

CITY OF FRANKLIN
SPECIAL COMMON COUNCIL MEETING
FRANKLIN CITY HALL – COMMON COUNCIL CHAMBERS
9229 WEST LOOMIS ROAD, FRANKLIN, WISCONSIN
AGENDA*
THURSDAY, DECEMBER 12, 2019 AT 5:30 P.M.

- A. Call to Order and Roll Call.
- B. Citizen Comment Period.
- C. Tax Incremental District No. 5 Ballpark Commons development project Agreement Regarding Impact Fees and Irrevocable Payment Bond (continuation of the December 3, 2019 Common Council meeting agenda item F.13., Acceptance of Developer Guarantee as Payment of Water Impact Fees Upon Issuing Building Permit in Compliance with Wisconsin State Statute § 66.0617(6)(g) but in Conflict with Franklin Ordinance 92-9. and the Form Thereof).
- D. Adjournment.

<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE</p> <p style="text-align: center;">December 12, 2019</p>
<p style="text-align: center;">REPORTS AND RECOMMENDATIONS</p>	<p style="text-align: center;">Tax Incremental District No. 5 Ballpark Commons development project Agreement Regarding Impact Fees and Irrevocable Payment Bond (continuation of the December 3, 2019 Common Council meeting agenda item F.13., Acceptance of Developer Guarantee as Payment of Water Impact Fees Upon Issuing Building Permit in Compliance with Wisconsin State Statute § 66.0617(6)(g) but in Conflict with Franklin Ordinance 92-9. and the Form Thereof)</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>C.</i></p>

Attached as the last of the materials attached hereto is a draft Agreement Regarding Impact Fees and an Irrevocable Payment Bond prepared as a result of negotiation by, between and among the developer and developer's staff and legal counsel and City staff and Special Counsel. Also attached are a copy of the December 10, 2019 Special Common Council meeting (which was not called to order due to the lack of a quorum in attendance) agenda packet (which included the materials from the December 3, 2019 Common Council meeting agenda item F.(G.)13.), and copies of email correspondence and a highlighted agreement redraft which accompanied the above entitled "Agreement" and which staff were prepared to distribute and present at that meeting. City staff will be present at the meeting to provide information to the Common Council on the subject matter.

COUNCIL ACTION REQUESTED

A motion to approve the Agreement Regarding Impact Fees and Irrevocable Payment Bond;

or

Such other action as the Common Council deems appropriate.

APPROVAL	REQUEST FOR COUNCIL ACTION	MEETING DATE December 10, 2019
REPORTS AND RECOMMENDATIONS	Tax Incremental District No. 5 Ballpark Commons development project Agreement Regarding Impact Fees and Irrevocable Payment Bond (continuation of the December 3, 2019 Common Council meeting agenda item F.13., Acceptance of Developer Guarantee as Payment of Water Impact Fees Upon Issuing Building Permit in Compliance with Wisconsin State Statute § 66.0617(6)(g) but in Conflict with Franklin Ordinance 92-9. and the Form Thereof)	ITEM NUMBER C.

Attached is a draft Agreement Regarding Impact Fees and an Irrevocable Payment Bond prepared by Special Counsel, which remains under review (including the impact fees stated dollar amounts) and negotiation by, between and among the developer and developer's staff and legal counsel and City staff and Special Counsel, at the time of this writing. Also attached are the materials from the December 3, 2019 Common Council meeting agenda item F.(G.)13. City staff will be present at the meeting to provide information to the Common Council on the subject matter.

COUNCIL ACTION REQUESTED

A motion to approve the Agreement Regarding Impact Fees and Irrevocable Payment Bond;

or

Such other action as the Common Council deems appropriate.

Agreement Regarding Impact Fees

This Agreement Regarding Impact Fees (“**Agreement**”) is made by BPC GOLF ENTERTAINMENT, LLC and BPC COUNTY LAND, LLC (collectively, the “**Developer**”) in favor of the CITY of FRANKLIN, a Wisconsin Body Politic (the “**City**”) on this December __, 2019.

Recitals

WHEREAS, the Developer is the process of constructing two projects in the City: the LUX Golf facility located on the property legally described in the attached Exhibit A (the “**Lux**”) and the Performance Center located on the property legally described in the attached Exhibit B (the “**Performance Center**” and together with the Lux, the “**Projects**”);

WHEREAS, in connection with the Project, the Developer owes the City \$630,618 in impact fees (the “**Impact Fees**”); and

WHEREAS, the Developer has requested and the City has approved the deferral of a portion of the Impact Fees upon the condition that the Developer execute and deliver this Agreement to the City.

Agreement

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency thereof Developer hereby acknowledges, the Developer covenants and agrees (for the benefit of the City) as follows:

1. Recitals. The terms and provisions of the above recitals are hereby incorporated by reference.
2. Deferral of Impact Fees. Upon execution of this Agreement, the Developer shall pay the City a portion of the Impact Fees equal to \$231,989. In exchange for the City’s agreement to defer the remain \$398,629.00 (the “**Deferred Impact Fees**”) of the Impact Fees, the Developer agrees to simultaneously deliver the following to the City:
 - a. A mortgage in favor of the City in the amount of \$199,314.50 to be recorded against the Lux, which will be released upon payment thereof.
 - b. A mortgage in favor of the City in the amount of \$32,674.50 to be recorded against the Performance Center, which will be released upon payment thereof.
 - c. An irrevocable payment bond from Developer’s principal (“**Zimmerman**”) in the form attached hereto as Exhibit C.

Developer agrees to pay the reasonable costs and expenses, including reasonable title and attorneys fees, incurred by the City in connection with recording the mortgages provided for herein against the Project.

3. Payment of Deferred Impact Fees. The Deferred Impact Fees shall be payable to the City by the Developer (and/or Zimmerman under the payment bond) upon the earlier to occur:
 - a. At least \$ _____ of the Deferred Impact Fees shall be paid to the City upon the closing of a construction loan for the Lux;
 - b. At least \$ _____ of the Deferred Impact Fees shall be paid to the City upon the closing of a construction loan for the Performance Center; and
 - c. Any and all outstanding Deferred Impact Fees shall be due and payable on July 1, 2020.In the event Developer fails to timely pay the Deferred Impact Fees as required hereunder, a ten (10%) percent penalty, plus interest at the prime rate then in effect shall accrue on all unpaid amounts.

