

<p>APPROVAL</p> <p><i>slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>08/06/19</p>
<p>REPORTS AND RECOMMENDATIONS</p>	<p>RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT A LANDSCAPE BUFFERYARD EASEMENT FOR AND AS PART OF THE REVIEW AND APPROVAL OF A SITE PLAN FOR FOUR, 3-STORY, APPROXIMATELY 53 UNIT APARTMENT BUILDINGS DEVELOPMENT AT BALLPARK COMMONS (7125, 7165, 7195, AND 7250 SOUTH BALLPARK DRIVE, FORMERLY APPROXIMATELY 7900 WEST CRYSTAL RIDGE DRIVE) (BALLPARK COMMONS APARTMENTS LLC, AN AFFILIATE OF MANDEL GROUP, INC., AND IN PARTNERSHIP WITH ZIM-MAR PROPERTIES, LLC, APPLICANT, ZIM-MAR PROPERTIES, LLC, PROPERTY OWNER)</p>	<p>ITEM NUMBER</p> <p>G.8.</p>

Attached is a copy of the above Landscape Bufferyard Easement for the Velo Village Apartments Development (formerly Ballpark Commons Apartment Development) property. The Easement was required by the Site Plan approval for the subject property in Plan Commission Resolution No. 2018-002, conditionally approving a Site Plan for Four, 3-Story, Approximately 53 Unit Apartment Buildings Development within the Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) development, in condition number 11, adopted on April 19, 2018.

Staff would note that the Easement allows buildings and structures within the easement as such are shown on the approved Site Plan for the Apartment Development project.

COUNCIL ACTION REQUESTED

A motion to adopt Resolution No. 2019-____, authorizing Certain Officials to Accept a Landscape Bufferyard Easement for and as Part of the Review and Approval of a Site Plan for Four, 3-Story, Approximately 53 Unit Apartment Buildings Development at Ballpark Commons (7125, 7165, 7195, and 7250 South Ballpark Drive, Formerly Approximately 7900 West Crystal Ridge Drive) (Ballpark Commons Apartments LLC, an affiliate of Mandel Group, Inc., and in partnership with Zim-Mar Properties LLC, applicant, Zim-Mar Properties, LLC, property owner) subject to minor technical corrections by staff.

RESOLUTION NO. 2019-_____

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT A LANDSCAPE BUFFERYARD EASEMENT FOR AND AS PART OF THE REVIEW AND APPROVAL OF A SITE PLAN FOR FOUR, 3-STORY, APPROXIMATELY 53 UNIT APARTMENT BUILDINGS DEVELOPMENT AT BALLPARK COMMONS (7125, 7165, 7195, AND 7250 SOUTH BALLPARK DRIVE, FORMERLY APPROXIMATELY 7900 WEST CRYSTAL RIDGE DRIVE) (BALLPARK COMMONS APARTMENTS LLC, AN AFFILIATE OF MANDEL GROUP, INC., AND IN PARTNERSHIP WITH ZIM-MAR PROPERTIES, LLC, APPLICANT, ZIM-MAR PROPERTIES, LLC PROPERTY OWNER)

WHEREAS, the Plan Commission having approved a Site Plan upon the application of BPC Master Developer, LLC, on April 19, 2018, and the Plan Commission having conditioned approval thereof in part upon Common Council approval of a Landscape Bufferyard Easement; and

WHEREAS, §15-5.0102A of the Unified Development Ordinance requires a thirty (30) foot-wide landscape bufferyard when lots back upon the right-of-way of an existing or proposed limited access arterial street or highway (i.e. Loomis Road/CTH 36), and said landscape bufferyard to be protected by a landscape bufferyard easement; and

WHEREAS, City of Franklin Resolution No. 2018-002 conditionally approving a Site Plan for the Ballpark Commons Apartments (aka Velo Village Apartments) within Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) development use, condition number 6 thereof providing that the applicant shall provide a 20' landscape bufferyard along west Rawson Avenue, and condition number 11 thereof providing that such public easements must be approved by the City of Franklin Common Council and subject to minor technical corrections recorded with the Milwaukee County Register of Deeds Office; and

WHEREAS, the Department of City Development and the Office of the City Attorney having reviewed the proposed Landscape Bufferyard Easement and having recommended approval thereof to the Common Council.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Landscape Bufferyard Easement submitted by Zim-Mar Properties, LLC, in the form and content as annexed hereto, be and the same is hereby approved; and the Mayor and City Clerk are hereby authorized to execute such Easement as evidence of the consent to and acceptance of such easement by the City of Franklin.

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS
TO ACCEPT A LANDSCAPE BUFFERYARD EASEMENT
VELO VILLAGE APARTMENTS DEVELOPMENT (BALLPARK COMMONS)
RESOLUTION NO. 2019-_____

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BE IT FURTHER RESOLVED, that the City Clerk be and the same is hereby directed to obtain the recording of the Landscape Bufferyard Easement in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of August, 2019.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of August, 2019.

APPROVED:

STEPHEN R. OLSON, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

LANDSCAPE BUFFERYARD EASEMENT

(BALLPARK COMMONS APARTMENTS – FRANKLIN, WISCONSIN)

This Landscape Bufferyard Easement is made by and between the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as “Grantee,” and ZIM-MAR PROPERTIES, LLC, a Wisconsin limited liability company, hereinafter referred to as “Grantor,” and shall become effective upon the recording of this Grant of Landscape Bufferyard Easement, together with the Acceptance following, with the Office of the Register of Deeds for Milwaukee County, pursuant to §700.40(2)(b) of the Wisconsin Statutes.

WITNESSETH

WHEREAS, Grantor is the owner in fee simple of certain real property, located within the City of Franklin, Milwaukee County, Wisconsin, described and depicted on Exhibit A and Exhibit B attached hereto and made a part hereof (the “Property”); and

WHEREAS, the Grantor is required by Section 15-5.0102A of the City of Franklin Unified Development Ordinance to provide a 30 foot wide planting strip adjacent to Loomis Road (CTH 36) (the “Loomis Buffer”); and

WHEREAS, Ballpark Commons Apartments LLC was the applicant for a proposed Site Plan in City of Franklin Plan Commission Resolution No. 2018-002 conditionally approving a Site Plan for the Ballpark Commons Apartments within the Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) development use. Condition 6 of Resolution No. 2018-002 thereof providing: Ballpark Commons LLC shall grant a 20 foot wide landscape bufferyard easement along Rawson Avenue (together with the Loomis Buffer, the “Protected Property” as shown on Exhibit B) to the City of Franklin subject to Common Council approval and recording with the Milwaukee County Register of Deeds Office; and

WHEREAS, Grantee is a “holder”, as contemplated by §700.40(1)(b)1. of the Wisconsin Statutes, whose purposes include, while exercising regulatory authority granted to it, *inter alia*, under §62.23 and §236.45 of the Wisconsin Statutes, the conservation of land, natural areas, open space, and water areas; and

WHEREAS, the Grantor and Grantee, by the conveyance to the Grantee of this Landscape Bufferyard Easement on, over, and across the Protected Property, desire to reserve the area for the planting of trees, shrubs and other natural plantings and prevent the use or development of the Protected Property for any purpose or in any manner inconsistent with the terms of this Landscape Bufferyard Easement; and

WHEREAS, the Grantee is willing to accept this Landscape Bufferyard Easement subject to the reservations and to the covenants, terms, conditions, and restrictions set out herein and imposed hereby;

NOW, THEREFORE, the Grantor, for and in consideration of the foregoing recitations and of the mutual covenants, terms, conditions, and restrictions subsequently contained herein, does hereby grant and convey unto the Grantee a Landscape Bufferyard Easement in perpetuity on, over, and across the Protected Property.

Grantee’s rights hereunder shall consist solely of the following:

1. To establish and ensure the continuance of an area reserved for the planting of trees, shrubs, and other natural plantings for the private use by the Grantor, as the owner of the underlying fee simple interests in the Property, to the exclusion of all others, for the purpose of buffering the parcels adjoining the Property by requiring the Protected Property to be open space in perpetuity; the Protected Property shall consist of natural vegetation and approved landscaping of trees, shrubs, and other natural plantings; designed to provide a screen and buffer between the Property and Loomis Road (STH 36) and West Rawson Avenue.
2. To enforce by proceeding at law or in equity the covenants subsequently set forth, including, and in addition to all other enforcement proceedings, proceedings to obtain all penalties and remedies set forth under Division 15-9.0500 of the Unified Development Ordinance of the City of Franklin, as amended from time to time, any violation of the covenants subsequently set forth being and constituting a violation of such Unified Development Ordinance, as amended from time to time, or such local applicable ordinance as may be later adopted or in effect to enforce such covenants or the purposes for which they are made, it being agreed that there shall be no waiver or forfeiture of the Grantee’s right to insure compliance with the covenants and conditions of this grant by reason of any prior failure to act; and

3. To enter the Protected Property at all reasonable times for the purpose of inspecting the Protected Property to determine if the Grantor is complying with the covenants and conditions of this grant.

And in furtherance of the foregoing affirmative rights of the Grantee, the Grantor makes the following covenants which shall run with and bind the Protected Property in perpetuity, namely, that, on, over, or across the Protected Property, the Grantor, without the prior consent of the Grantee, shall not:

- A. Construct or place buildings or any structure, beyond those buildings and structures and improvements as identified on any engineering or construction plans approved by the City of Franklin including, without limitation, the civil engineering plans approved on April 19, 2019 as City of Franklin Plan Commission Resolution No. 2018-002, which are specifically permitted and allowed within the limits of the Protected Property in compliance with this Landscape Bufferyard Easement;
- B. Construct or make any other improvements, unless and except, (i) notwithstanding Covenant 1 above, the improvement is specifically and previously approved by the Plan Commission of the City of Franklin or by the Common Council of the City of Franklin, upon the advice of such other persons, entities, and agencies as it may elect; such improvements as may be so approved being intended to enhance the open space buffer value of the Protected Property to the occupants of land adjoining or neighboring the Protected Property including, but not limited to fences, berms, sidewalks, trails, benches, monument signs, and the like; (ii) where any Conservation Easement may co-exist with the subject Landscape Bufferyard Easement, such maintenance of the ecological and aesthetic values of the Conservation Easement as may be set forth in the subject Conservation Easement document; (iii) where any Stormwater Management Easement may co-exist with the subject Landscape Bufferyard Easement, such maintenance of the stormwater management facilities of the Stormwater Management Easement as may be set forth in the subject Stormwater Management Easement document; and (iv) where any Berm easement may co-exist with the subject Landscape Bufferyard Easement, such maintenance of the enhanced berm consisting of attractive and effective berm and landscaping as may be set forth in the subject Berm Easement document.

To have and to hold this Landscape Bufferyard Easement unto the Grantee forever. Except as expressly limited herein, the Grantor reserves all rights as owner of the Protected Property, including, but not limited to, the right to use the Protected Property for all purposes not inconsistent with this grant. Grantor shall be responsible for the payment of all general property taxes levied, assessed, or accruing against the Protected Property pursuant to law.

The covenants, terms, conditions, and restrictions set forth in this grant shall be binding upon the Grantor and the Grantee and their respective agents, personal representatives, heirs, successors, and assigns, and shall constitute servitudes running with the Protected Property in perpetuity. This grant may not be amended, except by a writing executed and delivered by Grantor and Grantee or their respective personal representatives, heirs, successors, and assigns. Notices to the parties shall be personally delivered or mailed by U.S. Mail registered mail, return receipt requested, as follows:

To Grantor:

Zim-Mar Properties, LLC
c/o ROC Ventures, LLC
510 W. Kilbourn Ave., Second Floor
Milwaukee, WI 53203
Attn: Michael E. Zimmerman

To Grantee:

City of Franklin
Office of the City Clerk
9229 W. Loomis Road
Franklin, Wisconsin 53132

(Signatures follow on next pages)

Acceptance

The undersigned does hereby consent to and accepts the Landscape Bufferyard Easement granted and conveyed to it under and pursuant to the foregoing Grant of Landscape Bufferyard Easement. In consideration of the making of such Grant of Landscape Bufferyard Easement, the undersigned agrees that this acceptance shall be binding upon the undersigned and its successors and assigns and that the restrictions imposed upon the Protected Property may only be released or waived in writing by the City of Franklin, as contemplated by §236.293 of the Wisconsin Statutes.

In witness whereof, the undersigned has executed and delivered this acceptance on the ____ day of _____, A.D. 2019.

CITY OF FRANKLIN

By: _____
Stephen R. Olson, Mayor

By: _____
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN)
) ss
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, A.D. 2019, the above named Stephen R. Olson, Mayor and Sandra L. Wesolowski, City Clerk, of the above named municipal corporation, City of Franklin, to me known to be such Mayor and City Clerk of said municipal corporation, and acknowledged that they executed the foregoing instrument as such officers as the Deed of said municipal corporation by its authority and pursuant to Resolution No. _____, adopted by its Common Council on the _____ day of _____, 2019.

Notary Public

My commission expires _____

This instrument was drafted by the City of Franklin.

Approved as to contents:

Joel Dietl, Planning Manager
Department of City Development

Date

Approved as to form only:

Jesse A. Wesolowski
City Attorney

Date

MORTGAGE HOLDER CONSENT

The undersigned, (name of mortgagee), a Wisconsin banking corporation ("Mortgagee"), as Mortgagee under that certain Mortgage encumbering encumbering the Property and recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin, on _____, 20__, as Document No. _____, hereby consents to the execution of the foregoing easement and its addition as an encumbrance title to the Property.

IN WITNESS WHEREOF, Mortgagee has caused these presents to be signed by its duly authorized officers, and its corporate seal to be hereunto affixed, as of the day and year first above written.

Name of Mortgagee _____
Wisconsin Banking Corporation

Title _____

STATE OF WISCONSIN)
COUNTY OF MILWAUKEE)

On this the _____ day of _____, 20__, before me, the undersigned, personally appeared name of officer of mortgagee (the title of office, i.e.: VP) of (name of mortgagee), a Wisconsin banking corporation, and acknowledged that (s)he executed the foregoing instrument on behalf of said corporation, by its authority and for the purposes therein contained.

Name: _____

Notary Public, State of Wisconsin

My commission expires _____

Exhibit A

Description of the Property

Lot 3 of Certified Survey Map No. 9078, recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on October 16, 2018, as Document No. 10820171, being a redivision of Lots 3 and 4 of Certified Survey Map 9042 and lands in the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ and Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 9, Town 5 North, Range 21 East. Said land being in the City of Franklin, Milwaukee County, State of Wisconsin.

Lot 2 of Certified Survey Map No. 9042 recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on June 14, 2018, as Document No. 10785127, being a part of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ and Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 9, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

Lot 2 of Certified Survey Map No. _____ recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on _____, 2019, as Document No. _____, being a redivision of Lot 1 of Certified Survey Map No. 9042, being part of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 9, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

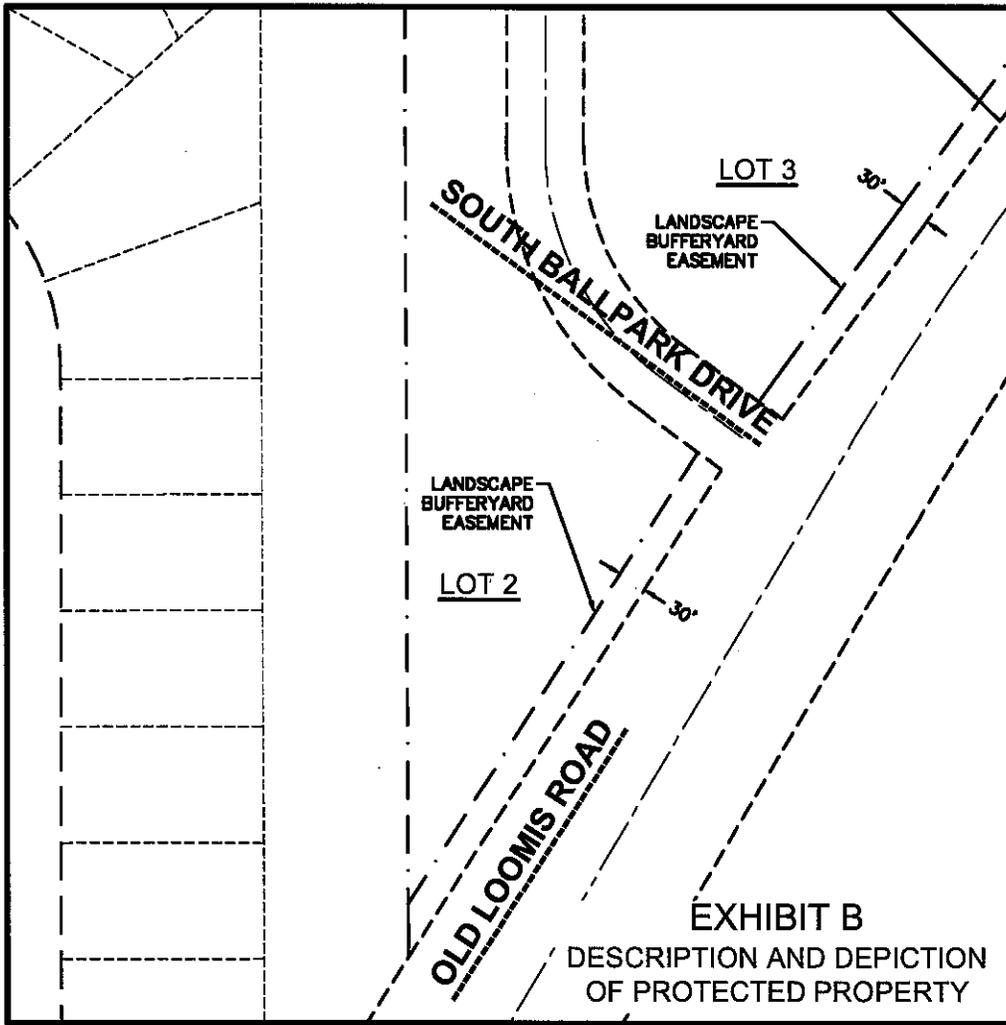
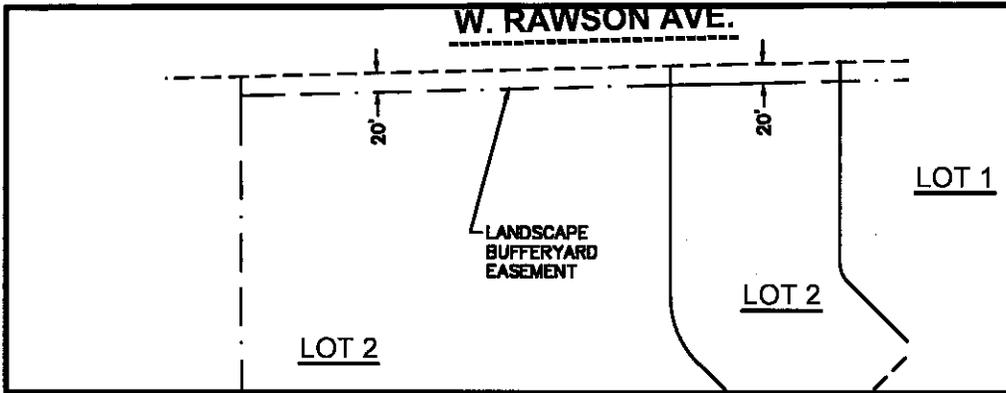
Exhibit B

