconsin ("City"), VTLC Development, LLC ("VTLC") and VTLC Development II, LLC ("VTLC II").

WITNESSETH

WHEREAS, CDA, City and VTLC have entered into that certain Site Development Agreement ("SDA") dated as of August 9, 2005 with respect to that certain real property located in Franklin, Wisconsin and legally described in Exhibit A attached hereto (the "Property"); and

WHEREAS, CDA, City and VTLC memorialized certain terms and conditions set forth in the SDA by recording a Memorandum of Agreement with the Register of Deeds for Milwaukee County as Document No. 9071138 ("Memorandum of SDA"); and

WHEREAS, CDA, City, VTLC and VTLC II have entered into that certain Amendment to the SDA ("Amended SDA") dated as of the date hereof; and

WHEREAS, CDA, City, VTLC and VTLC II wish to memorialize the terms and conditions set forth in the Amended SDA by recording this Memorandum of Amendment with the Register of Deeds for Milwaukee County.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties do hereby agree as follows:

1. Waiver of Repurchase Rights. Pursuant to Section 2 of the Amended SDA, CDA and City acknowledge and agree that VTLC has conveyed or will convey that portion of the Property described as Lots 1 and 2 of CSM No. 7638 to VTLC II and that, notwithstanding anything to the contrary contained in the SDA or the Memorandum of SDA, CDA's and City's waiver of all of their right, title and interest to repurchase Lots 1 and 4 of CSM No. 7638 pursuant to Section 9 of that certain Declaration of Protective Covenants for Franklin Business Park, recorded on March 8, 1994, as Document No. 6918359, with the Milwaukee County Register of Deeds upon VTLC's commencement and completion of the VTLC Facility, as defined in the SDA, will not expire upon such conveyance. Nothing contained herein is intended to affect the reinstatement of CDA's and City's repurchase rights under Section 2 of the Memorandum of SDA upon the further conveyance of Lot 1 from VTLC II to a third party other than VTLC, Beck Carton Corporation, Transpak Corporation, Vulcan Technologies Leasing Corporation or any entity owned or controlled by the foregoing entities.

*Handwritten signature*



DOC.# 09249795

REGISTER'S OFFICE | SS  
Milwaukee County, WI

RECORDED 06/09/2006 01:18PM

JOHN LA FAVE  
REGISTER OF DEEDS

AMOUNT: 19.00

THIS SPACE RESERVED FOR RECORDING DATA

NAME AND RETURN ADDRESS

Molly M. Stolmeier  
Godfrey & Kahn, S.C.  
780 North Water Street  
Milwaukee, WI 53202

900-0009-002, 900-0009-012,  
900-0009-008 and 900-0009-009

Parcel Identification Number

2. Additional Party. Pursuant to Section 1 of the Amended SDA, VTLC II has been added as a party to the SDA as the owner of a portion of the Property.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Amendment as of the date first above written.

COMMUNITY DEVELOPMENT  
AUTHORITY OF THE CITY OF FRANKLIN,  
WISCONSIN

By: Thomas M. Taylor  
Its: Chairman THOMAS M. TAYLOR

Attest: Douglas B. Wheaton  
Its: Executive Director  
DOUGLAS B. WHEATON

CITY OF FRANKLIN, WISCONSIN

By: Thomas M. Taylor  
Its: Mayor THOMAS M. TAYLOR

By: Calvin A. Patterson  
Its: Dir. of Finance & Treasurer  
CALVIN A. PATTERSON

Attest: Andrea L. Wesolowski  
Its: City Clerk  
ANDREA L. WESOLOWSKI



VTLC DEVELOPMENT, LLC

By: Brian P. Byrne  
Its: Manager  
BRIAN P. BYRNE

VTLC DEVELOPMENT II, LLC

By: Brian P. Byrne  
Its: Manager  
BRIAN P. BYRNE

**Acknowledgment and Consent**

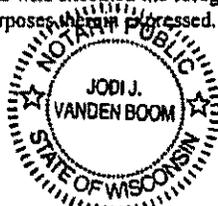
MLG Development, Inc. hereby acknowledges the foregoing Memorandum and agrees to the terms and conditions thereof.