4. Modification. No modification of any provision of this Agreement will be binding upon the City except as expressly set forth in a writing duly signed by and delivered on behalf of the City.
5. Time is of the Essence. Time is of the essence with respect to all payment provisions of this Agreement.
6. Severability. In the event any provision of this Agreement is determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, this Agreement and such provision shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, which shall remain in full force and effect.
7. Governing Law. This Agreement shall be interpreted, construed, and enforced according to the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date set forth above.

BPC GOLF ENTERTAINMENT, LLC

By:
Printed Name:
Title:

BPC COUNTY LAND, LLC

By:
Printed Name:
Title:

EXHIBIT A

Exhibit B

Exhibit C

IRREVOCABLE PAYMENT BOND (100%) - \$398,629.00

This IRREVOCABLE PAYMENT BOND or Surety Bond instrument is hereby executed to guarantee payment of deferred impact fees to be paid by the herein named Principal to the City of Franklin, Wisconsin (the "City"). This Payment Bond is dated December 10, 2019.

Project Title: Ballpark Commons (LUXE Golf)

Project Location: Franklin, Wisconsin

KNOW ALL PEOPLE BY THESE PRESENTS That **BPC GOLF ENTERTAINMENT, LLC**, a Wisconsin limited liability company ("Principal"), and **MICHAEL E. ZIMMERMAN**, an individual resident of Franklin, Wisconsin ("Surety"), are held firmly bound to the City of Franklin, Wisconsin (the "City"), in the amount of \$398,629.00 for impact fees related to the Project. For the payment of which, well and truly to be made to the City, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that if the said bounded Principal shall promptly make payment of the impact fees, when due, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

FURTHER, that this Payment Bond is being provided pursuant to Section 66.0617(6)(g) Wis. Stats. so that the Principal may obtain a deferral of all or a portion of the impact fees in accordance with such statute. If this Payment Bond is placed in the hands of an attorney for collection following the occurrence of an event of default hereunder, Surety agrees to pay to the City upon demand all costs and expenses, including, all attorneys' fees and court costs incurred by the City in connection with the enforcement or collection of all sums due under this Payment Bond (whether or not any action has been commenced by the City to enforce or collect such sums as are due under this Payment Bond) or in successfully defending any counterclaim or other legal proceeding brought by Surety contesting the City's right to collect the sums due under this Payment Bond.

FURTHER, that no change or extension of time shall in any way affect Principal's or Surety's obligations on this bond, and Surety does hereby waive notice of any change or extension of time.

FURTHER, In the event the Principal fail to timely pay the Deferred Impact Fees as required and defined by that certain Agreement Regarding Impact Fees, between the City and the Principal, then the Surety agrees to pay all the outstanding Deferred Impact Fees immediately after receipt of a written demand from the City. The City may, at its option, proceed directly without notice against Surety to collect and recover the full amount of the Deferred Impact Fees from the Surety hereunder, without proceeding against Principal or any collateral securing the Deferred Impact Fees. Demand for payment delivered hereunder shall be deemed delivered and received when sent to Surety's counsel via e-mail with a copy via regular mail: Matthew K. Impola, Foley & Lardner LLP, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202 mimpola@foley.com.

PROVIDED, FURTHER, that the undersigned Surety states that he has the authority to enter into and deliver this Payment Bond to the City.

APPROVAL <i>slw RA</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE Dec 3, 2019
REPORTS & RECOMMENDATIONS	Acceptance of Developer Guarantee as payment of Water Impact Fees upon issuing building permit in compliance with State Statute 66.0617 (6) g but in conflict with Franklin Ordinance 92-9 and the form thereof.	ITEM NUMBER <i>G.13.</i>

Background

Franklin Ordinance 92-9 requires Impact fees to be paid upon issuing a building permit. A recent State Statute 66.0617(6) g provides:

“the developer shall maintain in force a bond or irrevocable letter of credit in the amount of the unpaid fees executed in the name of the municipality”

For any total impact fee that exceeds \$75,000, the city must accept a bond or irrevocable letter of credit for a period of four years for any Impact fee that has not been spent by the municipality. The Common Council recently scheduled a Public Hearing regarding Proposed Amendments to the Impact Fee Ordinance addressing necessary changes related to Statutory requirements.

As a condition of City infrastructure grants included in the recently completed Amendment to the TID5 Developer’s Agreement, the Developer was to pull building permits for the MOSH and Luxe Golf projects.

Ballpark Commons Developer has request that the City accept the Developer’s Personal Guarantee for the \$500,486 of Water Impact fees on the MOSH and Luxe Golf building permits.

Analysis

The State Statute permits Impact fees that have not been spent by the municipality to be paid by a ‘bond’ or ‘irrevocable letter of credit’ for a period of four years or six months prior to expending the Impact fees. The City of Franklin currently holds \$2,550,000 of unspent Water Impact fees. The Water Utility is working on a new Elevated Water Storage Tank that is included in the 2002 Impact Fee Study that would expend all of those funds. The project is currently scheduled for 2021.

The City has accepted the Developer’s personal guarantee on TID5 Debt Service. The Developer has requested that the personal guarantee extend to the Water Impact Fees for the MOSH and Luxe Golf projects.

The subject matter has been presented to the Legal Services Department for review at the time of this writing.

Recommendation

A copy of the Continuing Guaranty on the TID5 Debt Service is attached. This document would need to be amended to include the Water Impact fees.

The Developer will provide the form of the guarantee at the December 3, 2019 meeting.

COUNCIL ACTION REQUESTED

Motion to Accept the Developer Guarantee, in a form as approved by the City Attorney, as payment of Water Impact Fees upon issuing building permit in compliance with State Statute 66.0617(6) g.

CONTINUING GUARANTY (UNLIMITED)

THIS CONTINUING GUARANTY (UNLIMITED) ("Guaranty") is made as of this ____ day of February 2018, by Michael E. Zimmerman, an individual resident of Wisconsin ("Guarantor"), in favor of the City of Franklin, a Wisconsin municipal corporation (the "City").