Description and Depiction of Protected Property

(See Attached)

EASEMENT EXHIBIT

PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. _____, PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. 9042 AND PART OF LOT 3 OF CERTIFIED SURVEY MAP NO. 9078, BEING PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



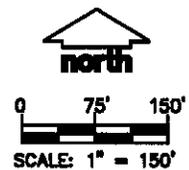
EASEMENT EXHIBIT LANDSCAPE BUFFERYARD EASEMENTS

PREPARED BY:
JSD Professional Services, Inc.
* Registered * Professional * Wisconsin
18200 91610 BUNK ROAD,
SUITE 100
MILWAUKEE, WISCONSIN 53118
PHONE: 262-213-0222

PREPARED FOR:
VELO VILLAGE APTS.
MANDEL GROUP, INC
330 E. KILBOURN AVE.
MILWAUKEE, WI 53202

PROJECT NO: 14-8548
FILE NO: B-6
FIELDBOOK/PG: --
SHEET NO: 1 OF 2

SURVEYED BY: JSD
DRAWN BY: DHS
CHECKED BY: ANW
APPROVED BY: JJJ



File: R:\2014\1405548 Ballpark Commons\dwg\146548 EXHIBIT EASEMENTS SOUTH REV 1.dwg Layout: LANDSCAPE BUFFERYARD 1 User: dslpwrjr Plotted: Aug 01, 2019 - 1:06pm

EASEMENT EXHIBIT

PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. _____, PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. 9042 AND PART OF LOT 3 OF CERTIFIED SURVEY MAP NO. 9078, BEING PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

LEGAL DESCRIPTIONS

PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. _____, PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. 9042 AND PART OF LOT 3 OF CERTIFIED SURVEY MAP NO. 9078, BEING PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, STRIPS OF LAND FOR BUFFERYARD EASEMENTS BOUNDED AND DESCRIBED AS FOLLOWS:

THE NORTH 20 FEET AND THE SOUTHERLY 30 FEET OF LOT 2 OF CERTIFIED SURVEY MAP NO. 9042.

LANDS CONTAINING 26,229 SQUARE FEET OR 0.6021 ACRES

ALSO:

THE SOUTHEASTERLY 30 FEET OF LOT 3, CERTIFIED SURVEY MAP NO 9078.

LANDS CONTAINING 3,504 SQUARE FEET OR 0.0804 ACRES

ALSO:

THE NORTH 20 FEET OF LOT 2, CERTIFIED SURVEY MAP NO. _____

LANDS CONTAINING 11,268 SQUARE FEET OR 0.2587 ACRES

File: R:\2014\1462548 Ballpark Commons\dwg\1462548 EXHIBIT EASEMENTS SOUTH REV 1.dwg Layout: LANDSCAPE BUFFERYARD 2 User: dgarofar Plotted: Aug 01, 2019 - 1:08pm

PREPARED BY:
JSD Professional Services, Inc.
• Engineers • Surveyors • Planners
1400 WISKO BUNKER ROAD,
SUITE 300
MILWAUKEE, WISCONSIN 53219
PHONE: 414.221.1200

APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE August 6, 2019
Reports & Recommendations	RESOLUTION FOR ACCEPTANCE OF NEW STORM DRAINAGE, SANITARY SEWER, AND WATERMAIN EASEMENTS FOR VELO VILLAGE APARTMENTS AT BALLPARK COMMONS 7125, 7165, 7195, AND 7235 SOUTH BALLPARK DRIVE- TAX KEY NUMBERS 754-9001-000, 754-9002-000, AND 754-9008-000	ITEM NO. <i>G.9.</i>

BACKGROUND

As part of the development of the Velo Village Apartments at Ballpark Commons, easements for storm drainage, sanitary sewers, and watermains are needed to allow the City access and maintenance rights to those utilities. These easements provide for the rights of grantor and grantee.

ANALYSIS

The attached easements include the storm drainage, sanitary sewer, and watermain systems with all applicable appurtenances.

Note that the previous certified survey map (CSM) for this area projected easement locations that are not where the utilities were finally designed nor constructed so those old easements need to be vacated. The subject area is still under construction and although most of the facilities have already been installed, there are partial asbuilts to verify that the utilities are located where they are supposed to be. Any approval should dictate that the utilities shall be confirmed to be within the easements as proposed.

The City Legal Department has reviewed the proposed changes to the standard template language.

OPTIONS

- A. Assuming that the utilities were constructed where they were planned, accept modified easements as subject to the legal and engineering concerns. Or
- B. Deny easements as proposed.

FISCAL NOTE

None

OPTIONAL COUNCIL ACTIONS

(Option A) Motion to adopt Resolution No. 2019 - _____, a resolution acceptance of new storm drainage, sanitary sewer, and watermain easements for Velo Village Apartments at Ballpark Commons 7125, 7165, 7195, and 7235 South Ballpark Drive- Tax key numbers 754-9001-000, 754-9002-000, and 754-9008-000. Subject to technical corrections, including, but not limited to verification that utilities were constructed where they were designed.

Engineering: GEM

STATE OF WISCONSIN: CITY OF FRANKLIN : MILWAUKEE COUNTY

RESOLUTION NO. 2019 - _____

A RESOLUTION FOR ACCEPTANCE OF NEW STORM DRAINAGE, SANITARY SEWER, AND WATERMAIN EASEMENTS FOR VELO VILLAGE APARTMENTS AT BALLPARK COMMONS 7125, 7165, 7195, AND 7235 SOUTH BALLPARK DRIVE- TAX KEY NUMBERS 754-9001-000, 754-9002-000, AND 754-9008-000

WHEREAS, easements are required to maintain and operate Storm Drainage, Sanitary Sewer, and Watermain in the Velo Village Apartments at Ballpark Commons Development; and

WHEREAS, existing easements recorded on the certified survey maps do not conform to the design and construction of the utilities.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that it would be in the best interest of the City to accept such new easements and therefore the Mayor and City Clerk are hereby authorized and directed to execute the easements accepting them on behalf of the City.

BE IT FURTHER RESOLVED, that the City Clerk is directed to record said easements with the Register of Deeds for Milwaukee County.

Introduced at a regular meeting of the Common Council of the City of Franklin the _____ day of _____, 2019, by Alderman _____.

PASSED AND ADOPTED by the Common Council of the City of Franklin on the _____ day of _____, 2019.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

STORM SEWER EASEMENT

Velo Village Apartments at Ballpark Commons
7125, 7165, 7195 and 7235 South Ballpark Drive
Franklin, WI
754-9002-000

THIS EASEMENT is made by and between the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "City," and ZIM-MAR PROPERTIES, LLC, a Wisconsin limited liability company, with an address of 510 W. Kilbourn Avenue, Second Floor, Milwaukee, WI 53203, as owner (including successors and assigns of the City as may become applicable including the heirs, executors, administrators, successors and assigns of above owner(s) as may be or may become applicable), hereinafter called "Grantor," (if more than one grantor is listed above, said language herein referring thereto shall be interpreted in the plural and refer jointly and severally to such grantors).

WITNESSETH

WHEREAS, Grantor is the owner and holder of record Title to certain real property particularly described on Exhibit "A" which is attached hereto and incorporated herein (the Property); and

WHEREAS, the City desires to acquire a perpetual, non-exclusive easement with the right of entry in and across a portion of the Property hereinafter described, with the right to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable the following facilities and appurtenances thereto, hereinafter collectively called the "Facilities," in, upon and across said portion of the Property: a storm drainage system consisting of an underground storm sewer, all as shown on the plan attached hereto as Exhibit "B."; and

WHEREAS, the initial construction and installation of the Facilities shall be made by Grantor at Grantor's expense and the Facilities shall be the property of the City and be deemed dedicated to the City upon the City's inspection and approval of the Facilities as installed, subject to the terms and conditions set forth below:

NOW, THEREFORE, in consideration of the grant of the easement hereinafter described and the payment of One Dollar (\$1.00) and other valuable considerations to the Grantor, the receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described, does hereby grant unto the City a perpetual, non-exclusive easement to build, construct and/or operate, maintain, repair, reconstruct and inspect, as may become applicable, the Facilities, in upon and across that part of the Property in that part of the Northwest ¼ and Northeast ¼ of Section Nine (9), Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, Milwaukee County, Wisconsin, more particularly described on Exhibit C attached hereto (the "Easement Area").

1. That said Facilities shall be maintained and kept in good order and condition by the City, at the sole cost and expense of the City. Responsibility for maintaining the ground cover and landscaping within the Easement Area shall be that of the Grantor (including heirs, executors, administrators, successors, and assigns as owners of the Property).
2. That in and during whatever construction, reconstruction, enlargement or repair work is or becomes necessary in constructing and/or maintaining of said Facilities, so much of the surface or subsurface of the Easement Area on the property as may be disturbed will, at the expense of the City, be replaced in substantially the same condition as it was prior to

such disturbance; except that the City will in no case be responsible for replacing or paying for replacing any aesthetic plantings or improvements other than ordinary lawns or standard walks, roadways, driveways and parking lot surfacing which were required to be removed in the course of doing the above work. The City shall indemnify and save harmless the Grantor from and against any loss, damage, claim, cost, injury or liability resulting from negligence or willful acts or omissions on the part of the City, its agents or employees in connection with said work involved in constructing and/or maintaining of said Facilities; provided that if the above loss, claim, cost, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses available under law which the City or Grantor are entitled to raise, excepting the defense of so-called "sovereign immunity."

3. That no structure, fence, or other improvements may be placed within the limits of the Easement Area by the Grantor except that improvement such as walks, pavements for driveways and parking lot surfacing, wetland plantings and landscaping may be constructed, installed, planted or placed within the Easement Area as approved by the City Engineer. The City acknowledges any structures or improvements placed within the limits of the Easement Area of the type as identified on any engineering or construction plans approved by the City from time to time are specifically permitted and allowed within the limits of the Easement Area in compliance with this Easement.
4. In connection with the construction by the Grantor of any structure or building abutting said Easement Area, the Grantor will assume all liability for any damage to the Facilities in the above described Easement Area caused by such construction. The Grantor will also save and keep the City clear and harmless from any claims for personal injuries or property damage caused by any negligence or wrongful acts or omissions of the Grantor or persons acting on behalf of the Grantor, arising out of the construction by the Grantor of any structure or building abutting the said Easement Area, and shall reimburse the City for the full amount of such loss or damage, provided that if the above loss, claim, cost, damage injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence.
5. No charges will be made against the Property for the cost of maintenance or operation of said Facilities in the Property. Whenever the Grantor makes application for a service connection associated with the services provided by virtue of the Facilities, the regular and customary service connection charge in effect at the time of the application may be charged and paid. The City shall not allow liens to be placed on the Easement Area and shall satisfy any lien placed of record due to the City's activities within ten (10) days after receiving notice of the filing of such lien. The Grantor shall be responsible for the routine maintenance of the surface of the Easement Area.
6. The City of Franklin shall in no case be responsible for maintaining at its expense any portion of said storm drainage services outside of the Easement Area and outside the limits of any adjoining easements.
7. The Facilities shall be accessible for maintenance by the City at all times upon reasonable advance notice to the Grantor, except in the event of an emergency, in which case notice shall be provided as soon as reasonably possible. The Grantor shall submit plans for approval to the City Engineer for any underground installation within the Easement Area, which approval shall not be unreasonably withheld, conditioned or delayed.

8. That the Grantor shall submit plans for all surface alterations of plus or minus 1 foot or greater within the limits of said Easement Area. Said alterations shall be made only with the approval of the City Engineer of the City of Franklin, which approval shall not be unreasonably withheld, conditioned or delayed.
9. The City and Grantor shall each use, and take reasonable measures to cause their employees, officers, customers, agents, contractors and assigns to use, the Easement Area in a reasonable manner and so as not to obstruct or otherwise use the Easement Area in a manner that would unreasonably interfere with the use thereof by the other party hereto or its employees, officers, customers, agents, contractors and assigns.
10. The City and Grantor each hereby waives all rights of subrogation that either has or may hereafter have against the other for any damage to the Easement Area or any other real or personal property or to persons covered by such party's insurance, but only to the extent of the waiving party's insurance coverage; provided, however, that the foregoing waivers shall not invalidate any policy of insurance now or hereafter issued, it being hereby agreed that such a waiver shall not apply in any case which would result in the invalidation of any such policy of insurance and that each party shall notify the other if such party's insurance would be so invalidated.
11. Either party hereto may enforce this easement by appropriate action, and should it prevail in such litigation, that party shall be entitled to recover, as part of its costs, reasonable attorneys' fees.
12. This easement may not be modified or amended, except by a writing executed and delivered by the City and Grantor or their respective successors and assigns. This easement shall be binding upon and inure to the benefit of the Grantor, the City and their respective successors and assigns, it being the intent that all of the covenants hereunder shall be "covenants running with the land."
13. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.
14. If any term or provision of this easement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this easement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by applicable law.
15. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
16. This Easement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
17. That the Grantor shall submit as-built drawings of the installed facilities for approval to the City Engineer, which approval shall not be unreasonably withheld, conditioned, or delayed.

(Signatures follow on next pages)

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seals

ON THIS DATE OF: _____, 2019

GRANTOR:

Zim-Mar Properties, LLC

By: _____
Michael E. Zimmerman, Co-Manager

By: _____
Greg Marso, Co-Manager

STATE OF _____

SS

COUNTY OF _____

Before me personally appeared on the _____ day of _____, 2019, the above named Michael E. Zimmerman, the co-manager of Zim-Mar Properties, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

NOTARY PUBLIC _____

My commission expires _____

STATE OF _____

SS

COUNTY OF _____

Before me personally appeared on the _____ day of _____, 2019, the above named Greg Marso, the co-manager of Zim-Mar Properties, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

NOTARY PUBLIC _____

My commission expires _____

CITY OF FRANKLIN

By: _____
Stephen R. Olson, Mayor

By: _____
Sandra L. Wesolowski, City Clerk

STATE OF _____

ss

COUNTY OF _____

On this _____ day of _____ 2019, before me personally appeared Stephen R. Olson and Sandra L. Wesolowski who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority and pursuant to Resolution File No. _____ adopted by its Common Council on _____, 20_____

Notary Public
My commission expires _____

This instrument was drafted by the City of Franklin.