**MLG DEVELOPMENT, INC.**

By: Andrew C. Teske  
Name: ANDREW C. TESKE  
Title: VICE PRESIDENT

STATE OF WISCONSIN )  
 ) SS.  
COUNTY OF Milwaukee )

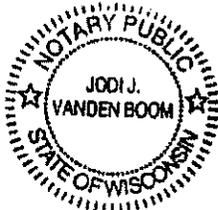
Personally came before me this 24 day of March, 2008 the above-named Thomas M. Taylor and Wynne B. Wheaton, the Chairman and Exec. Dir., respectively, of the Community Development Authority of the City of Franklin, Wisconsin, to me known to be the persons who executed the foregoing instrument and acknowledged to me that he executed the same for the purposes therein expressed.



Jodi J. Vander Boom  
Notary Public, State of Wisconsin  
My Commission Expires: 9/14/08

STATE OF WISCONSIN )  
 ) SS.  
COUNTY OF Milwaukee )

Personally came before me this 24 day of March, 2008 the above-named Thomas M. Taylor, Calvin A. Johnson and Sandra L. Wenzel, the Mayor, Dir. of Fin. Tr. and City Clerk, respectively, of the City of Franklin, Wisconsin, to me known to be the persons who executed the foregoing instrument and acknowledged to me that he executed the same for the purposes therein expressed.



Jodi J. Vander Boom  
Notary Public, State of Wisconsin  
My Commission Expires: 9/14/08

STATE OF WISCONSIN )  
 ) SS.  
COUNTY OF Milwaukee )

Personally came before me this 16th day of May, 2006 the above-named Brian P. Byrne, the Manager, of VTLC Development, LLC, to me known to be the person who executed the foregoing instrument and acknowledged to me that he executed the same for the purposes therein expressed.

[Signature]  
Notary Public, State of Wisconsin  
My Commission Expires: is permanent

STATE OF WISCONSIN )  
 ) SS.  
COUNTY OF Milwaukee )

Personally came before me this 16th day of May, 2006 the above-named Brian P. Byrne, the Manager, of VTLC Development II, LLC, to me known to be the person who executed the foregoing instrument and acknowledged to me that he executed the same for the purposes therein expressed.

[Signature]  
Notary Public, State of Wisconsin  
My Commission Expires: is permanent

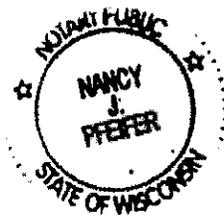
STATE OF WISCONSIN )  
 ) SS.  
COUNTY OF WAUKESHA )

Personally came before me this 10<sup>th</sup> day of MARCH, 2006 the above-named ANDREW C. TESKE, the VICE PRESIDENT of MLG Development, Inc., to me known to be the persons who executed the foregoing instrument and acknowledged to me that he executed the same for the purposes therein expressed.

[Signature]  
Notary Public, State of Wisconsin  
My Commission Expires: 11-1-09

This instrument was drafted by,  
and after recording should be  
returned to:

Molly M. Stolmeier  
Godfrey & Kahn, S.C.  
780 North Water Street  
Milwaukee, Wisconsin 53202



**EXHIBIT A**

**Legal Description of Property**

Lots 1, 2, 3, and 4 of Certified Survey Map No. 7638, recorded on July 29, 2005, as Document No. 9059273, a division of Parcel 2 of Certified Survey Map No. 6804 and Parcel 4 of Certified Survey Map No. 6836 and Parcel 1 of Certified Survey Map No. 6925 and Parcel 2 of Certified Survey Map No. 6964 and vacated West Ashland Way, being a part of the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 26, Town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin.

Tax Key Nos.:       900-0009-002  
                          900-0009-012  
                          900-0009-008  
                          900-0009-009

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