WITNESSETH:

WHEREAS, Guarantor is owner of BPC Master Developer, LLC, a Wisconsin limited liability company ("Developer"). Developer and the City are party to a Development Agreement dated February __, 2018 (the "Development Agreement");

WHEREAS, Developer and/or Developer's affiliates are the owners of that certain real property legally described in Exhibit A attached hereto (the "Property").

WHEREAS, the Property is located within the boundaries of Tax Incremental District No. 5, City of Franklin, Wisconsin (the "District"). Pursuant to Wis. Stat. § 66.1105, the City adopted a plan for redevelopment within the District.

WHEREAS, the Developer plans on constructing a mixed-use development consisting of a stadium, sports village, restaurants, apartments, retail buildings, a hotel and offices on the Property, with an estimated development cost of approximately One Hundred Thirty Million and No/100 US Dollars (\$130,000,000) (the "Project").

WHEREAS, pursuant to the Development Agreement, the City has agreed to fund up to Twenty Two Million Five Hundred Twenty One Thousand Four Hundred Eighty Four and No/100 US Dollars (\$22,521,484) through the issuance of one or more general obligation bonds, promissory notes, or note anticipation notes, revenue bonds or combination thereof (the "GO Bonds").

WHEREAS, as a condition of issuing the GO Bonds and paying for all or some of the TIF Improvements, the City has required that Guarantor execute and deliver this Guaranty. Based on sound business judgment, Guarantor deems it in Guarantor's best interest to execute and deliver to the City the Guaranty because, among other considerations, Guarantor has an interest in or relationship with Developer, and Guarantor expects to derive valuable benefits as a result of the Project.

NOW, THEREFORE, in consideration of the above and other valuable consideration, receipt and sufficiency of which are acknowledged, Guarantor agrees as follows:

Section 1. Nature of Guaranty. This is an unlimited and continuing guaranty of payment. Developer has agreed to create at least (i) Twenty Million Dollars (\$20,000,000) of new assessed value as the result of the construction of the Project on or before January 1, 2019, (ii) Fifty Million Dollars (\$50,000,000.00) of new assessed value as a result of the construction of the Project on or before January 1, 2020, and (iii) Ninety-Four Million (\$94,000,000.00) of new assessed value as a result of construction of the Project on or before January 1, 2021, and to maintain such assessed values until the GO Bonds have been paid in full or defeased. In the event of a violation of this covenant, the City may demand in writing that Guarantor pay any shortfall on the regularly scheduled principal and interest payments on the GO Bonds caused by such violation (the "Obligations"). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the City to issue the GO Bonds, the Guarantor guarantees the payment, on a continuing basis, of all the Obligations when due. Notwithstanding the foregoing, each of Guarantor's payments of the Obligations under this Agreement shall be (1) limited in

proportion to the actual amounts disbursed under the Disbursing Agreement (as defined in the Development Agreement), towards the TIF Improvements and the City expenses expressly permitted under the Development Agreement, plus interest thereon, and (2) based on the actual or assumed payment obligations under the GO Bonds which are amortized over the life of the District, regardless of whether the City funds the City Bond Payments using shorter term debt. This Guaranty shall automatically terminate on the date that the GO Bonds have been paid in full or defeased. In the event that any Tax Increment is not applied as set forth in the Development Agreement due to the City's non-appropriation of such funds, then the Obligations hereunder shall be reduced on a dollar for dollar basis so that such reduction in the Obligations is equal to the amount of Tax Increment that the City failed to appropriate in accordance with the Development Agreement.

Section 2. Notice to Guarantor. BY SIGNING BELOW, YOU ARE BEING ASKED TO GUARANTY PAYMENT OF THE PAST, PRESENT AND FUTURE OBLIGATIONS OF THE DEVELOPER. YOU MAY ALSO HAVE TO PAY THE COSTS OF COLLECTION. THE CITY CAN COLLECT THE OBLIGATIONS AND COSTS OF COLLECTION FROM YOU WITHOUT FIRST TRYING TO COLLECT FROM THE DEVELOPER OR ANOTHER GUARANTOR OR FROM ANY COLLATERAL FOR THE OBLIGATIONS.

Section 3. Guaranty of Payment. The City may, at its option, proceed directly without notice against Guarantor to collect and recover the full amount of the Obligations from Guarantor hereunder, without proceeding against Developer or any collateral securing the Obligations.

Section 4. Waiver by Guarantor. The Guarantor waives:

- (a) notice of acceptance of this Guaranty by the City;
- (b) notice of presentment, demand for payment, notice of default or nonpayment, protest and notice of dishonor of any of the Obligations;
- (c) notice of any payment to the City of any of the Obligations; and
- (d) all other demands and notices of every kind in connection with this Guaranty or any of the Obligations, except a notice of an "Event of Default" hereunder.

Section 5. Unconditional Payment. If any payment received by the City hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference under any bankruptcy, insolvency, or other debtor relief law, then the obligation to make such payment shall survive and shall not be discharged or satisfied with any prior payment thereof, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable. Guarantor agrees not to assert at any time against Developer or its successors or assigns any right or claim to indemnification, reimbursement, contribution or payment for or with respect to any and all amounts which Guarantor may pay to the City, and Guarantor waives and releases all such rights and claims to indemnification, reimbursement, contribution or payment from Developer, its successors or assigns.

Section 6. No Impairment. Guarantor further agrees that the validity of this Guaranty and the Obligations and liability of Guarantor hereunder shall not be affected or impaired by any act of the City, including, but not limited to, the City's:

- (a) extension, in whole or in part, by renewal or otherwise, of the time for the payment of any of the Obligations or the performance of any term or condition of any transaction in connection with any of the Obligations;
- (b) release, surrender, exchange, modification, impairment or extension of the period of duration, or the time for performance or payment, or any collateral securing any of the Obligations;
- (c) settlement, compromise, release, surrender, modification or impairment and enforcement and exercise, or failure to or refusal to enforce or exercise, any claims, rights, or remedies of any kind and nature against the Developer, or any other party presently or hereafter liable for the Obligations, or any collateral security held by the City for any of the Obligations; and
- (d) subordination of the Obligations, or any part, to any other indebtedness now or hereafter owing by the Developer to anyone.