Approved as to contents

Manager of Franklin Municipal Water Utility

Date: _____

Approved as to form only

City Attorney

Date: _____

Exhibit A

(Description of the Property)

Lot 2 of Certified Survey Map No. 9042 recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on June 14, 2018, as Document No. 10785127, being a part of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ and Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 9, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

Exhibit B
(Depiction of the Facilities)

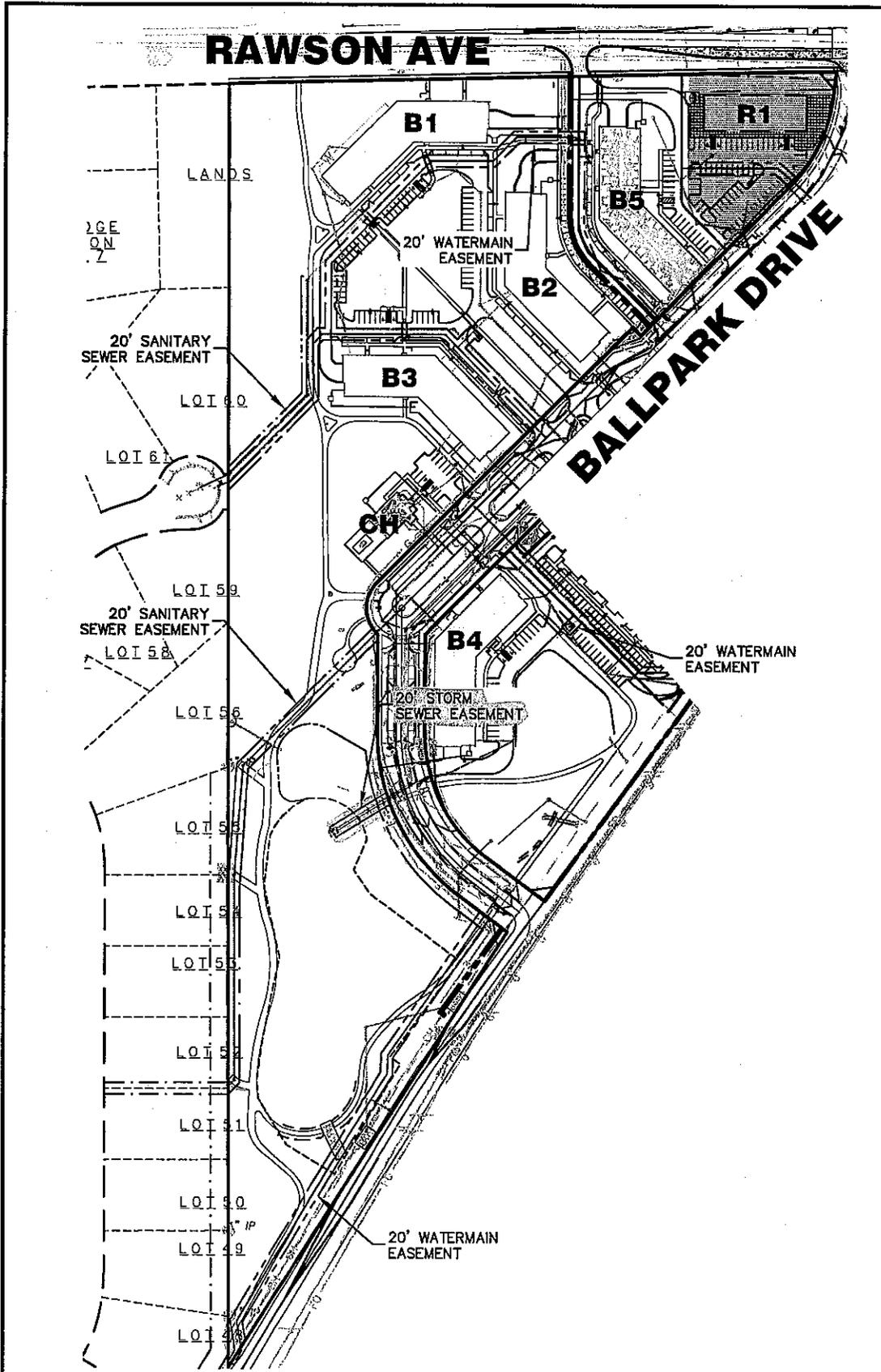


EXHIBIT B

VELO VILLAGE UTILITY EASEMENTS

PREPARED BY:
JSD Professional Services, Inc.
 Engineers • Surveyors • Planners
 N229 W1610 BUSSE ROAD,
 SUITE 100
 WALKESHA, WISCONSIN 53188
 PHONE: (262)513-0666

PREPARED FOR:
 VELO VILLAGE APTS.
 MANDEL GROUP, INC
 330 E. KILBOURN AVE.
 MILWAUKEE, WI 53202

PROJECT NO: 14-6548
 FILE NO: B--*
 FIELDBOOK/PG: --
 SHEET NO: 1 OF 1

SURVEYED BY: JSD
 DRAWN BY: DHS
 CHECKED BY: AWW
 APPROVED BY: JLJ

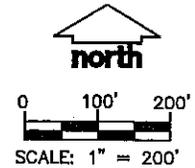
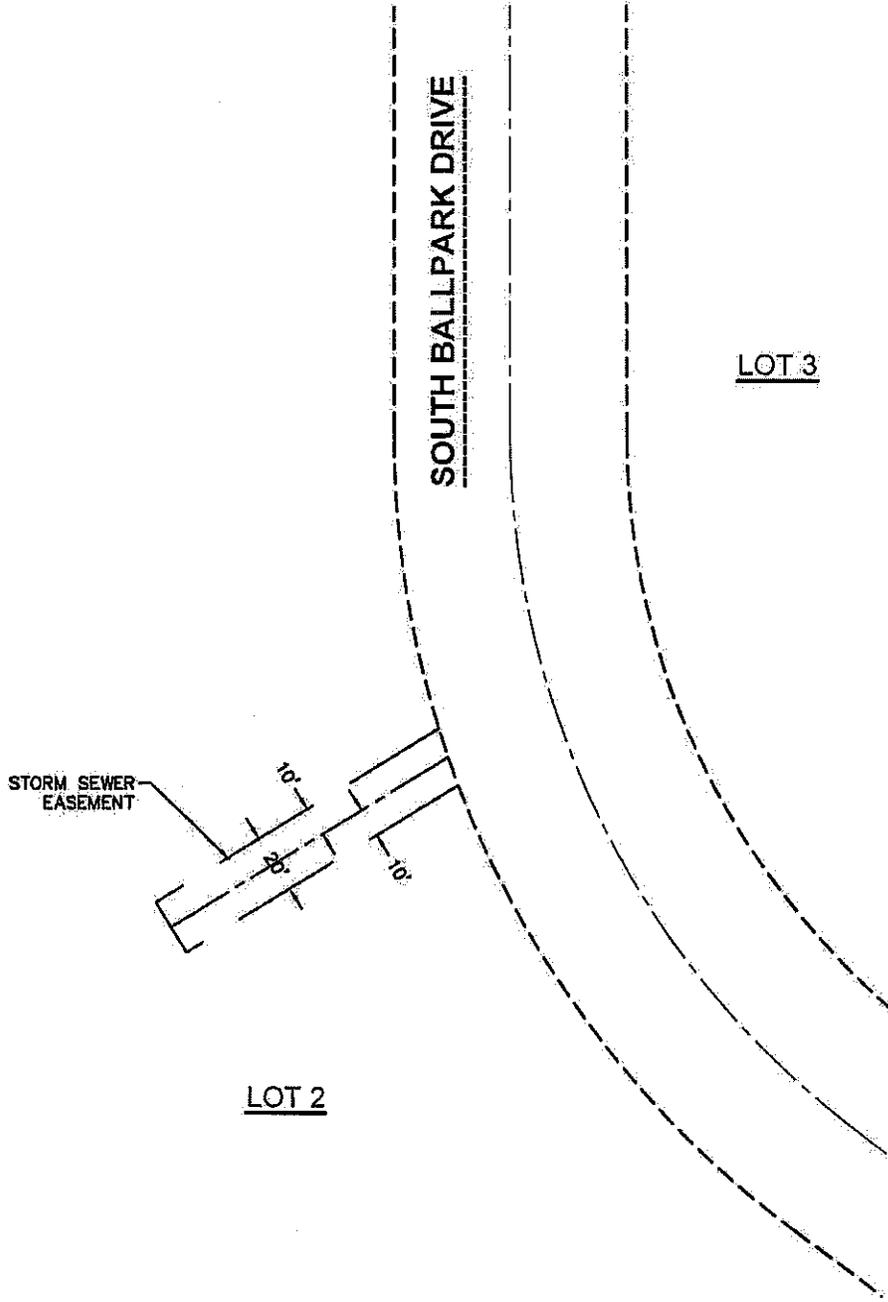


Exhibit C

(Description of Easement Area)

EASEMENT EXHIBIT

PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. 9042, BEING PART OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



File: R:\2014\1405548 Ballpark Commons\dwg\1405548 EXHIBIT EASEMENTS SOUTH REV 1.dwg Layout: STORM EASE 1 User: dspranjer Plotted: Jul 24, 2019 - 2:21pm

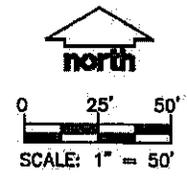
EASEMENT EXHIBIT STORM SEWER EASEMENT

PREPARED BY:
JSD Professional Services, Inc.
a Division of JSD Group • Planners • Engineers
 12230 W1810 BUSSE ROAD,
 SUITE 100
 MILWAUKEE, WISCONSIN 53188
 PHONE: (262) 813-0888

PREPARED FOR:
 VELO VILLAGE APTS.
 MANDEL GROUP, INC
 330 E. KILBOURN AVE.
 MILWAUKEE, WI 53202

PROJECT NO: 14-6548
 FILE NO: B-0
 FIELDBOOK/PG:
 SHEET NO: 1 OF 2

SURVEYED BY: JSD
 DRAWN BY: DHS
 CHECKED BY: AWW
 APPROVED BY: JLJ



WATER MAIN EASEMENT

Velo Village Apartments at Ballpark Commons
7125, 7165, 7195, 7235 and 7250 South Ballpark Drive
Franklin, WI
754-9002-000; 754-9008-000

THIS EASEMENT, made by and between the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "City," and ZIM-MAR PROPERTIES, LLC, a Wisconsin limited liability company, with an address of 510 W. Kilbourn Avenue, Second Floor, Milwaukee, WI 53203, as owner, (including heirs, executors, administrators, successors and assigns of above owner(s) as may be or may become applicable), hereinafter called "Grantor," (if more than one grantor is listed above, said language herein referring thereto shall be interpreted in the plural and refer jointly and severally to such grantors).

WITNESSETH

WHEREAS, Grantor is the owner and holder of record Title to certain real property described on Exhibit "A" which is attached hereto and incorporated herein (the Property); and

WHEREAS, the City desires to acquire a permanent, exclusive easement with the right of entry in and across a portion of the property hereinafter described with the right to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable the following facilities and appurtenances thereto, hereinafter collectively called the "Facilities," in, upon and across said portion of the Property: an underground water main and associated fire hydrants, all as shown on the plan attached hereto as Exhibit "B"; and

WHEREAS, the initial construction and installation of the Facilities shall be made by Grantor at Grantor's expense and the Facilities shall be the property of the city and be deemed dedicated to the City upon the City's inspection and approval of the Facilities as installed, subject to the terms and conditions set forth below:

NOW, THEREFORE, in consideration of the grant of the easement hereinafter described and the payment of One Dollar (\$1.00) and other valuable considerations to the Grantor, receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described does hereby grant unto the City a permanent, exclusive easement to build, construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may become applicable, the Facilities in, upon and across that part of the Property, in that part of the Northwest ¼ and Northeast ¼ of Section Nine (9), Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, Milwaukee County, Wisconsin, more particularly described on Exhibit C attached hereto (the "Easement Area").

UPON CONDITION

1. That said Facilities shall be maintained and kept in good order and condition by the City, at the sole cost and expense of the City. Responsibility for maintaining the ground cover and landscaping within the Easement Area shall be that of the Grantor (including heirs, executors, administrators, successors and assigns as owners of the Property).
2. That in and during whatever construction, reconstruction, enlargement or repair work is or becomes necessary in constructing and/or maintaining of said Facilities, so much of the surface or subsurface of the Easement Area as may be disturbed, will at the expense of

the City be replaced in substantially the same condition as it was prior to such disturbance; except that the City will in no case be responsible for replacing or paying for replacing any aesthetic plantings or improvements other than ordinary lawns or standard walks, roadways, driveways and parking lot surfacing which were required to be removed in the course of doing the above work. The City shall indemnify and save harmless the Grantor from and against any loss, damage, cost, claim, injury or liability resulting from negligence or willful acts or omissions on the part of the City, its agents or employees in connection with said work involved in the constructing and/or maintaining of said Facilities; provided that if the above loss, claim, cost, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses which under law the City or Grantor are entitled to raise, excepting the defense of so-called "sovereign immunity."

3. That no structure may be placed within the limits of the Easement Area by the Grantor except improvements such as walks, pavements for driveways and parking lot surfacing, retaining walls and landscaping may be constructed, installed, planted or placed within the Easement Area. The City acknowledges any structures, utilities or improvements placed within the limits of the Easement Area of the type as identified on any engineering or construction plans approved by the City from time to time are specifically permitted and allowed within the limits of the Easement Area in compliance with this Easement.
4. That, in connection with the construction by the Grantor of any structure or building abutting said Easement Area, the Grantor will assume all liability for any damage to the Facilities in the above described Easement Area caused by such construction. The Grantor will also save and keep the City clear and harmless from any claims for personal injuries or property damage caused by any negligence or wrongful acts or omissions of the Grantor or persons acting on behalf of the Grantor, arising out of the construction by the Grantor of any structure or building abutting the said Easement Area, and shall reimburse the City for the full amount of such loss or damage; provided that if the above loss, claim, cost damage or injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degrees of negligence.
5. That no charges will be made against the Property for the cost of maintenance or operation of said Facilities in the Property. Whenever the Grantor makes application for a service connection associated with the services provided by virtue of the Facilities, the regular and customary service connection charge in effect at the time of the application may be charged and paid. The City shall not allow liens to be placed on the Easement Area and shall satisfy any lien placed of record due to the City's activities within ten (10) days after receiving notice of the filing of such lien. The Grantor shall be responsible for the routine maintenance of surface of the Easement Area.
6. All conditions pertaining to the "Maintenance of Water Service Piping" as set forth in Chapter 5.12 of the "City of Franklin Design Standards and Construction Specifications dated 2017 and subsequent amendments thereto shall apply to all water services which are within the easement defined limits and also within the limits of any adjoining easements; except that the City of Franklin Water Works, a utility owned by the City of Franklin shall in no case be responsible for maintaining at its expense any portion of said water services not owned by the City, outside of the easement defined limits and outside the limits of any adjoining easements regardless of any statement to the contrary in said "Rules and Regulations Governing Water Service."

7. The Facilities shall be accessible for maintenance by the City at all times upon reasonable advance notice to the Grantor, except in the event of an emergency, in which case notice shall be provided as soon as reasonably possible. The Grantor shall submit plans for approval to the City Engineer for any underground installation within the Easement Area, which approval shall not be unreasonably withheld, conditioned or delayed.
8. That the Grantor shall submit plans for all surface alterations of plus or minus 1 foot or greater within the limits of said easement. Said alterations shall be made only with the approval of the City Engineer of the City of Franklin, which approval shall not be unreasonably withheld, conditioned or delayed.
9. Notwithstanding the exclusive nature of the grant of easement hereunder, Grantor retains the right to use the Easement Area for all legal purposes in accordance with the terms hereof, provided, the City and Grantor shall each use, and take reasonable measures to cause their employees, officers, customers, agents, contractors and assigns to use, the Easement Area in a reasonable manner and so as not to obstruct or otherwise use the Easement Area in a manner that would unreasonably interfere with the use thereof by the other party hereto or its employees, officers, customers, agents, contractors and assigns.
10. The City and Grantor each hereby waives all rights of subrogation that either has or may hereafter have against the other for any damage to the Easement Area or any other real or personal property or to persons covered by such party's insurance, but only to the extent of the waiving party's insurance coverage; provided, however, that the foregoing waivers shall not invalidate any policy of insurance now or hereafter issued, it being hereby agreed that such a waiver shall not apply in any case which would result in the invalidation of any such policy of insurance and that each party shall notify the other if such party's insurance would be so invalidated.
11. Either party hereto may enforce this easement by appropriate action, and should it prevail in such litigation, that party shall be entitled to recover, as part of its costs, reasonable attorneys' fees.
12. This easement may not be modified or amended, except by a writing executed and delivered by the City, Grantor or their respective successors and assigns. This easement shall be binding upon and inure to the benefit of the Grantor, the City and their respective successors and assigns, it being the intent that all of the covenants hereunder shall be "covenants running with the land."
13. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.
14. If any term or provision of this easement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this easement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by applicable law.
15. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

17. That the Grantor shall submit as-built drawings of the installed facilities in electronic format for approval to the City Engineer, which approval shall not be unreasonably withheld, conditioned, or delayed.
18. This Easement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(Signatures follow on next pages)

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seals

ON THIS DATE OF: _____, 2019

GRANTOR:

Zim-Mar Properties, LLC

By: _____
Michael E. Zimmerman, Co-Manager

By: _____
Greg Marso, Co-Manager

STATE OF _____
SS

COUNTY OF _____

Before me personally appeared on the _____ day of _____, 2019, the above named Michael E. Zimmerman, the co-manager of Zim-Mar Properties, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

NOTARY PUBLIC _____

My commission expires _____

STATE OF _____
SS

COUNTY OF _____

Before me personally appeared on the _____ day of _____, 2019, the above named Greg Marso, the co-manager of Zim-Mar Properties, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

NOTARY PUBLIC _____

My commission expires _____

CITY OF FRANKLIN

By: _____
Stephen R. Olson, Mayor

By: _____
Sandra L. Wesolowski, City Clerk

STATE OF _____

ss

COUNTY OF _____

On this _____ day of _____ 2019, before me personally appeared Stephen R. Olson and Sandra L. Wesolowski who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority and pursuant to Resolution File No. _____ adopted by its Common Council on _____, 20____

Notary Public
My commission expires _____

This instrument was drafted by the City of Franklin.