Section 7. Guarantor's Representations Guarantor hereby represents, warrants and agrees as follows:

- (a) no event has occurred, nor will any event occur upon the making and execution of this Guaranty or the compliance with its terms, or upon the consummation of the transaction herein contemplated, which either by itself or with the lapse of time, or the giving of notice or both, would give any creditor of Guarantor the right to accelerate the maturity of any material indebtedness of the Guarantor;
- (b) Guarantor is not in default nor does Guarantor anticipate default by Guarantor under any loan, lease, agreement or instrument, or any law, rule, regulation, order, writ, injunction, decree, determination or award, noncompliance with which would materially adversely affect Guarantor's assets or financial condition;
- (c) Guarantor has no outstanding unpaid tax liabilities (except for taxes which are currently accruing, but are not delinquent), and no tax deficiencies have been proposed or assessed against the Guarantor which would materially adversely affect Guarantor's assets or financial condition;
- (d) Guarantor is not a party to any litigation or administrative proceeding, nor is Guarantor aware of any threatened litigation or administrative proceeding which in either case would, if adversely determined, cause any material adverse change in Guarantor's assets or financial condition;
- (e) The Obligations set forth in this Guaranty are incurred in the interest of the Guarantor's marriage or family; and
- (f) no information, exhibit or report furnished by the Guarantor to the City in connection with the negotiation or execution of the Development Agreement or this Guaranty contained any material misstatement of fact as of the date when made, or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading as of the date when made.

Section 8, Acknowledgements by Guarantor. Guarantor acknowledges and agrees that the City has not made any representations or warranties with respect to the enforceability of the Development

Agreement against Developer or any collateral secured thereby, or as to Developer's financial condition. Guarantor hereby acknowledges having received and reviewed a true copy of the Development Agreement. Guarantor further acknowledges and agrees that Guarantor has independently determined the financial condition of Developer.

Section 9. Guarantor's Additional Covenants. Guarantor covenants that so long as the Obligations remain outstanding and unless otherwise waived or consented to in writing by the City, the Guarantor shall:

- (a) promptly notify the City of the occurrence of any event which would create a material adverse change in the Guarantor's assets or financial condition; and
- (b) pay and discharge, when due, all of Guarantor's taxes, assessments and other liabilities prior to delinquency, except when the payment thereof is being contested in good faith by appropriate legal procedures which will avoid foreclosure of liens securing such items, and with adequate reserves provided therefor.

Section 10. Joint and Several Liability. Guarantor acknowledges that Guarantor's liability hereunder is joint and several. The City shall have no obligation to exercise any rights under this Guaranty against more than one person or entity liable for the Obligations, and may proceed against one or any number of persons or entities liable for the Obligations, including Guarantor, without proceeding against all or any others liable for the Obligations. The City, at its option, may proceed in the first instance against Guarantor on this Guaranty to collect any of the Obligations, without first proceeding against Developer, any other guarantors or other persons or entities who may be liable for any of the Obligations, or against any collateral security previously, contemporaneously or subsequently given to the City to secure any of the Obligations by Developer, Guarantor or any other person.

Section 11. Modification. No modification of any provision of this Guaranty will be binding upon the City except as expressly set forth in a writing duly signed by and delivered on behalf of the City.

Section 12. Time is of the Essence. Time is of the essence with respect to all payment provisions of this Guaranty.

Section 13. Binding Effect. This Guaranty benefits the City, its successors and assigns, and binds Guarantor, his heirs and personal representatives.

Section 14. Severability. In the event any provision of this Guaranty is determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, this Guaranty and such provision shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Guaranty, which shall remain in full force and effect.

Section 15. Governing Law. This Guaranty shall be interpreted, construed, and enforced according to the laws of the State of Wisconsin.

Section 16. Notices. All notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) upon delivery to an officer or designated representative of the person entitled to such notice, if hand delivered, or (ii) two business days following deposit in the United States mail, postage prepaid, or with a nationally recognized overnight commercial carrier that will certify as to the date and time of delivery, airbill prepaid,

or (iii) upon transmission if by facsimile, and each such communication or notice shall be addressed as follows, unless and until any of such parties notifies the other in accordance with this Section of a change of address:

If to the City: City of Franklin
9229 West Loomis Road
Franklin, WI 53132
Attention: Director of Economic Development
Facsimile No.: 414-427-7691

With a Copy to: City of Franklin
9229 West Loomis Road
Franklin, WI 53132
Attention: City Clerk
Facsimile No.: 414-425-6428

If to the Developer:
Michael E. Zimmerman
510 West Kilbourn Avenue, 2nd Floor
Milwaukee, WI 53202
Facsimile No.: 1-414-224-9290

With a copy to:
Matthew K. Impola
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306
Facsimile No.: 1-414-297-4900

Section 17. Capitalized Terms. Capitalized terms not specifically defined herein shall have the same meaning as in the Development Agreement.

Section 18. Collection Expenses; Event of Default. If this Guaranty is placed in the hands of an attorney for collection following the occurrence of an Event of Default hereunder, Guarantor agrees to pay to the City upon demand all costs and expenses, including, all attorneys' fees and court costs incurred by the City in connection with the enforcement or collection of all sums due under this Guaranty (whether or not any action has been commenced by the City to enforce or collect such sums as are due under this Guaranty) or in successfully defending any counterclaim or other legal proceeding brought by Guarantor contesting the City's right to collect the sums due under this Guaranty. An "Event of Default" hereunder shall mean that Guarantor fails to perform or observe any agreement, covenant, term or provision contained in this Guaranty and such failure continues for a period of seven (7) business days after Guarantor's receipt of written notice from City.

Section 18. Entire Agreement. This Guaranty is intended by Guarantor and the City as a final expression of this Guaranty and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Guaranty. This Guaranty may not be supplement or modified except in writing signed by both parties. This is a continuing guaranty and shall remain in full force and effect until Lender receives written notice of revocation due to the death of the Guarantor. Upon actual notice of death,



Parcel 1:

That part of the Southwest $\frac{1}{4}$ of Section 4, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at a point on the East line of said Southwest $\frac{1}{4}$ of Section 4, which is 918.81 feet North of the Southeast corner of said $\frac{1}{4}$ Section; thence North on the East line 400.00 feet to a stone monument; thence West on the East and West $\frac{1}{8}$ line 544.50 feet to a point; thence South and parallel to the East line 400.00 feet to a point; thence East and parallel to the said $\frac{1}{4}$ line 544.50 feet to the place of beginning.

For Informational Purposes Only:

Tax Key No. 745-8998-000

Parcel 2:

Outlot 1, in Block 1 in Whitnall View Addition No. 1, being a subdivision of a part of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 4, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin.

For Informational Purposes Only:

Tax Key No. 745-0029-000

Parcel 3:

Outlot 1 of Certified Survey Map No. 3107, recorded on July 11, 1977, in reel 1030, Image 1316, as Document No. 5119257, being a part of the Southwest $\frac{1}{4}$ of Section 4, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin. Excepting therefrom the lands described in the Warranty Deed recorded November 6, 1998 as Document No. 7629111.

For Informational Purposes Only:

Tax Key No. 745-8999-004

Parcel 4:

Outlot 1 of Certified Survey Map No. 3931, recorded October 24, 1980 in Reel 1333, Image 129, as Document No. 5434959, being a part of the Southeast $\frac{1}{4}$ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin.

For Informational Purposes Only:

Property Address: 8230 W. Rawson Avenue

Tax Key No. 744-8985-002

Parcel 5

Parcel 1 of Certified Survey Map No. 3931, recorded October 24, 1980 in Reel 1333, Image 129, as Document No. 5434959, being a part of the Southeast $\frac{1}{4}$ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin. Excepting therefrom the lands described in the Warranty Deed recorded November 6, 1998 as Document No. 7629111.

For Informational Purposes Only:

Property Address: 8230 W. Rawson Avenue

Tax Key No. 744-8985-001

Parcel 6A:

That part of the Southeast ¼ of Section 4, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Northeast corner of said ¼ Section; thence South 89 °51'33" West along the North line of said ¼ Section, 1324.72 feet to the North and South 1/8 line of said ¼ Section; thence South 0°54'45" West along said 1/8 line, 905.13 feet to the place of beginning of land to be described; continuing thence South 0°54'45" West along the said 1/8 line, 1010.0 feet to a point; thence South 7 °08' West 174.78 feet to a point; thence South 0 °37' West 244.20 feet to a point in the center line of West Loomis Road, 406.47 feet to the point of intersection with the South line of said ¼ Section; thence West along the South line of said ¼ Section, 382.40 feet to a point; thence North 0 °56' East along the East line of the West ½ of the West ½ of said ¼ Section, 1731.87 feet to a point; thence North 89 °51'33" East and parallel to the North line of said ¼ Section 662.60 feet to the place of beginning, excepting therefrom the South 60.0 feet and the Southeasterly 33.0 feet for street purposes. Excepting therefrom those lands conveyed in Document No. 4382939.

Parcel 6B:

That part of the East ½ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Beginning at the Southeast corner of the Northeast ¼ of said Section; thence North along the East line thereof, 519.25 feet to a point; thence West on a line parallel to the South line of said Northeast ¼ Section, 204.0 feet to a point in a 40 foot right-of-way; thence Southwesterly along said right-of-way to a point on the South line of said Northeast ¼ Section, said point being 948.5 feet West of the Southeast corner of said ¼ Section; thence West along the North line of the Southeast ¼ section to a point on the North and South 1/8 line of said Southeast ¼ section, said point being 1324.72 feet West of the Northeast corner of said Southeast ¼ Section; thence South along said 1/8 line, 303 feet to a point; thence West on a line parallel to the North line of said Southeast ¼ Section, 662.45 feet to a point; thence South 602.13 feet to a point, said point being 662.60 feet West of said 1/8 line; thence east on a line parallel to the North line of said Southeast ¼ Section; 662.60 feet to a point on said 1/8 line; thence continuing Easterly on a line 662.62 feet to a point, said point being 663.25 feet West of the Southeast corner and 1733.79 feet North of the South line of said ¼ Section; thence North on a line 906.73 feet to a point on the North line of said Southeast ¼ Section, said point being 662 feet West of the Northeast corner of said Southeast ¼ Section; thence East along said North line to a point of beginning. Excepting therefrom that part of the Northeast ¼ of Section 4, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Southeast corner of said ¼ Section; thence North along the East line thereof, 519.25 feet to a point; thence North 87 °16' West on a line parallel to the South line of said ¼ Section, 204.0 feet to a point in a 40 foot right-of-way; thence Southwesterly along said right-of-way, to a point in the South line of said ¼ Section, 948.5 feet West of the Southeast corner of said ¼ Section; thence East along the South line of said ¼ Section to the point of beginning, excepting therefrom the East 60 feet thereof.

Parcel 6C.

The North 303 feet of the East ½ of the Northwest ¼ of the Southeast ¼ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin.

Parcel 6D:

That part of the West ½ of the East ½ of the Southeast ¼ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows, to-wit: Beginning at a point in the center line of the old Loomis Road (formerly State Trunk Highway 36) which point is South 89 °06' West 663.25 feet along the South line of said ¼ Section from the Southeast corner of

Section 4; thence North 1003.85 feet to the center of Loomis Road; thence South 50 °49' West along said center line 283.58 feet; thence South 42 °14' West along said center line 90.56 feet which is the place of beginning of the land herein to be described; thence continuing South 42 °14' West 135.01 feet; thence North 69 °29' West 311.87 feet; thence North 0 °02' East 957.79 feet; thence North 89 °07' West 279.90 feet; thence South 0 °02' West 414.02 feet to the place of beginning.