Approved as to contents

Date: _____

Manager of Franklin Municipal Water Utility

Approved as to form only

Date: _____

City Attorney

Exhibit A
(Description of the Property)

Lot 3 of Certified Survey Map No. 9078, recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on October 16, 2018, as Document No. 10820171, being a redivision of Lots 3 and 4 of Certified Survey Map 9042 and lands in the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ and Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 9, Town 5 North, Range 21 East. Said land being in the City of Franklin, Milwaukee County, State of Wisconsin.

Lot 2 of Certified Survey Map No. 9042 recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on June 14, 2018, as Document No. 10785127, being a part of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ and Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 9, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

Exhibit B
(Depiction of the Facilities)

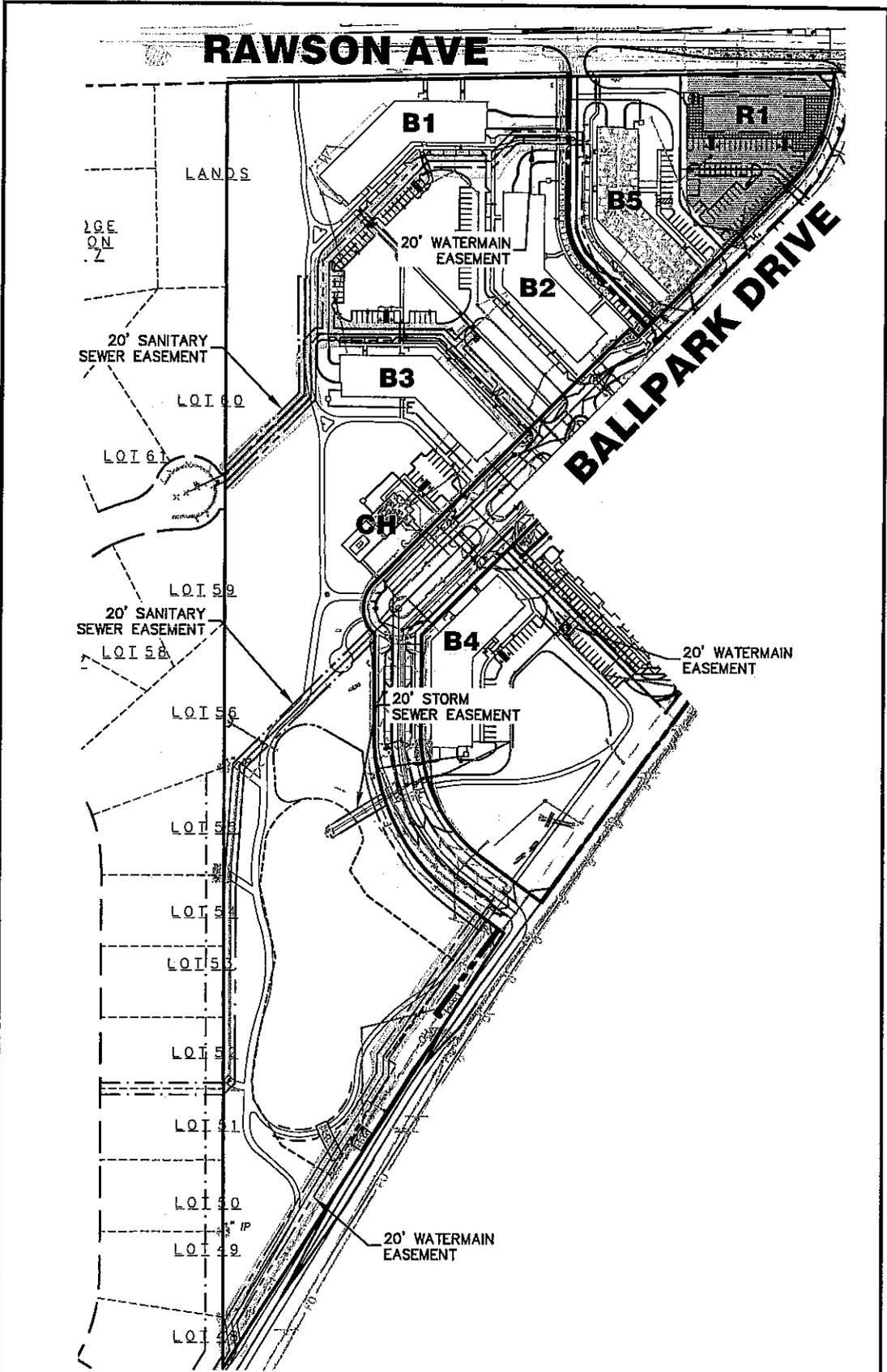


EXHIBIT B

VELO VILLAGE UTILITY EASEMENTS

PREPARED BY:
JSD Professional Services, Inc.
 Engineers • Surveyors • Planners
 2335 W1810 BUSSE ROAD,
 SUITE 100
 WAUKESHA, WISCONSIN 53188
 PHONE: (262)513-0666

PREPARED FOR:
 VELO VILLAGE APTS.
 MANDEL GROUP, INC
 330 E. KILBOURN AVE.
 MILWAUKEE, WI 53202

PROJECT NO: 14-6548
 FILE NO: B-*
 FIELDBOOK/PG: -
 SHEET NO: 1 OF 1

SURVEYED BY: JSD
 DRAWN BY: DHS
 CHECKED BY: AWW
 APPROVED BY: J.L.J.

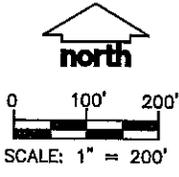
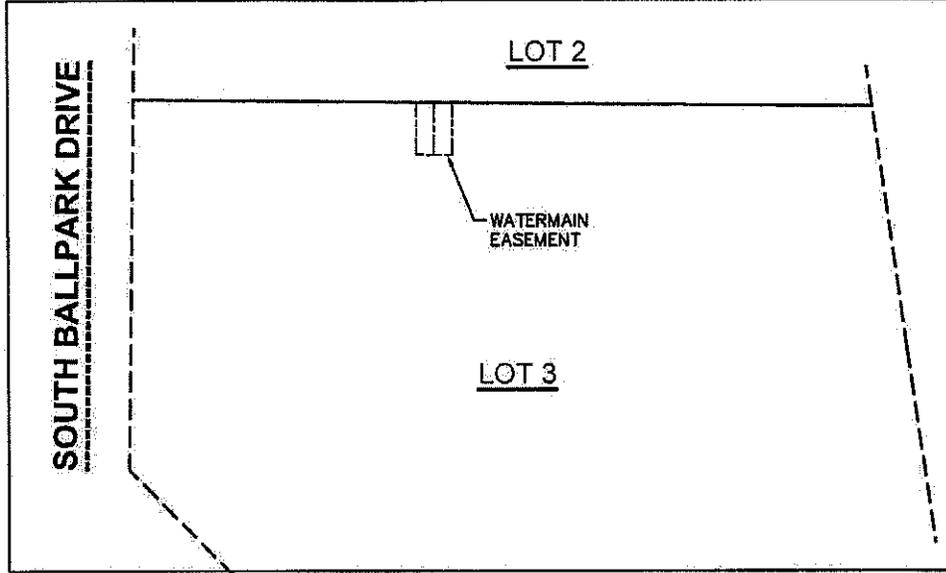


Exhibit C
(Description of Easement Area)

EASEMENT EXHIBIT

PART OF LOT 3 OF CERTIFIED SURVEY MAP NO. 9078, BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



File: R:\2014\1426548 Ballpark Commons\dwg\146548 EXHIBIT EASEMENTS SOUTH_REV 1.dwg Layout: WATERMAIN EASE 1 User: dapanjr Plotted: Jul 24, 2019 - 2:21pm

EASEMENT EXHIBIT

WATERMAIN EASEMENT

PREPARED BY:



10238 W1810 BUSSE ROAD,
SUITE 100
MILWAUKEE, WISCONSIN 53168
PHONE: (227)813-0568

PREPARED FOR:

VELO VILLAGE APTS.
MANDEL GROUP, INC
330 E. KILBOURN AVE.
MILWAUKEE, WI 53202

PROJECT NO: 14-8548

FILE NO: 8-*

FIELDBOOK/PG: -

SHEET NO: 1 OF 2

SURVEYED BY: JSD

DRAWN BY: DHS

CHECKED BY: AWW

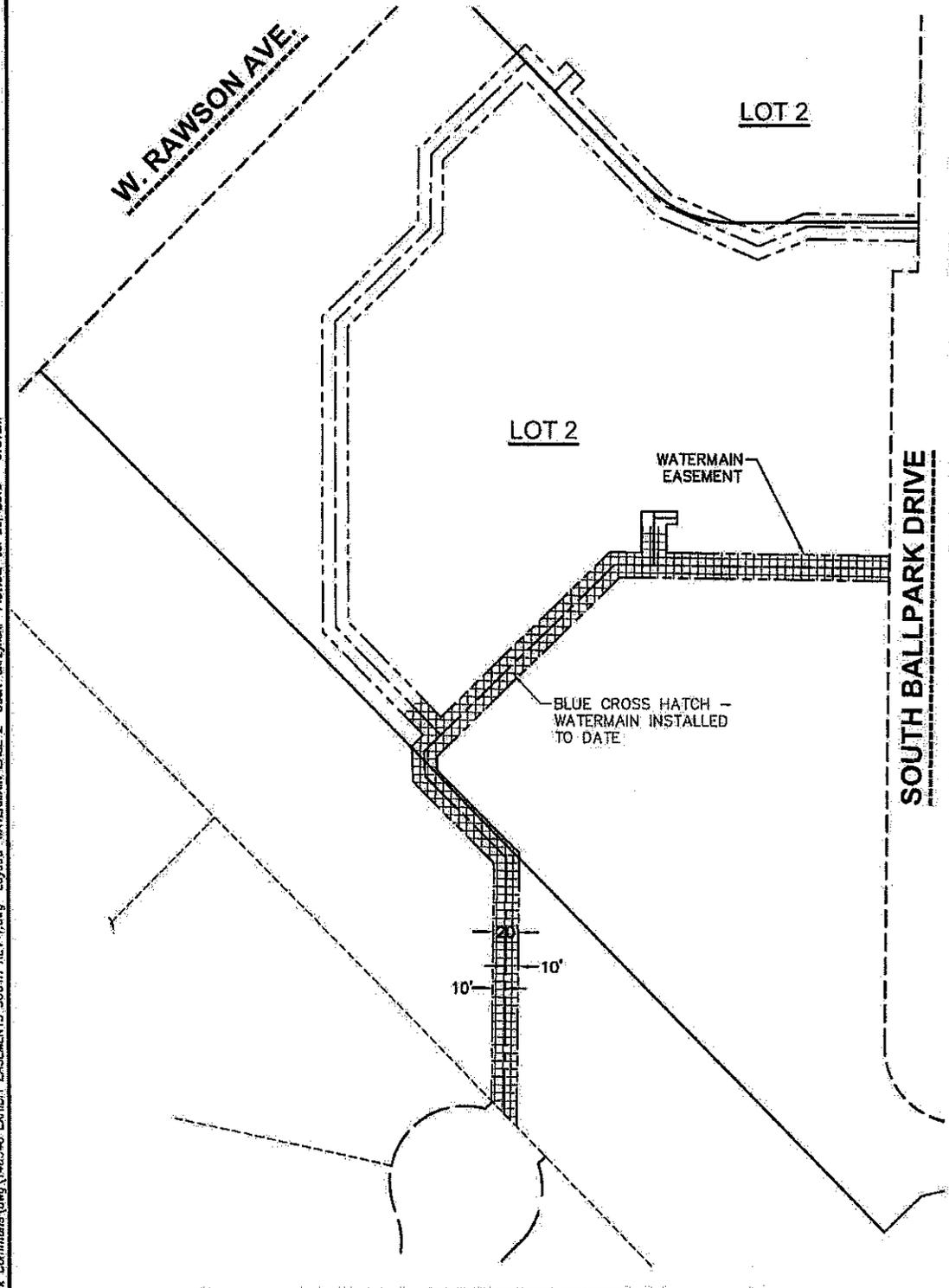
APPROVED BY: JJJ



SCALE: 1" = 80'

EASEMENT EXHIBIT

PART OF LOTS 2 OF CERTIFIED SURVEY MAP NO. 9078 AND PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. _____, BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



File: R:\2014\146548_Ballpark Commons.dwg 146548 EXHIBIT EASEMENTS SOUTH REV 1.dwg Layout: WATERMAIN EASE 2 User: sbrzynski Plot Date: Jul 26, 2019 - 9:51am

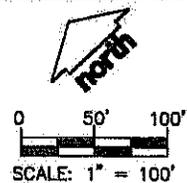
EASEMENT EXHIBIT WATERMAIN EASEMENT

PREPARED BY:
JSD Professional Services, Inc.
 Engineers • Surveyors • Planners
 4230 W1610 BUSSE ROAD,
 SUITE 100
 WAUKESHA, WISCONSIN 53188
 PHONE: (262)813-0888

PREPARED FOR:
 VELO VILLAGE APTS.
 MANDEL GROUP, INC
 330 E. KILBOURN AVE.
 MILWAUKEE, WI 53202

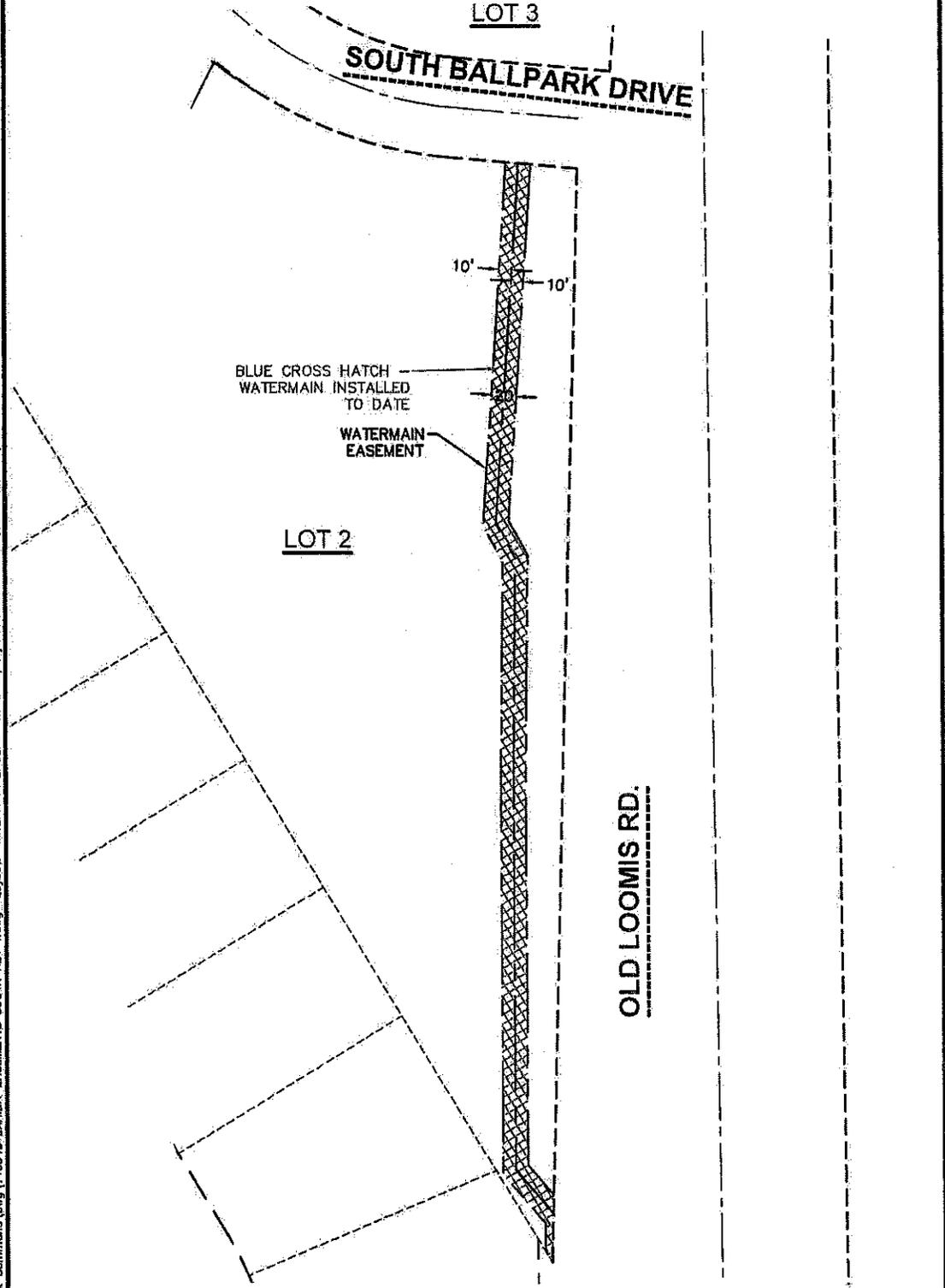
PROJECT NO: 14-8548
FILE NO: B-8
FIELDBOOK/PG: -
SHEET NO: 1 OF 2

SURVEYED BY: JSD
DRAWN BY: DHS
CHECKED BY: AWW
APPROVED BY: J.L.J.



EASEMENT EXHIBIT

PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. 9042, BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

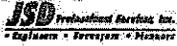


File: R:\2014\1426548 Ballpark Commons\dwg\146548 EXHIBIT EASEMENTS SOUTH REV 1.dwg Layout: WATERMAIN EASE 3 User: dapanjr Plotted: Jul 24, 2019 - 2:21pm

EASEMENT EXHIBIT

WATERMAIN EASEMENT

PREPARED BY:



4236 W1910 BUSSE ROAD,
SUITE 100
MILWAUKEE, WISCONSIN 53188
PHONE: (262)513-0868

PREPARED FOR:

VELO VILLAGE APTS.
MANDEL GROUP, INC.
330 E. KILBOURN AVE.
MILWAUKEE, WI 53202

PROJECT NO: 14-8548

FILE NO: B-*

FIELDBOOK/PC: -

SHEET NO: 1 OF 2

SURVEYED BY: JSD

DRAWN BY: DHS

CHECKED BY: AWW

APPROVED BY: JLJ



0 50' 100'

SCALE: 1" = 100'

SANITARY SEWER EASEMENT

Velo Village Apartments at Ballpark Commons
7125, 7165, 7195 and 7235 South Ballpark Drive
Franklin, WI
754-9002-000

THIS EASEMENT is made by and between the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "City," and ZIM-MAR PROPERTIES, LLC, a Wisconsin limited liability company, with an address of 510 W. Kilbourn Avenue, Second Floor, Milwaukee, WI 53203 as owner (including successors and assigns of the City as may become applicable including the heirs, executors, administrators, successors and assigns of above owner(s) as may be or may become applicable), hereinafter called "Grantor," (if more than one grantor is listed above, said language herein referring thereto shall be interpreted in the plural and refer jointly and severally to such grantors).

WITNESSETH

WHEREAS, Grantor is the owner and holder of record Title to certain real property particularly described on Exhibit "A" which is attached hereto and incorporated herein (the Property); and

WHEREAS, the City desires to acquire a non-exclusive easement with the right of entry in and across a portion of the Property, with the right to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable the following facilities and appurtenances thereto, hereinafter collectively called the "Facilities," in, upon and across said portion of the Property: an underground sanitary sewer and associated manholes, all as shown on the plan attached hereto as Exhibit "B".

NOW, THEREFORE, in consideration of the grant of the easement hereinafter described and the payment of One Dollar (\$1.00) and other valuable considerations to the Grantor, the receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described, does hereby grant unto the City a perpetual, non-exclusive easement to build, construct and/or operate, maintain, repair, reconstruct and inspect, as may become applicable, the Facilities, in, upon and across that portion of the property in that part of the Northwest $\frac{1}{4}$ and Northeast $\frac{1}{4}$ of Section Nine (9), Township Five (5), North, Range Twenty-one (21) East", in the City of Franklin, Milwaukee County, Wisconsin, more particularly described on Exhibit C attached hereto (the "Easement Area").

1. That said Facilities shall be maintained and kept in good order and condition by the City, at the sole cost and expense of the City. Responsibility for maintaining the ground cover and landscaping within the Easement Area shall be that of the Grantor (including heirs, executors, administrators, successors, and assigns as owners).
2. That in and during whatever construction, reconstruction, enlargement or repair work is or becomes necessary in constructing and/or maintaining of said Facilities, so much of the surface or subsurface of the Easement Area on the Property as may be disturbed will, at the expense of the City, be replaced in substantially the same condition as it was prior to such disturbance; except that the City will in no case be responsible for replacing or paying for replacing any aesthetic plantings or improvements other than ordinary lawns or standard walks, roadways, driveways and parking lot surfacing which were required to be removed in the course of doing the above work. The City shall indemnify and save harmless the Grantor from and against any loss, damage, claim, cost, injury or liability resulting from negligence or willful acts or omissions on the part of the City, its agents or

employees in connection with said work involved in constructing and/or maintaining of said Facilities; provided that if the above loss, claim, cost, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses available under law which the City or Grantor are entitled to raise, excepting the defense of so-called "sovereign immunity."

3. That no structure may be placed within the limits of the Easement Area by the Grantor except that improvement such as walks, pavements for driveways and parking lot surfacing, landscaping, fencing and dog park improvements may be constructed, installed, planted or placed with the Easement Area. The City acknowledges any structures or improvements placed within the limits of the Easement Area of the type as identified on any engineering or construction plans approved by the City from time to time are specifically permitted and allowed within the limits of the Easement Area in compliance with this Easement.
4. That, in connection with the construction by the Grantor of any structure or building abutting said Easement Area, the Grantor will assume all liability for any damage to the Facilities in the above described Easement Area caused by such construction. The Grantor will also save and keep the City clear and harmless from any claims for personal injuries or property damage caused by any negligence or wrongful acts or omissions of the Grantor or persons acting on behalf of the Grantor, arising out of the construction by the Grantor of any structure or building abutting the said Easement Area, and shall reimburse the City for the full amount of such loss or damage, provided that if the above loss, claim, cost, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence.
5. That no charges will be made against the Property for the cost of maintenance or operation of said Facilities in the Property. Whenever the Grantor makes application for a service connection associated with the services provided by virtue of the Facilities, the regular and customary service connection charge in effect at the time of the application may be charged and paid. The City shall not allow liens to be placed on the Easement Area and shall satisfy any lien placed of record due to the City's activities within ten (10) days after receiving notice of the filing of such lien. The Grantor shall be responsible for the routine maintenance of the surface of the Easement Area.
6. The Facilities shall be accessible for maintenance by the City at all times upon reasonable advance notice to the Grantor, except in the event of an emergency, in which case notice shall be provided as reasonably possible. The Grantor shall submit plans for approval to the City Engineer for any underground installation within the Easement Area, which approval shall not be unreasonably withheld, conditioned or delayed.
7. That the Grantor shall submit plans for all surface alterations of plus or minus 1 foot or greater within the limits of said Easement Area. Said alterations shall be made only with the approval of the City Engineer of the City of Franklin, which approval shall not be unreasonably withheld, conditioned or delayed.
8. The City and Grantor shall each use, and take reasonable measures to cause their employees, officers, customers, agents, contractors and assigns to use, the Easement Area in a reasonable manner and so as not to obstruct or otherwise use the Easement Area in a manner that would unreasonably interfere with the use thereof by the other party hereto or its employees, officers, customers, agents, contractors and assigns.

9. The City and Grantor each hereby waives all rights of subrogation that either has or may hereafter have against the other for any damage to the Easement Area or any other real or personal property or to persons covered by such party's insurance, but only to the extent of the waiving party's insurance coverage; provided, however, that the foregoing waivers shall not invalidate any policy of insurance now or hereafter issued, it being hereby agreed that such a waiver shall not apply in any case which would result in the invalidation of any such policy of insurance and that each party shall notify the other if such party's insurance would be so invalidated.
10. Either party hereto may enforce this easement by appropriate action, and should it prevail in such litigation, that party shall be entitled to recover, as part of its costs, reasonable attorneys' fees.
11. This easement may not be modified or amended, except by a writing executed and delivered by the City and Grantor or their respective successors and assigns. This easement shall be binding upon and inure to the benefit of the Grantor, the City and their respective successors and assigns, it being the intent that all of the covenants hereunder shall be "covenants running with the land."
12. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.
13. If any term or provision of this easement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this easement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by applicable law.
14. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin. This Easement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and same instrument.

(Signatures follow on next pages)

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seals

ON THIS DATE OF: _____, 2019

GRANTOR:

Zim-Mar Properties, LLC

By: _____
Michael E. Zimmerman, Co-Manager

By: _____
Greg Marso, Co-Manager

STATE OF _____
SS

COUNTY OF _____

Before me personally appeared on the _____ day of _____, 2019, the above named Michael E. Zimmerman, the co-manager of Zim-Mar Properties, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

NOTARY PUBLIC _____

My commission expires _____

STATE OF _____
SS

COUNTY OF _____

Before me personally appeared on the _____ day of _____, 2019, the above named Greg Marso, the co-manager of Zim-Mar Properties, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

NOTARY PUBLIC _____

My commission expires _____

CITY OF FRANKLIN

By: _____
Stephen R. Olson, Mayor

By: _____
Sandra L. Wesolowski, City Clerk

STATE OF _____

ss

COUNTY OF _____

On this _____ day of _____ 2019, before me personally appeared Stephen R. Olson and Sandra L. Wesolowski who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority and pursuant to Resolution File No. _____ adopted by its Common Council on _____, 20_____

Notary Public
My commission expires _____

This instrument was drafted by the City of Franklin.

Approved as to contents

Manager of Franklin Municipal Water Utility

Date: _____

Approved as to form only

City Attorney

Date: _____

Exhibit A

(Description of the Property)

Lot 2 of Certified Survey Map No. 9042 recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on June 14, 2018, as Document No. 10785127, being a part of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ and Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 9, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

Exhibit B

(Depiction of the Facilities)

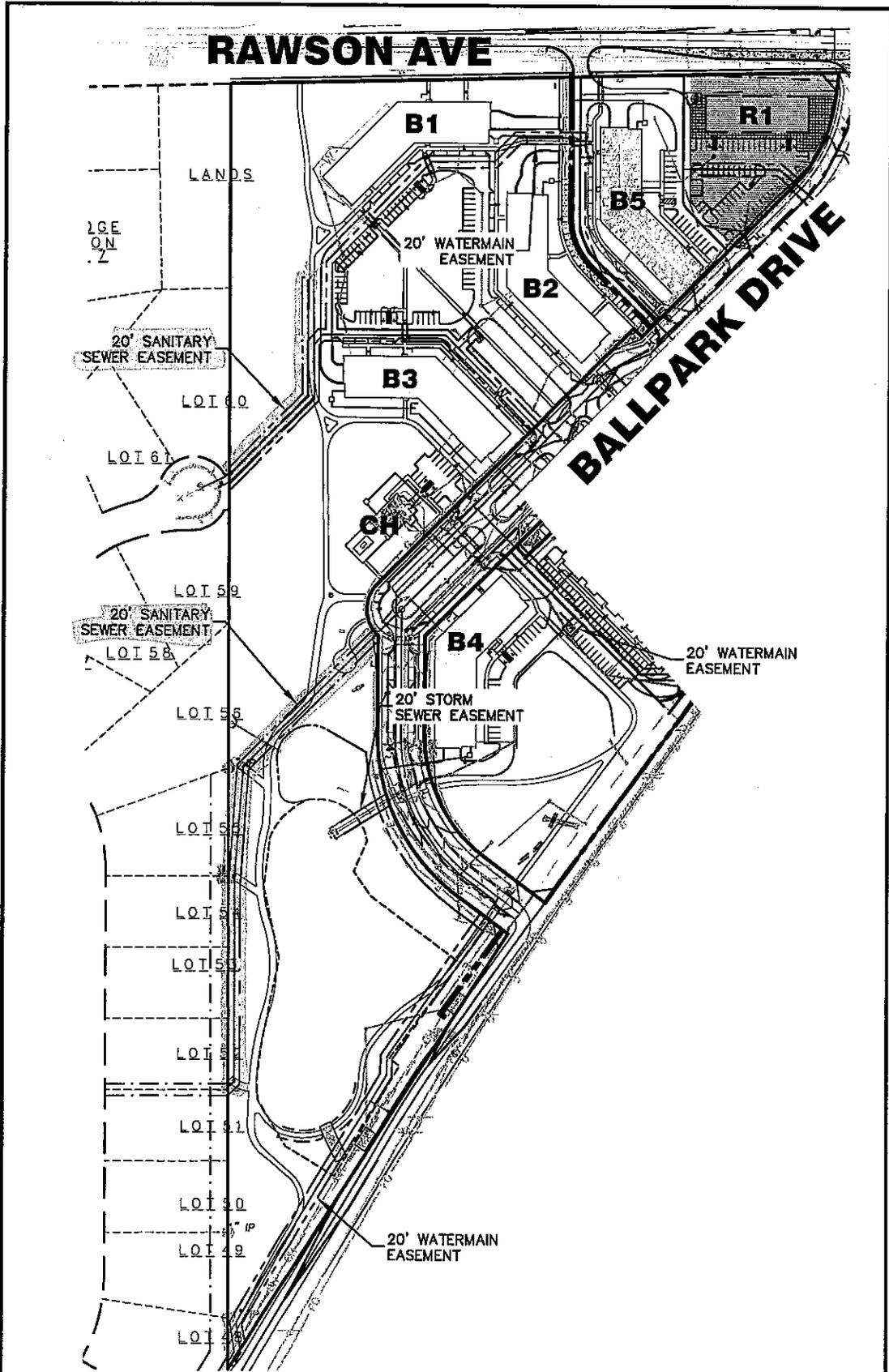


EXHIBIT B

VELO VILLAGE UTILITY EASEMENTS

<p>PREPARED BY: JSD Professional Services, Inc. <small>"Engineers • Surveyors • Planners"</small> N238 W1810 BUSSE ROAD, SUITE 100 WAUKESHA, WISCONSIN 53188 PHONE: (262)513-0666</p>	<p>PREPARED FOR: VELO VILLAGE APTS. MANDEL GROUP, INC 330 E. KILBOURN AVE. MILWAUKEE, WI 53202</p>	<p>PROJECT NO: 14-6548 FILE NO: B-* FIELDBOOK/Pg: - SHEET NO: 1 OF 1</p>	<p>SURVEYED BY: JSD DRAWN BY: DHS CHECKED BY: AWW APPROVED BY: JLJ</p>
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north

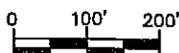
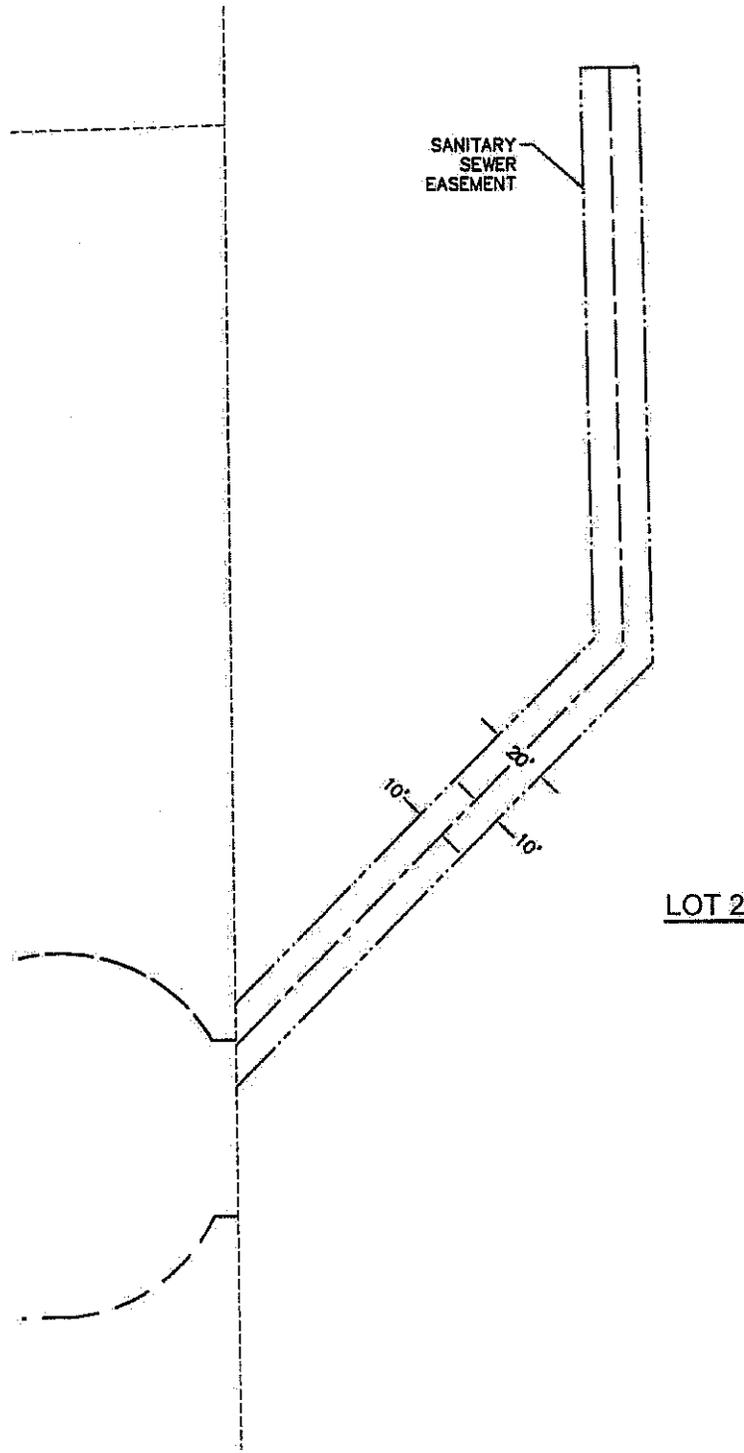