Parcel 6E:

That part of the Southeast ¼ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Northeast corner of the above said ¼ Section; thence Westerly along the North line of said ¼ Section, 662.00 feet; thence South 0 °00'00" West on a line a distance of 1,200.00 feet to the point of beginning, said line if extended would intersect the South line of the ¼ Section, 663.25 feet West of the Southeast corner of said ¼ Section; thence continuing along said line, South 0 °00'00" West, 264.60 feet; thence South 89 °07'00" West, 279.90 feet; thence South 0 °02'00" West, 354.31 feet to a point in the highway right-of-way of "Old Loomis Road" as laid out and traveled on January 1, 19971; thence along said highway right-of-way North 40 °21'43" East, 1,009.10 feet to the point of beginning. Together with that part of the Southeast ¼ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Northeast corner of said ¼ Section; thence South along the East line of said ¼ Section, 981.07 feet; thence West 60 feet to the point of beginning, said point being the intersection of the West right-of-way line of South 76th Street and the North right-of-way line of relocated Old Loomis Road as laid out and traveled on June 1, 1973; thence continuing West along the North right-of-way line of said Old Loomis Road, 49.07 feet to the point of beginning of a curve; thence Westerly along said North right-of-way line 95.18 feet along the arc of a curve concave to the Southeast, said curve having a radius of 234.04 feet and a long chord of 94.53 feet bearing South 78 °20'55" West; thence North 52 °57'46" East, 177.46 feet to a point on the West right-of-way line of South 76th Street; thence South along said West right-of-way line, 87.80 feet to the point of beginning.

Parcel 6F:

That part of the Southeast ¼ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Beginning at the Northeast corner of said ¼ Section; thence continuing West along the North line of said ¼ Section 662 feet to a point; thence South on a line, which line runs 2421.40 feet to a point 215 feet North of the South line and 663.25 feet West of the East line of said ¼ Section (measured parallel respectively to the East and South line), 1,200 feet to a point; thence East and parallel to the North line of said ¼ Section 185 feet to a point; thence Northeasterly on a line to a point on the East line of said ¼ Section, 848 feet South of the Northeast corner thereof; thence North along the East line of said ¼ Section to the point of beginning.

For Informational Purposes Only:

Tax Key No. 744-8980-001

Parcel 7:

That part of the Southeast ¼ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at a point on the West line of the East ½ of said ¼ Section, 326 feet North of the South line, said point being the center line of West Loomis Road; thence North along the West line of the East ½ of said ¼ Section, 450 feet to a point; thence South 69 °44' East, 311 feet to a point in the center line of West Loomis Road, 448.70 feet to the place of beginning. Excepting therefrom that part of the Southeast ¼ of Section 4, in Township 5 North, range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows:

Commencing at the Northeast corner of said ¼ Section; thence westerly along the North line of said ¼ Section, 1324.72 feet to the North and South 1/8 line; thence South 0°54'45" West along the 1/8 line, 1915.13 feet to the place of beginning of lands to be described; thence South 55°53'15" East 109.36 feet; thence South 57°44'15" East 43.87 feet; thence South 80°59'15" East 21.11 feet; thence South 68°32'15" East 28.90 feet; thence South 49°04'15" East 62.90 feet to a point in the center line of West Loomis Road; thence North 41°20'45" East along the center line of West Loomis Road 104.00 feet to a point; thence North 68°36'15" West 311.87 feet to a point in the said 1/8 line; thence South 0°54'45" West along said 1/8 line, 52.21 feet to the place of beginning.

For Informational Purposes Only:
Tax Key No. 744-8988-000

Parcel 8:

That part of the Southeast ¼ of Section 4, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Northeast corner of said ¼ Section; thence westerly along the North line of said ¼ Section, 1324.72 feet to the North and South 1/8 line; thence South 0°54'45" West along the 1/8 line, 1915.13 feet to the place of beginning of lands to be described; thence South 55°53'15" East 109.36 feet; thence South 57°44'15" East 43.87 feet; thence South 80°59'15" East 21.11 feet; thence South 68°32'15" East 28.90 feet; thence South 49°04'15" East 62.90 feet to a point in the center line of West Loomis Road; thence North 41°20'45" East along the center line of West Loomis Road 104.00 feet to a point; thence North 68°36'15" West 311.87 feet to a point in the said 1/8 line; thence South 0°54'45" West along said 1/8 line, 52.21 feet to the place of beginning.

For Informational Purposes Only:
Tax Key No. 744-8989-000

Parcel 9:

That part of the Southeast ¼ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, described as follows: Commence at the Southeast corner of said Section 4, run thence North 00°00'00" West, on an assumed bearing, along the East line of said Section, 1594.42 feet; thence North 90°00'00" West 60.00 feet to the West right-of-way of 76th Street and the point of beginning of this description; run thence South 00°00'00" East 205.00 feet along said right-of-way; thence South 58°00'00" West, 300.00 feet; thence South 20°30'00" West 385.00 feet; thence South 37°33'55" West 201.65 feet; thence South 48°16'12" West 330.78 feet; thence South 61°02'50" West 578.18 feet to a point located 230 feet North of, as measured normal to, the South line of said Section; thence South 89°08'18" West 39.61 feet parallel with the South line of said Section; thence North 40°22'33" East 1740.48 feet; thence North 56°11'16" East 141.03 feet; thence North 90°00'00" East 49.07 feet to the point of beginning.

For Informational Purposes Only:
Tax Key No. 744-8981-000

Parcel 10:

That part of the East ½ of the Southwest ¼ of the Northeast ¼ of Section 4, Town 5 North, Range 21 East that lies within the City Limits of the City of Franklin, County of Milwaukee, State of Wisconsin. Together with that part of the Southeast ¼ of the Northeast ¼ of Section 4, Town 5 North, Range 21 East that lies within the City Limits of the City of Franklin, County of Milwaukee, State of Wisconsin. Excepting therefrom that part of the Northeast ¼ of Section 4, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the