 SCALE: 1" = 200'

Exhibit C

(Description of Easement Area)

EASEMENT EXHIBIT

PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. 9042, BEING PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



File: R:\2014\14CS548\Belport Commons\14CS548 EXHIBIT EASEMENTS SOUTH REY 1.dwg Layout: SANITARY EASE 1 User: skrzynski Plotted: Jul 26, 2019 -- 8:58am

EASEMENT EXHIBIT

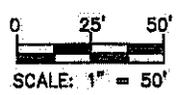
SANITARY SEWER EASEMENT

PREPARED BY:
JSD Professional Services, Inc.
Engineers • Surveyors • Planners
 4238 W1610 BUSSE ROAD,
 SUITE 100
 WAUKESHA, WISCONSIN 53188
 PHONE: (262)513-0686

PREPARED FOR:
 VELO VILLAGE APTS.
 MANDEL GROUP, INC
 330 E. KILBOURN AVE.
 MILWAUKEE, WI 53202

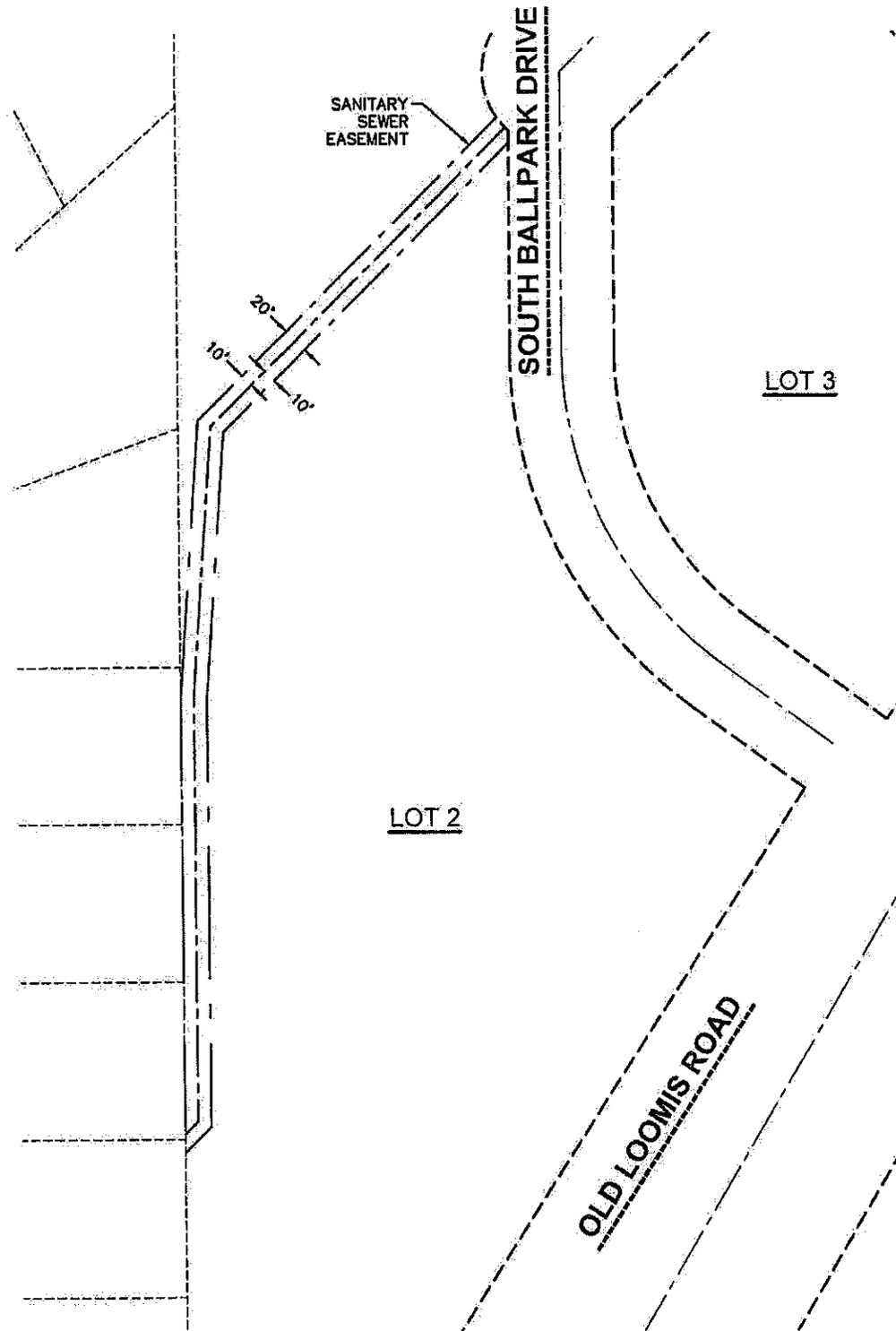
PROJECT NO: 14-6548
 FILE NO: B-0
 FIELDBOOK/PG: --
 SHEET NO: 1 OF 2

SURVEYED BY: JSD
 DRAWN BY: DHS
 CHECKED BY: AWW
 APPROVED BY: J.J.



EASEMENT EXHIBIT

PART OF LOT 2 OF CERTIFIED SURVEY MAP NO. 9042, BEING PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



File: R:\2014\1405548 Ballpark Commons\dwg\146548 EXHIBIT EASEMENTS SOUTH REV 1.dwg; Layout: SANITARY EASE 2 User: dspanier Plotted: Jul 24, 2019 - 2:21pm

EASEMENT EXHIBIT

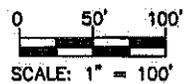
SANITARY SEWER EASEMENT

PREPARED BY:
JSD Professional Services, Inc.
Engineers • Surveyors • Planners
 14238 W1610 BUSSE ROAD,
 SUITE 100
 MILWAUKEE, WISCONSIN 53168
 PHONE: (262)513-0888

PREPARED FOR:
 VELO VILLAGE APTS.
 MANDEL GROUP, INC
 330 E. KILBOURN AVE.
 MILWAUKEE, WI 53202

PROJECT NO: 14-8548
 FILE NO: B-4
 FIELDBOOK/PG: -
 SHEET NO: 1 OF 2

SURVEYED BY: JSD
 DRAWN BY: DHS
 CHECKED BY: AWW
 APPROVED BY: J.L.J.



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<p>APPROVAL</p> <p><i>slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>August 6, 2019</p>
<p>REPORTS AND RECOMMENDATIONS</p>	<p>A Resolution Authorizing Certain Officials to Execute a Termination of Proposed CSM Easements (Velo Village at Ballpark Commons property) (Zim-Mar Properties, LLC, Owner)</p>	<p>ITEM NUMBER</p> <p><i>G.10.</i></p>

Annexed hereto are a copy of the Termination of Proposed CSM Easements and a resolution to authorize City execution of same. The purposes and reasons for such action are stated within the documents.

COUNCIL ACTION REQUESTED

A motion to adopt A Resolution Authorizing Certain Officials to Execute a Termination of Proposed CSM Easements (Velo Village at Ballpark Commons property) (Zim-Mar Properties, LLC, Owner).

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2019-_____

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE A
TERMINATION OF PROPOSED CSM EASEMENTS
(VELO VILLAGE AT BALLPARK COMMONS PROPERTY)
(ZIM-MAR PROPERTIES, LLC, OWNER)

WHEREAS, two previously approved certified survey maps for property within the Ballpark Commons development include depictions/descriptions of certain 'proposed' or 'existing' easements to provide for landscape bufferyards, water mains, sanitary sewers, conservation, storm sewers, stormwater management, vision corner triangles, shared access and other similar matters; and

WHEREAS, in the development process, certain depictions/descriptions have changed in part and/or become more accurate, and have been the subject of independent easements approved by the Common Council; and

WHEREAS, under the aforesaid circumstances, in acknowledgement of those more specific grants recorded between the City and Owner, it is reasonable now to terminate and release each of the proposed easements.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Termination of Proposed CSM Easements, in such form and content as annexed hereto, be and the same is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk be and the same are hereby authorized to execute and deliver such agreement.

BE IT FINALLY RESOLVED, that the City Clerk be and the same is hereby directed to obtain the recording of the Termination of Proposed CSM Easements in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

Introduced at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2019.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2019.

APPROVED:

Stephen R. Olson, Mayor

RESOLUTION NO. 2019-_____

Page 2

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

Termination of Proposed CSM Easements

Document Number

This Termination of Proposed CSM Easements (this "Termination") is made as of _____, 2019, by the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin (the "City").

WHEREAS, ZIM-MAR PROPERTIES, LLC, a Wisconsin limited liability company ("Owner") is the owner and holder of record title to certain real property as more particularly described on Exhibit "A" which is attached hereto and incorporated herein (the "Property");

WHEREAS, in order to subdivide the Property for purposes of Owner's planned development, Owner caused the Property to be submitted to (1) that certain Certified Survey Map No. 9078, recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on October 16, 2018, as Document No. 10820171 and (2) that certain Certified Survey Map No. 9042 recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on June 14, 2018, as Document No. 10785127 (collectively, the "CSMs") requiring certain approvals by the City in accordance with Wis. Stats. Chapter 236;

WHEREAS, in connection with such approvals, the City required such CSMs include and depict certain 'proposed' or 'existing' easements (without reference to recorded document number) to provide for landscape bufferyards, water mains, sanitary sewers, conservation, storm sewers, stormwater management, vision corner triangles, shared access and other similar matters (the "Proposed Easements") which burden the Property;

WHEREAS, the City and Owner have agreed upon and entered into independent agreements granting such easements for the benefit of the City on the terms and conditions as more particularly set forth in such agreements; and

WHEREAS, in acknowledgement of those more specific grants recorded between the City and Owner, the City now desires to terminate and release each of the Proposed Easements as more particularly set forth below.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual terms and conditions contained herein, and the grant of the specific easement agreements referenced above, the receipt and sufficiency of which are hereby acknowledged, the City hereby agrees and acknowledges that the Proposed Easements set forth on the CSMs shall be hereby terminated, released and shall be of no further force and effect.

Recording Area

Name and Return Address

City of Franklin
c/o City Clerk
9229 West Loomis Road
Franklin, Wisconsin 53132

Part of 754-9001-000; 754-9002-000; 754-9008-000

Parcel Identification Number (PIN)

This document was drafted by Candace D. Berg, Esq., c/o Foley & Lardner LLP, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

IN WITNESS WHEREOF, the City has set its hands and seal on date set forth above.

CITY OF FRANKLIN

By: _____
Stephen R. Olson, Mayor

By: _____
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN)
 SS
COUNTY OF MILWAUKEE)

On this _____ day of _____, 2019, before me personally appeared Stephen R. Olson and Sandra L. Wesolowski, who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority and pursuant to resolution file No. _____ adopted by its Common Council on _____, 2019.

NOTARY PUBLIC
My commission expires _____

Approved as to contents
Date:

City Engineer

Approved as to form only
Date:

City Attorney

Exhibit A

Description of the Property

Lot 3 of Certified Survey Map No. 9078, recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on October 16, 2018, as Document No. 10820171, being a redivision of Lots 3 and 4 of Certified Survey Map 9042 and lands in the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ and Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 9, Town 5 North, Range 21 East. Said land being in the City of Franklin, Milwaukee County, State of Wisconsin.

Lot 2 of Certified Survey Map No. 9042 recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on June 14, 2018, as Document No. 10785127, being a part of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ and Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 9, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

Lot 2 of Certified Survey Map No. _____ recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on _____, 2019, as Document No. _____, being a redivision of Lot 1 of Certified Survey Map No. 9042, being part of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 9, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

<p>APPROVAL</p> <p><i>slw</i> </p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>8/6/2019</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>Public School District Request for Exemption from Municipal Impact Fees</p>	<p>ITEM NUMBER</p> <p><i>6.11.</i></p>

At the Common Council Meeting of July 16, 2019, the Common Council received a request from Dr. Judy Mueller, District Administrator, and Mr. James Milzer, Director of Business Services, on behalf of the Franklin Public Schools requesting that the City of Franklin amend its municipal code to provide for an exemption from municipal impact fees for public school districts. The letter was referred to staff, and a copy is attached hereto for convenience. The purpose of this council action sheet is to provide background and context for the Common Council to provide direction as to further action, if any.

This topic was previously considered by the Common Council. At its meeting of November 5, 2013, the Common Council approved a resolution "directing staff to investigate and prepare an ordinance exempting public school districts from subjection to city-imposed impact fees as set forth in section 92-9 of the Municipal Code." Resolution 2013-6924, which is attached for your convenience, was unanimously approved.

Adopting the resolution established a requirement that a Public Facilities Needs Assessment be prepared pursuant to §66.0617(4) of the Wisconsin Statutes and that a draft ordinance be prepared. The Needs Assessment and ordinance were then subject to a public hearing. A copy of each is attached. (Note: The Needs Assessment and ordinance also addressed a separate impact fee issue not related to the school districts which was ultimately passed.)

The public hearing was held on January 7, 2014, and there was significant discussion and input provided at the public hearing. The portion of the ordinance related to this topic was laid over for the purpose of gathering additional information. The Council Action sheet from the January 21, 2014 Council meeting, which is attached for your convenience, provided the additional information requested. The Council was also provided a copy of a letter from the then Superintendent of the Franklin Public Schools supporting adoption (attached).

At the meeting of January 21, 2014, a motion to adopt an ordinance amendment that would exempt public school projects from municipal impact fees failed to receive a second. As such, no action was taken, the municipal code was not amended, and public school systems remain subject to the City's municipal impact fees.

If the Common Council wants to consider an amendment at this time, the statutorily-required steps must still be followed. The Public Facility Needs Assessment would need to be updated and, the ordinance amendment would need to be prepared, both of which should be relatively easy given the work previously completed. A quick review of state statutes would occur to confirm no changes

occurred that impact this topic (none are expected). After the documents were again completed, a public hearing would need to be noticed with the required 20-day notice period. Thereafter, the Common Council could consider adoption of the ordinance.

The following impact fee payments remain outstanding for the current school construction project. These fees were calculated based on the net addition of 13 new full-time staff and 87,420 square feet of new building area.

Park	N/A
Fire Protection	\$14,424.30
Law Enforcement	\$26,488.26
Library	N/A
Transportation	\$30,422.16
Water	\$18,248.00
Administrative Fee	<u>\$480.70</u>
TOTAL IMPACT FEES	\$90,063.42

Normally impact fees are paid prior to issuance of a building permit. The School District, however, was allowed to commence construction but were informed that the fees must be paid prior to occupancy. This was an administrative determination made at the time, not specifically provided for in the ordinance, to help ensure that our permit approval process requirements didn't keep the school district from finishing the school by the start of the school year. As such, the fees noted above remain due prior to occupancy of the school. It is worth noting that the ordinance previously not approved in 2014 did have a retroactive implementation date which would have resulted in the refunding of the impact fees that had been paid by the Franklin School District just prior to that time. Given the timing required for a public hearing notice, such an approach would have to be followed again should the Common Council wish to consider such an exemption.

Alternatively, the Council might consider authorizing a continuation of the deferral of the payment pending resolution on consideration of the ordinance (should the Council direct staff to undertake such steps). Note, however, that an allowance for continued deferral would take away the City's leverage in ensuring payment since occupancy would already have been granted, even if it were granted under a conditional occupancy permit, which would be the case if any fees related to the permit remained unpaid.

Action Options:

- 1) No action is required by the Common Council should they wish to retain the status quo.
- 2) If the Common Council wants to consider exempting schools districts from impact fees, the Common Council should direct staff to proceed with the same implementation steps previously considered in 2014.

The motion, for example, could be as follows: "A motion directing staff to investigate and prepare an ordinance exempting public school districts from subjection to City-imposed impact fees as set forth in Section 92-9 of the Municipal Code, including preparing a public facility needs assessment and holding a public hearing."

3) If the Common Council wanted to provide for a continued deferral of payment pending resolution on a potential ordinance change, the following would be added to the motion listed above in #2: "and authorizing continued deferral of payment of impact fees on the new Forest Park Middle School pending final resolution on the proposed ordinance with such deferral subject to issuance of only a conditional occupancy permit until such matter is resolved or such fees are paid."

COUNCIL ACTION REQUESTED

As determined by the Common Council.



FRANKLIN PUBLIC SCHOOLS

OFFICE OF THE
CITY CLERK
CITY OF FRANKLIN
2019 JUL -1 AM 11:14

To: Mayor Steve Olson
City of Franklin, Wisconsin

From: Dr. Judy Mueller, District Administrator, Franklin Public Schools
Mr. James Milzer, Director of Business Services, Franklin Public Schools

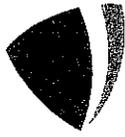
Date: June 28, 2019

The Franklin Public School District, as a taxing entity authorized by state statute, is requesting that the City of Franklin Common Council revise Section 92-9 of the municipal code pertaining to "Impact Fees" to extend the same impact fee exemption to public school districts as it does for all other taxing entities.

Chapter 92 by its definition of Institutional Development, exempts from impact fees, construction or modifications of improvements to real property by the United States, the State of Wisconsin, Milwaukee County, and the City of Franklin. All of these are governmental entities as is the Franklin Public School District. However, the school district is the only one that is not exempted. This inequity must be corrected by including the school district in this list.

Looking back at the history of this issue, in 1992 the Franklin Public Schools participated as a member of the Impact Fee Task Force. The Task Force was dealing with a specific problem. Residential growth was occurring so fast, and the timing of tax assessments on new homes was such that the new residents could enjoy many city services prior to paying property taxes. According to Bruce Kaniewski, AICP, who was the City Planner at the time, in his report entitled, Housing Diversity in Franklin, Wisconsin, he indicates that "impact fees were created in the city to offset the costs of providing additional capital improvements for the rapid residential growth, therefore lowering the cost impact of the growth upon the existing residential property owners, especially the reasonably priced homes in the city." The Franklin Public School District was affected the most by this development because, "the Franklin Public Schools attendance area was receiving the great majority of new housing starts with new children to educate without the benefit of a substantial non-residential tax base." At the time, "a \$2,000 per new single-family home impact fee was adopted for school capital improvements." However, the school district never collected any impact fee revenue as the State of Wisconsin decided that there was no impact to school districts from residential growth and essentially outlawed the collection of impact fees for school districts. How did we go from a City Task Force calculating that the school district shouldered the largest burden of the impact from residential growth, to the Franklin Public Schools being charged an impact fee for replacing an aging school?

At its most basic concept, municipal taxes are collected from all property owners to pay for all services provided by the city. School districts are tax exempt by state statute and similar to the city, do not pay taxes to any other taxing entity. The impact fee ordinance has lost its focus on taking care of the specific situation of rapid residential development to assigning blame for all additional costs to the city. Is the school district to blame for having additional students, or is the city to blame for allowing the development of all these new houses with additional children, or is the state to blame for not allowing the city to regulate growth? It becomes very complex when trying to figure out the root cause of the costs. Regardless, the city will continue to grow, and with the addition of residential impact fees, the tax base should be able to support the growth of the school district.



FRANKLIN

PUBLIC SCHOOLS

Looking at the specific impact fees that the city has asked the school district to pay, it is impossible to imagine that replacing an aging middle school with a new one would cost the city \$90,063.42. This includes \$30,422.16 for transportation although no new roads were needed. \$14,424.30 for fire protection although the new building by virtue of the fire protection, materials used in construction, and the design, is much less susceptible to fire than the old building. \$26,488.26 for law enforcement although there are no new buildings to respond to and the District currently pays the cost of a police officer that works in the high school and middle school. \$18,248 for water although the District paid for the water line to the school and pays the cost of the water that is used.

The last time that the Common Council considered exempting school districts from the impact fees from which it exempts all other taxing entities, the question of democracy was raised. The opinion was put forth by a citizen that it was not democratic for school districts to be exempt from impact fees like other taxing entities because there are multiple school district's within the city and some citizens do not get to vote on school referendums. Let's think about this concept. In a democracy, we elect representatives that make decisions which impact all the citizens but not necessarily equally. If the common council decides to make a repair to a road in a neighborhood on the west side of the city, the people on the east side may never use that road, but they paid for it in their taxes. Just because school districts must by law, hold referendums, is no reason to treat those decisions any differently than when the common council decides to expend funds without a referendum. It is true that municipal boundaries do not always match those of school districts and that this creates some unique situations. Take for example the City of Franklin residents that live in the Oak Creek-Franklin School District. It has been suggested that they should not pay for any cost the city incurs related to the Franklin Public Schools even though it is part of the city that they live in. Consider though, that those residents can vote to approve a referendum for the Oak Creek-Franklin School District and yet they do not pay taxes to the City of Oak Creek where the development takes place and where the impact of the school construction, if any, would be incurred. Essentially they can approve the referendum but not pay for the infrastructure costs if there are any. This is why city services should be paid for by all of the citizens within the city boundaries.

Our national and state democracies have created school districts which the elected representatives have made tax exempt. This was done because the school districts provide services to the community and are meant to be supported by the community. The truth is that in our democracy we do not get to decide individually which services we would like to pay for or only pay for the services we use. As an example, if we do not use the state park system, we still have to pay for it in our state taxes. All citizens of a city pay taxes for the services that the city provides regardless of whether or not they use those services. Our democracy is built on electing representatives that decide on the services that will be provided, and then collecting the funds to pay for those services that provide for the greater good.

In summary, the Franklin Public Schools is a tax exempt entity that provides for the greater good in the City of Franklin and it should be exempt from impact fees.

RESOLUTION NO. 2013-6924

A RESOLUTION DIRECTING STAFF TO INVESTIGATE AND PREPARE AN ORDINANCE
EXEMPTING PUBLIC SCHOOL DISTRICTS FROM SUBJECTION TO CITY-IMPOSED IMPACT
FEES AS SET FORTH IN SECTION 92-9 OF THE MUNICIPAL CODE

WHEREAS, the City of Franklin previously adopted Impact Fees related to park, playground, and other recreational facilities; fire protection and emergency medical facilities; law enforcement facilities; transportation facilities; and the Southwest Sanitary Sewer Service Area extension facilities that require developers to pay for the capital costs that are necessary to accommodate land development; and

WHEREAS, public school districts function similar to units of local government having the ability to levy property taxes and requiring the election of resident citizens to serve on the School Board and other units of government, specifically the United States, the State of Wisconsin, Milwaukee County, and the City of Franklin are exempted by local definition from paying such impact fees as may apply to institutional development; and

WHEREAS, any impact fee charged to a public school district would effectively be passed through to all of the property tax payers of the district thereby diluting the intended application of such fees upon developers, and, similarly, those land developers which cause growth and development of the public school district are already subject to impact fees through application of residential development impact fee rates; and

WHEREAS, a public school district may appeal the imposition or amount of imposition of an impact fee but failure to appeal or differences in the conclusions of such appeals could lead to inconsistent application of impact fees upon development by public school districts, which development should all be treated in a similar manner.

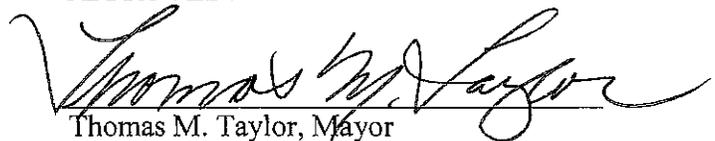
NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Franklin does hereby direct the Director of Administration, with the advice and direction of the City Attorney, to prepare an ordinance revision to Section 92-9 "Impact Fees" to provide for exemption of public school districts from application of impact fees applicable to institutional or non-residential development.

BE IT FURTHER RESOLVED that, unless otherwise restricted by law, such ordinance shall be retroactive to January 1, 2013, and shall provide that or allow for any such applicable impact fees collected since that date from or on behalf of a public school district be refunded.

Introduced at a regular meeting of the Common Council of the City of Franklin this 5th day of November, 2013 by Alderman Skowronski

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 5th day of November, 2013.

APPROVED:


Thomas M. Taylor, Mayor

ATTEST:


Sandra L. Wesolowski, City Clerk

AYES 6 NOES 0 ABSENT 0

**AMENDMENT TO THE 2002
IMPACT FEE STUDY
&
THE 2004 IMPACT FEE UPDATE
-
DECEMBER 2013**

**CITY OF FRANKLIN
MILWAUKEE COUNTY, WISCONSIN**

Prepared By:
Department of Administration,
City of Franklin, Wisconsin

INTRODUCTION

“In 2002, the City of Franklin hired Ruckert & Mielke, Inc. to prepare a public facilities needs assessment and impact fee study (2002 Impact Fee Study) for the construction of law enforcement and municipal court facilities and fire protection and emergency medical facilities, as well as library, park and recreation, transportation system and water system facilities. The needs assessment was prepared during February and March of 2002 in accordance with Wisconsin Statutes 66.0617, formerly Wisconsin Statutes 66.55, and was presented to the City on April 16, 2002. The City held a public hearing on the proposed impact fee ordinance on May 7, 2002. On May 7, 2002, the City adopted the impact fee ordinance imposing total impact fees in the amount of \$3,809. Since then a 2004 amendment updated the law enforcement/municipal court, and fire protection and EMS impact fees. Within the 2004 update most of the analyses remained unchanged with the exception of the development projections, land use projections, and a few of the estimated project costs for the police and fire facilities.” [Excerpt from the “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013, as prepared by Ruckert & Mielke, Inc.”]

Additionally, in 2013 Ruckert & Mielke, Inc. prepared an “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013, which updated the original needs assessment to revise the land use, population, and development projections and which updated the park impact fee project lists, costs, and identified any new park projects or improvements that may be required due to new development. It then applied that revised information to an updated calculation of the parks, playgrounds, and other recreational facilities impact fee. The amendment was supplementary to and intended to be read in conjunction with the 2002 Impact Fee Study, and the 2004 amendment. The amendment acted as an updated public facility needs assessment for the Park and Recreation Facilities.

The purpose of this update is to address two items. First, addressed herein as Part 1, at the direction of the Common Council in accordance with Resolution 2013-6924, adopted November 5, 2013, the Common Council wishes to consider the exemption of public schools from application of each of the various impact fees. Second, addressed herein as Part 2, based upon the results of the 2013 amendment to the impact fee for parks, playgrounds, and other recreational facilities, it is reasonable to suspend for 2014 the annual increase in impact fee rates as provided for by §92-9 L of the Municipal Code of Franklin, Wisconsin. This amendment is supplementary to and intended to be read in conjunction with the 2002 Impact Fee Study and the 2004 and 2013 amendments. This amendment, in conjunction with the documents previously referenced, acts as an updated public facility needs assessment.

METHODOLOGY

“The public facilities needs assessment prepared in 2002 included the following, as required by Wisconsin Statutes 66.0617:

1. An inventory of existing public facilities including an identification of existing deficiencies in the quantity or quality of those public facilities, for which it was anticipated that an impact fee would be imposed.

2. An identification of new public facilities or improvements or expansions of existing public facilities that will be required because of new land development. The identification was based upon an explicitly identified level of service and standards.
 3. A detailed estimate of the capital costs of providing the new public facilities or improvements or expansion previously mentioned.
 4. A computation of the cost per capita of providing the new public facilities required because of new land development, and a recommended schedule of impact fees, including an estimate of the effect of imposing impact fees on the availability of affordable housing within the City.”
- [Excerpt from the “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013 as prepared by Ruckert & Mielke, Inc.”]

As noted in the introduction, the 2013 amendment updated such sections in relation to the parks, playgrounds, and other recreational facilities impact fee and calculated a new parks, playgrounds, and other recreational facilities impact fee. Specifically, the amendment noted that it “updated the original needs assessment to revise the land use, population and development projections and update the park impact fee project lists, costs and identify any new park projects or improvements that may be required due to new development.”

As such, this additional amendment to the 2002 Impact Fee Study and the 2004 Impact Fee Update, along with recommendations included in the September 2013 amendment, as adopted in October of 2013, incorporates all of the information required of a Public Facility Needs Assessment as identified in Wis. Stats 66.0617.

PART 1. EXEMPTION OF PUBLIC SCHOOLS FROM SUBJECTION TO IMPACT FEES.

As noted above, on November 5, 2013, the Common Council adopted Resolution No. 2013-6924, incorporated below, which directed that an ordinance be prepared for consideration to “provide for exemption of public school districts from application of impact fees applicable to institutional or non-residential development.”

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

RESOLUTION NO. 2013-~~6924~~

A RESOLUTION DIRECTING STAFF TO INVESTIGATE AND PREPARE AN ORDINANCE EXEMPTING PUBLIC SCHOOL DISTRICTS FROM SUBJECTION TO CITY-IMPOSED IMPACT FEES AS SET FORTH IN SECTION 92-9 OF THE MUNICIPAL CODE

WHEREAS, the City of Franklin previously adopted Impact Fees related to park, playground, and other recreational facilities; fire protection and emergency medical facilities; law enforcement facilities; transportation facilities; and the Southwest Sanitary Sewer Service Area extension facilities that require developers to pay for the capital costs that are necessary to accommodate land development; and

WHEREAS, public school districts function similar to units of local government having the ability to levy property taxes and requiring the election of resident citizens to serve on the School Board and other units of government, specifically the United States, the State of Wisconsin, Milwaukee County, and the City of Franklin are exempted by local definition from paying such impact fees as may apply to institutional development; and

WHEREAS, any impact fee charged to a public school district would effectively be passed through to all of the property tax payers of the district thereby diluting the intended application of such fees upon developers, and, similarly, those land developers which cause growth and development of the public school district are already subject to impact fees through application of residential development impact fee rates; and

WHEREAS, a public school district may appeal the imposition or amount of imposition of an impact fee but failure to appeal or differences in the conclusions of such appeals could lead to inconsistent application of impact fees upon development by public school districts, which development should all be treated in a similar manner.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Franklin does hereby direct the Director of Administration, with the advice and direction of the City Attorney, to prepare an ordinance revision to Section 92-9 "Impact Fees" to provide for exemption of public school districts from application of impact fees applicable to institutional or non-residential development.

BE IT FURTHER RESOLVED that, unless otherwise restricted by law, such ordinance shall be retroactive to January 1, 2013, and shall provide that or allow for any such applicable impact fees collected since that date from or on behalf of a public school district be refunded.

Introduced at a regular meeting of the Common Council of the City of Franklin this 5th day of November, 2013 by Alderman Skowronski

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 5th day of November, 2013.

APPROVED:



Thomas M. Taylor, Mayor

ATTEST:



Sandra L. Wesolowski, City Clerk

AYES NOES ABSENT

Based on communication from Ruekert & Mielke, the City's impact fees, as currently established and applicable on a non-residential or institutional development basis, would be applied to schools "expanding for growth of student population." They noted that "if they are performing a renovation project to improve an older school or replace an outdated school this school would not be subject to impact fee charges unless there is an enlargement in student population or staff."

Upon inquiry, however, Ruekert & Mielke did not indicate that they specifically anticipated impact fee revenue to be generated by new public school development. A review of the 2002 Impact Fee Study does show that the "Governmental and Institutional" land use category is considered relative to existing and planned land uses and construction of additional floor area. This category specifically notes that it "Includes Institutional District." This distinction is relevant because the Institutional District has a broad range of facilities that are considered permitted or special uses within the district.

Section 15-3.0312 I-1 of the Unified Development Ordinance indicates that the "Institutional District is intended to: 1. Eliminate the ambiguity of maintaining, in unrelated use districts, areas which are under public or public-related ownership and where the use for public, or quasi-public

purpose, is anticipated to be permanent.” As noted above, however, the district is not limited to such uses, the Institutional District has a broad range of facilities that are permitted or special uses including, but not limited to, the following: utilities, lumber yards, hardware stores, nurseries, gift shops, funeral services, dance studios, theatrical producers and services, various health care services and facilities, and convenience stores (Per Table 15-3.0603 of the Unified Development Ordinance). Additionally schools, governmental buildings, religious organizations, and libraries are included as permitted or special uses in this district. As a conclusion, it is easy to see that construction of additional square footage of floor space in the Institutional District, as contemplated in the Impact Fee Study, does not limit itself to governmental buildings, churches, schools, and the like. The additional square footage of floor space includes all of these potential other permitted and special uses that could occur with the Institutional District and which would logically be subject to impact fees.

That being the case, it is reasonable to conclude that the Impact Fee Study did not specifically consider and incorporate anticipated revenue from development of public schools.

There is also a logical consideration for the exemption of public schools from consideration of the application of impact fees. As noted by the Common Council in Resolution 2013-6924, “any impact fee charged to a public school district would effectively be passed through to all of the property taxpayers of the district thereby diluting the intended application of such fees upon developers, and, similarly, those land developers which cause growth...” Therefore, the intended cost of new development is passed directly to those causing new development under the ordinance if public school development is exempted, provided such revenue is not anticipated. In such an instance, the impact fee rates will be set at levels necessary to generate the necessary impact fee revenue from only those to whom the fee directly applies. They would not be set at a reduced level that incorporates impact fee revenue paid indirectly by non-new-growth property taxpayers of the school district. It is worth noting repeating, therefore, that the current fees as previously set were not set too low, if schools are now exempted, because there is no evidence that the anticipated revenue levels specifically anticipated or included a revenue stream from public school development.

In addition to the logical argument presented above, public school district’s share a similarity with other organizations already excluded from City of Franklin impact fees levied on institutional development. Chapter 92 provides in the definition of “Institutional Development” that “The construction or modification of improvements to real property by the United States, the State of Wisconsin, Milwaukee County and the City of Franklin are not institutional development for the purposes of this section.” The reasoning for this exemption is not identified, but each of these entities obtains a substantial portion of its operating revenues through taxation. A characteristic a public school district shares, whereas most developers are not taxing bodies.