Southeast corner of said ¼ Section; thence North along the East line thereof, 519.25 feet to a point; thence North 87° 16' West on a line parallel to the South line of said ¼ Section, 204.0 feet to a point in a 40 foot right-of-way; thence Southwesterly along said right-of-way, to a point in the South line of said ¼ Section, 948.5 feet West of the Southeast corner of said ¼ Section; thence East along the South line of said ¼ Section to the point of beginning, excepting therefrom the East 60 feet thereof. Further Excepting therefrom all that part of the Northeast 1/4 of Section 4, town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Southeast Corner of Said 1/4 Section; running thence North 03° 51' 30" East on the East Line of Said 1/4 Section, 519.25 feet to a point; thence North 87° 16' West, 582.23 feet to the place of beginning of the Land to be described; thence continuing North 87° 16' West, 148.77 feet to a point in the Easterly line of the park described in Document No. 2137727; Thence South 03° 51' 30" West and parallel to the East Line of Said 1/4 Section, 367.55 feet to a point; thence North 58° 12' 34" East, 255.43 Feet to a Point; Thence North 11° 00' 30" West, 229.27 feet to the place of beginning; together with a non-exclusive right-of-way 40 feet wide, extending from the Southeasterly corner of the above described premises to South 76TH street the center line of Said right-of-way being an Extension in a Northeasterly Direction of the Southerly line of the above-described premises. Further excepting therefrom all that part of the Northeast 1/4 of Section 4, town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Southeast Corner of Said 1/4 Section running thence North 03° 51' 30" East on the East Line of Said 1/4 Section, 519.25 feet to a point; thence North 87° 16' West, 204.00 feet to the place of beginning; thence continuing North 87° 16' West, 378.23 feet to a point; thence South 11° 00' 30" East, 229.27 Feet to a Point; Thence North 58° 12' 34" East, 392.97 feet to the place of beginning, together with a non-exclusive right of way 40 feet wide, extending from the Southeasterly corner of the subject premises to South 76TH Street, the center line of said right of way being an Extension in the Northeasterly direction of the Southerly line of the subject premises.

For Informational Purposes Only:
Tax Key No, 708-8996-000

Parcel 11:

That part of the Northeast ¼ of Section 4, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Southeast corner of said ¼ Section; thence North along the East line thereof, 519.25 feet to a point; thence North 87° 16' West on a line parallel to the South line of said ¼ Section, 204.0 feet to a point in a 40 foot right-of-way; thence Southwesterly along said right-of-way, to a point in the South line of said ¼ Section, 948.5 feet West of the Southeast corner of said ¼ Section; thence East along the South line of said ¼ Section to the point of beginning, excepting therefrom the East 60 feet thereof.

For Informational Purposes Only:
Tax Key No, 708-8999-000

For informational purposes only
Property Address: Situated on West Old Loomis Road, Franklin, WI
Tax Key No.:

Parcel 1:

A tract of land in the Northwest 1/4 of Section 9, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: commence at the North 1/4 of said Section; thence South 0 deg. 14'24" East, along the East line of said 1/4 Section, 75.00 feet to the point of beginning; thence South 88 deg. 31'36" West for a distance of 660.75 feet, along the South line of West Rawson Avenue to a point; thence South 0 deg. 16'24" East for a distance of 749.00 feet to a point; thence North 88 deg. 31'36" East for a distance of 660.20 feet to a point; thence North 0 deg. 13'52" West for a distance of 749.01 feet to the point of beginning.

Parcel 2:

A tract of land in the Northwest 1/4 of Section 9, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: commencing at the North 1/4 corner of said Section thence South 00 deg. 14'24" East, along the East line of said 1/4 Section, 823.83 feet to the point of beginning; thence South 88 deg. 31'36" West for a distance of 660.20 feet to a point; thence South 0 deg. 16'24" East for a distance of 1474.75 feet to the North line of relocated State Highway 36; thence North 30 deg. 15'50" East for a distance of 977.50 feet, along said North line to a point of curve; thence along a curve to the right having a radius of 3919.72 feet and an arc length of 295.77 feet, being subtended by a chord of North 33 deg. 12'0" East for a distance of 295.70 feet, along said North line to a point on a curve; thence North 0 deg. 13'52" West for a distance of 400.00 feet to the point of beginning.

Parcel 3: That part of the West 1/2 of the Northeast 1/4 of Section 9, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, which is bounded and described as follows: Commencing at the Northwest corner of said 1/4 Section; thence South 00° 08' 17" West along the West line of said 1/4 Section, 75.01 feet to a point in the South line of West Rawson Avenue which is the Point of Beginning of the land to be described; thence North 89° 08' 18" East along the South line of said West Rawson Avenue, 458.24 feet to a point on the West line of West Loomis Road (State Trunk Highway 36); thence South 00° 51' 42" East along the West line of said Loomis Road, 437.54 feet to a point; thence North 87° 34' 40" West, 466.17 feet to a point in the West line of said 1/4 Section; thence North 00° 08' 17" East along the West line of said 1/4 Section, 410.90 feet to the point of beginning.

Parcel 4: That part of the West 1/2 of the North East 1/4 of Section 9, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee and State of Wisconsin, which is bounded and described as follows: Commencing at a point in the West line of said 1/4 Section, which is 485.91 feet South 00° 08' 17" West of the North West corner of said 1/4 Section; continuing thence South 00° 08' 17" West along the West line of said 1/4 Section, 213.45 feet to a point; thence South 53° 19' 45" East, 325.57 feet to a point in the Northwesterly line of Old Loomis Road; thence North 36° 40' 15" East along the Northwesterly line of said Old Loomis Road, 235.81 feet to a point of curve; thence Northeasterly 212.96 feet along the arc of a curve, whose center lies to the West, whose radius is 325.10 feet and whose chord bears North 17° 54' 17" East, 209.17 feet to a point; thence North 87° 34' 40" West, 466.17 feet to the point of commencement.

Parcel 5: That part of the Northeast 1/4 of Section 9, in Township 5 North, Range 21 East, in the Town of Franklin, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at a point on the West line of the Northeast 1/4 of Section 9 aforesaid with the center line of West Loomis Road, thence Northeasterly along the center line of West Loomis Road, 490 feet to a point; thence Northwesterly at right angles to the center line of West Loomis Road 357.74 feet to a point in the West line of the Northeast 1/4 of Section 9 aforesaid; and thence South along the West line of the Northeast 1/4 of Section 9 aforesaid

606.69 feet to the place of commencement.