Given the above discussion, there is no basis to conclude that exclusion of public schools from application of the impact fees would impact the conclusions reported in the Impact Fee Study or its subsequent update or amendment. Additionally, at the time of the preparation of this amendment, no clear statutory prohibition against an exemption of public schools from application of an impact fee was identified by the City Attorney.

PART 2. SUSPEND, FOR 2014, THE ANNUAL INCREASE IN IMPACT FEE RATES.

Section §92-9 L. of the Municipal Code of Franklin provides that “The impact fees imposed under this section shall be increased annually at the rate of 5%, with the adjustment effective January 1 of each year.” The ordinance does not specify the intent of this annual increase, but it is clearly understood from the historical record that this annual increase serves to ensure that the fee remains up-to-date with costs and inflationary factors that will impact the expenditure side of impact fee related projects.

As noted in the “Introduction” above, in 2013 Ruckert & Mielke, Inc. prepared an “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013. That study updated the original needs assessment to revise the land use, population and development projections. It also updated the park impact fee project lists, costs and identified any new park projects or improvements that may be required due to new development. It then applied both sets of revised information to an updated calculation of the parks, playgrounds, and other recreational facilities impact fee. The end result after amendment to the ordinance was a reduction in the parks, playgrounds, and other recreational facilities impact fee from \$3,799 to \$2,816 per dwelling unit for single-family or two-family residential development and from \$2,534 to \$1,942 per dwelling unit for multi-family residential development.

Both sets of adjustments impacted the final rates as determined in the review of the parks, playgrounds, and other recreational facilities impact fee. Obviously the final calculated fee was impacted by the park development specific data and plans. The land use, population and development projections, however, will have broader implications across all the impact fee types included in Section §92-9 of the municipal code. An amendment to each of these sections is currently contracted for and underway with Ruckert & Mielke, Inc. The parks-related fee was simply accelerated due to a specific project need; otherwise all impact fee areas would have been addressed within one amendment.

The updating of the population projections, for example, “are extremely important in the calculation of impact fees as future development is one of the driving factors in the impact fee calculation.” [Excerpt from the “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013.] At the same time, the Common Council has an obligation to consider and determine that a proposed impact fee bears a rational relationship to the need for new, expanded and improved public facilities. Similarly, Section §92-9 L. of the Municipal Code anticipates that the Common Council needs to determine “that the amount of fees imposed continues to represent an equitable and reasonable apportionment of the cost of public improvements and requirements generated by land development.” To that end, it provides further that “Upon such considerations and for such purpose, the Common Council may make reasonable adjustments to the amount of such fees...”

Given the requirements of the statute and the expectation that the Common Council may make reasonable adjustments to the amount of such fees and in consideration of the results incorporated into the “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013, as prepared by Ruckert & Mielke, Inc., it is reasonable for the Common Council to conclude that the annual increase in the impact fee rates should be suspended for 2014.

The significant reduction in the park impact fee following the recent amendment suggests that it is possible that the remaining impact fee rates will experience a need for a reduction when the study is completed. The parks study, however, did not parse out the impact of each factor on the final rate adjustment. As such, one cannot conclude the degree to which the rate change was caused by adjustments to population, land use, and development rates; nor can one conclude exactly how other factors may influence the other impact fee rates. Even though a final determination cannot be reached until an amendment for the remaining impact fees is completed in early 2014, the parks impact fee amendment results are sufficient to warrant suspending the automatic annual increase in rates pending the final results of the outstanding study. In this regard it is more reasonable to err on the side of undercharging for a brief period than it is to increase the rate on January 1st only to, potentially, reduce it shortly thereafter.

In fact, in the “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013, Ruckert & Mielke notes that “the City and R/M came to an agreement that all future yearly fee escalations shall be based upon the Milwaukee CPI (Consumer Price Index).” Ruckert & Mielke suggested this course of action as a step in ensuring that “the most proper and justifiable impact fee is still in place” going forward. The park impact fee rate, therefore, was already set anticipating a lower annual rate increase than the 5% currently established in the municipal code.

In conclusion, pending completion of the impact fee review currently underway, the results of the park, playgrounds, and other recreational facilities impact fee amendment should be headed, and the annual increase in impact fee rates should be suspended for 2014.

IMPACT ON AFFORDABLE HOUSING

The exemption of public schools from application of impact fees will not impact housing affordability from that as discussed in the prior study, update, or amendment because, as discussed above, it should have no impact on the impact fee rates themselves.

The suspension of the annual, automatic 5% rate increase will not negatively impact housing affordability from that as discussed in the prior study, update, or amendment because, as discussed above and for the same reason as referenced in the “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013, proposing to eliminate the 2014 annual rate increase effectively decreases the 2014 fees and fee rates, and, as such, there should be no negative effect on housing affordability.

APPROVAL 	REQUEST FOR COUNCIL ACTION	MEETING DATE 01/21/2014
REPORTS & RECOMMENDATIONS	An Ordinance to Amend §92-9 of the Municipal Code Pertaining to Impact Fees for the Purpose of Exempting Public Schools from Application of Each of the Various Impact Fees	ITEM NUMBER G.4.

This item was laid over from the Common Council meeting of January 7, 2014 for the purpose of gathering additional information. The following items address the requested information.

1. Dr. Patz indicates that "In the referendum process, after final design (for both questions on the referendum ballot) etc., an amount of \$50,000 was budgeted for building permit fees with the anticipation that those fees would be waived." In conversation he also noted that the District did not distinguish impact fees from plan review or construction permitting fees, all of which were treated as one issue.
2. Dr. Patz also indicated that "Impact fees were not something that the construction firm or architects have dealt with in any of their school projects.... \$50,000 was budgeted with the anticipation of fees being waived." He noted that the "Fee amount of \$50,000 was budgeted but was to be taken out of the project's total budget."
3. Bill Mielke clarified the position attributed to him relative to the legality of exempting schools from the application of impact fees. Mr. Mielke clarified that he had explained that the Wisconsin Statutes themselves did not have a provision that automatically exempted public schools or public buildings from the application of impact fees, nor do they specifically prohibit such an exemption. Mr. Mielke indicated that his statement, therefore, was intended to relay that a community must then provide for any such exemption within their local ordinance, providing that the municipality's attorney saw no obstacles under the law and further provided that such exemption continues to meet any tests or requirements of the law.
4. Following is the total amount of impact fees collected from the Franklin School District during 2013.

Franklin Public Schools Impact Fees Paid in 2013

Area		Auditorium & Classrooms	Concessions & Restroom	
Receipt No.		88338	87167	Total
4294	Water	44,325.00	3,940.00	48,265.00
4295	Transportation	20,061.00	921.00	20,982.00
4296	Fire	9,496.00	436.00	9,932.00
4297	Law Enforcement	17,453.00	801.00	18,254.00
TOTAL		\$91,335.00	\$6,098.00	\$97,433.00
4293	Admin	\$385.00	\$110.00	\$495.00

5. Each impact fee is calculated in accordance with the provisions of the ordinance. Per sections 92-9 D. (f), E. (f), and G. (f), the fire protection and emergency medical facilities, the law enforcement facilities, and the transportation facilities impact fees, respectively, are calculated for institutional development by multiplying the square foot of building space by the applicable annually adjusted rate per square foot. The water impact fee is generally calculated via two different methods of applying estimated average daily water usage, both of which are provided for in the ordinance (92-9 L. (2)(b)[1] and [2]). The numbers are compared as a double check of their validity. In this instance, the lower of the two was used. The park, playground and other recreational facilities impact fee only applies to residential dwelling units and was not charged in this instance. Please note that the "Admin Fee" is not actually an impact fee, it is a separate development fee established within the UDO intended to be used to provide funding for updating the impact fee studies, which is the reason we list it with impact fee charges and account for it in the Development Fund. Nonetheless, it is not an impact fee itself.

In addition to the requested information, the following information is provided on the public hearing comments. The public hearing raised a concern that might be perceived to not have been addressed within the report, namely that it is a matter of democracy and that the failure of a public school district to pay impact fees spreads that cost to residents of other school districts who had no say in the matter, thereby making such individuals, in some way, second-class citizens. This position is not a fair or accurate assessment of topic at hand because the argument has an inherent assumption which becomes its fatal, logical flaw. Arguing that exempting public schools spreads the cost of the fee to other residents presumes that the basis of the fee specifically anticipated revenue from school development projects in the first place. In reality, absent the basis of the rate calculation specifically anticipating impact fee revenue from public schools in its calculations, there is no revenue stream to replace – no cost to spread – if public schools are subsequently determined to be exempt. As noted in the report, "Ruekert & Mielke did not indicate that they specifically anticipated impact fee revenue to be generated by new public school development." As such, the information provided in the report makes it clear that the final rates previously calculated would not have changed had a public school exemption been in place prior to calculation of the rates. Therefore, there would be no spreading of the costs to others. The impact fee cannot spread to others what was not expected in the calculations in the first place. It is a fine, but important, distinction, but the result is that no second class citizens are created because no fee is being spread to other individuals by the action under consideration.

In fact, as noted in the report, the exact opposite is true. If impact fees are applied to public schools those impact fees would be passed through to all property taxpayers of the district, not just those who are the intended target of the impact fees under the ordinance and under the State Law. The report noted the following: "any impact fee charged to a public school district would effectively be passed through to all of the property taxpayers of the district thereby diluting the intended application of such fees upon developers, and, similarly, those land developers which cause growth..."

The attached ordinance has been revised to remove the language that was approved at the last meeting relative to suspending the automatic rate increase.

COUNCIL ACTION REQUESTED

Motion to adopt Ordinance No. 2014-____, "An Ordinance to Amend §92-9 of the Municipal Code Pertaining to Impact Fees for the Purpose of Exempting Public Schools from Application of Each of the Various Impact Fees".



City of Franklin

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

ORDINANCE NO. 2014-_____

AN ORDINANCE TO AMEND §92-9 OF THE MUNICIPAL CODE
PERTAINING TO IMPACT FEES FOR THE PURPOSE OF EXEMPTING PUBLIC SCHOOLS
FROM APPLICATION OF EACH OF THE VARIOUS IMPACT FEES

WHEREAS, the Common Council adopted Ordinance No. 95-1341, An Ordinance Establishing Impact Fees Upon Land Development, on April 25, 1995 and the Franklin Impact Fee Task Force Impact Fees Needs Assessment – 1995 Report to the Mayor and Common Council dated March 21, 1995 recommended the periodic review by the City of impact fees established, especially if the factors affecting the volume and impact of growth change significantly; and

WHEREAS, such fees having been enacted and amended, respectively, pursuant to Ordinance No. 2002-1712, An Ordinance To Amend §92-9 of the Municipal Code Pertaining to Impact Fees, such Ordinance having been adopted pursuant to a public facility needs assessment, as contemplated by §66.0617(4), Stats., as entitled “Impact Fee Study” and as prepared by Ruekert/Mielke and dated April/2002; and

WHEREAS, such Ordinance and fees having been additionally amended in accordance with the Wisconsin Statutes and the actions of the Common Council of the City of Franklin; and

WHEREAS, a public hearing was held before the Common Council on January 7, 2014, to receive public input upon the proposed changes to the impact fee ordinance as set forth in the study amendment entitled “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update - December 2013;” and

WHEREAS, notice of the aforesaid public hearing was published as a Class I Notice under Ch. 985, Stats., which notice specified that the amendment to the public facility needs assessment was available for public viewing in the office of the City Clerk; said needs assessment having been so available in such office for at least 20 days prior to the public hearing; and

WHEREAS, adoption of this amendment to §92-9 of the Municipal Code pertaining to Impact Fees will have the effect of exempting public schools from application of each of the various impact fees, retroactive to January 1, 2013, which will, in part, eliminate the indirect pass through of such impact fee charges to property taxpayers of a public school system who would otherwise not be subject to such an impact fee; and

WHEREAS, the Common Council having found and determined that the proposed impact fees it considered for adoption by way of amendment to §92-9 of the Municipal Code bear a rational relationship to the need for new, expanded and improved public facilities required to serve land development; that such fees, on the basis of the prior completed facility needs analysis and as addressed by the proposed amendment, do not exceed the proportionate share of the capital costs that are required to serve land development as compared to existing uses of land within the City; that the

length of the planning period and update period are reasonable periods of time under all of the circumstances presented upon which to base, calculate, impose, and expend the proposed impact fees; and that the proposed impact fees are based upon reasonable estimates of the capital costs for new, expanded or improved public facilities and do not include amounts necessary to address existing deficiencies in public facilities.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1: §92-9 K. of the Municipal Code of Franklin, Wisconsin, be amended by appending to the end thereof the following:

“Effective January 1, 2013, public schools are exempt from application of each of the various impact fees set forth above.”

SECTION 2: It is the intent of the retroactive effective dates herein that any such impact fee paid in excess of the required amount, after consideration of the applicable effective date herein, shall cause reimbursement of any excess portion of such payments made.

SECTION 3: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION 4: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 5: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this 21st day of January, 2014, by Alderman_____.

PASSED AND ADOPTED at a regular meeting of the Common Council of the City of Franklin this 21st day of January, 2014.

APPROVED:

Thomas M. Taylor, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

January 13, 2014

CITY OF FRANKLIN

2014 JAN 16 AM 11:18



Dear Mayor Taylor,

I would ask that this letter serve as a formal request to have the Franklin City Council *approve* the resolution that would waive the Impact Fees assessed to the Franklin Public Schools related to the current construction project underway at Franklin High School. We would ask that the fees be retroactively returned to the School District.

In previous conversations with you, I expressed our sincere desire to create a positive working relationship with the City and you have been most receptive and accommodating throughout all of our conversations and requests. I believe the positive relationship that has been developed between us extends far beyond the City and School District. The community's passage of the referendum to improve our schools is a testament to their support for our School District and the importance of the School District to the City of Franklin. We take great pride in our schools and know that the community also shares in this belief.

It is also our belief that when the current ordinance was created there was no intention for this rule to be applied to the School District. Since we are like-minded governmental entities, the needs and expectations of our constituents are very much aligned with our purpose. The current Ordinance states that any new development(s) applies to business and residential properties, to which the School District is identified as neither of these. I believe individuals who served on the committee which developed this ordinance in the early 90's can attest to it's intent in support of the District's position and request.

When our construction project is completed it will bring an everlasting sense of pride to the City of Franklin and the students who attend our schools. Our request to have fees waived was also done in Greendale, Brown Deer and numerous other communities throughout the state. The partnership that exists in those communities is an example of two significant entities working together for the betterment of our community.

Our schools have been, and will continue to be, accessible to our community and utilized for the benefit of our residents and students alike. We sincerely hope the Council will support the Resolution to waive the Impact Fees and continue to support Franklin Public Schools.

Sincerely,

Dr. Steve Patz, Superintendent

Cc: Franklin Common Council Members

APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE August 6, 2019
Reports & Recommendations	UPDATED PLAN TO ADDRESS ROAD REPAIRS IN THE RAWSON HOMES NEIGHBORHOOD AREA	ITEM NO. 6.12.

BACKGROUND

The Rawson Homes neighborhood area (vicinity of W. Rawson Avenue, S. 36th Street and S. 37th Place) is completing construction with a water main relay and drainage work. Before the projects started, it was anticipated that the watermain trenches would be patched, allowed to settle over the winter, and defects over the trenches would be addressed in 2020 as the entire project is addressed in the 2020 road program. Unfortunately, the pavement base under the roads in this neighborhood completely fell apart once the water trench was opened. There are some sections that move several inches when a fully loaded dump truck passes over them.

On July 2, 2019, Common Council directed Staff to further refine an action plan and solicit contractors as needed to address roads in the Rawson Homes neighborhood area. Bids were received from contractors and award of that bid appears elsewhere on this agenda.

ANALYSIS

Since July 2, 2019, Staff has refined the budget on better estimates and firm bids and quotes. Change orders for the MMSD and water utility projects are forthcoming at a future Common Council meeting. Note that there is significant commitment by DPW and Utility Staff and resources to complete this project.

For 2019-

- \$70,000 stone needed to mix with asphalt millings in undercutting.
- \$212,685.00 Stark Pavement bid for new asphalt binder course.
- \$40,000 Sewer Rehab fund to repair manholes.
- **\$322,685.00 Total Cost.** Funded by:
 - \$7,395 from future change order from MMSD PPII's project
 - \$158,134.35 from future change order from water main relay project
 - \$40,000.00 from Sanitary Sewer Rehab Budget
 - \$117,155.65 from Street Improvement Fund

For 2020-

- \$10k+/- spot repair any locations that have settlement over trenches.
- \$20k+/- asphalt for driveways paved by DPW.
- \$150k +/- asphalt needed for 2" surface. This work could be bid out with the road program.
- Net \$180k+/- needed for next year.

FISCAL NOTE

A budget amendment appears elsewhere on this agenda.

OPTIONS

- A. Acknowledge the desired plan and approve budget amendment and award bid found elsewhere on this agenda. Or
- B. Refer back to Staff with further direction.

COUNCIL ACTION REQUESTED

For discussion purposes only.

Engineering: GEM

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