For informational purposes only

Property Address: Situated on West Old Loomis Road, Franklin, WI 53132

Tax Key No.: 754-9988-001 (Parcel 1), 754-9988-002 (Parcel 2), 755-9995-002 (Parcel 3), 755-9995-001 (Parcel 4), 755-9996-000 (Parcel 5)

PARCEL 1:

That part of the following described lands which lie Easterly and Southeasterly of of a public highway right of way line located 33 feet westerly and northwesterly of, as measured at right angles to or radially to, the centerline of "Relocated Old Loomis Road" as delineated further below.

That part of the Northeast 1/4 of Section 9, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at a point on the West line of said 1/4 Section, 606.69 feet North of the Intersection of the centerline of Loomis Road (as laid out and traveled on April 17, 1951) with the West line of said 1/4 Section; thence Southeasterly on a line at right angles to said centerline, 357.74 feet to a point on said centerline, which is 490 feet Northeasterly of the intersection of said centerline with the West line of said 1/4 Section; thence Northeasterly along said centerline to a point which is 341 feet South 41°34' West (measured along said centerline) from the North line of said Section; thence North 58°26' West, 384.40 feet to a point on the North line of said Section, which point is 531.50 feet East of the Northwest corner of said 1/4 Section; thence West along the North line of said 1/4 Section, 531.50 feet to the Northwest corner of said 1/4 Section; thence South along the West line of said 1/4 Section, to the point of commencement; except the North 75 feet thereof; further excepting the West 66 feet thereof.

The Centerline of "Relocated Old Loomis Road" is described as follows: Commencing at the Northwest corner of the Northeast 1/4 of Section 9, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin; thence South 00°08'17" West along the West line of said 1/4 Section 754.40 feet; thence South 53°19'45" East 325.84 feet to the point of beginning of the centerline of "Relocated Old Loomis Road;" thence North 36°40'15" East 280.00 feet to a point of curve; thence along the arc of curve concave to the west, with a radius of 358.10 feet and a long chord of 230.41 feet bearing North 17°54'17" East, a distance of 234.58 feet to a point of tangency; thence North 00°51'42" West 512.54 feet to a point in the North line of said 1/4 Section and a point of ending of the centerline of "Relocated Old Loomis Road," said point being located 489.93 feet North 89°08'18" East of the Northwest corner of said 1/4 Section.

PARCEL 2:

That part of the West 1/2 of the Northeast 1/4 of Section 9, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at a point in the North line of said 1/4 Section 531.50 feet East of the Northwest corner; thence East along the North line of said 1/4 Section 514 feet to center line of Loomis Road; thence South 41°34' West along the center line of Loomis Road, 341 feet to a point; thence North 58°26' West, 384.40 feet to the point of commencement.

For informational purposes only

Property Address: Situated on West Rawson Avenue, Franklin, WI

Tax Key No.: NA

That Westerly 56 feet of that part of the following described lands which lie Easterly and Southeasterly of of a public highway right of way line located 33 feet westerly and northwesterly of, as measured at right angles to or radially to, the centerline of "Relocated Old Loomis Road" as delineated further below.

That part of the Northeast 1/4 of Section 9, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at a point on the West line of said 1/4 Section, 606.69 feet North of the Intersection of the centerline of Loomis Road (as laid out and traveled on April 17, 1951) with the West line of said 1/4 Section; thence Southeasterly on a line at right angles to said centerline, 357.74 feet to a point on said centerline, which is 490 feet Northeasterly of the intersection of said centerline with the West line of said 1/4 Section; thence Northeasterly along said centerline to a point which is 341 feet South 41°34' West (measured along said centerline) from the North line of said Section; thence North 58°26' West, 384.40 feet to a point on the North line of said Section, which point is 531.50 feet East of the Northwest corner of said 1/4 Section; thence West along the North line of said 1/4 Section, 531.50 feet to the Northwest corner of said 1/4 Section; thence South along the West line of said 1/4 Section, to the point of commencement; except the North 75 feet thereof.

The Centerline of "Relocated Old Loomis Road" is described as follows: Commencing at the Northwest corner of the Northeast 1/4 of Section 9, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin; thence South 00°08'17" West along the West line of said 1/4 Section 754.40 feet; thence South 53°19'45" East 325.84 feet to the point of beginning of the centerline of "Relocated Old Loomis Road," thence North 36°40'15" East 280.00 feet to a point of curve; thence along the arc of curve concave to the west, with a radius of 358.10 feet and a long chord of 230.41 feet bearing North 17°54'17" East, a distance of 234.58 feet to a point of tangency; thence North 00°51'42" West 512.54 feet to a point in the North line of said 1/4 Section and a point of ending of the centerline of "Relocated Old Loomis Road," said point being located 489.93 feet North 89°08'18" East of the Northwest corner of said 1/4 Section.

For informational purposes only

Property Address: Commonly Known As "Old Loomis Rd", Franklin, WI

Tax Key No.: NA

Sandi Wesolowski

From: Jesse Wesolowski <jweslaw@aol.com>
Sent: Tuesday, December 10, 2019 4:15 PM
To: Sandi Wesolowski; Shirley Roberts
Subject: Fwd: T5 Ballpark Commons impact fees bond, Fwd: Luxe Golf Building - 7055, 7065, 7055 S Ballpark Drive
Attachments: BPC - Payment Bond - Impact Fees(1).docx, Redline - BPC - Payment Bond - Impact Fees and BPC - Payment Bond - Impact Fees(1).pdf

Begin forwarded message:

From: "MImpola@foley.com" <MImpola@foley.com>
Subject: RE: T5 Ballpark Commons impact fees bond; Fwd: Luxe Golf Building - 7055, 7065, 7055 S. Ballpark Drive
Date: December 10, 2019 at 12:08:38 PM CST
To: Jesse Wesolowski <jweslaw@aol.com>, "douglas.buck@quarles.com" <douglas.buck@quarles.com>
Cc: "solson@franklinwi.gov" <solson@franklinwi.gov>, "rebecca.speckhard@quarles.com" <rebecca.speckhard@quarles.com>, "protzenberg@franklinwi.gov" <protzenberg@franklinwi.gov>, Calli Berg <cberg@franklinwi.gov>, "gmorrow@franklinwi.gov" <gmorrow@franklinwi.gov>, "JDietl@franklinwi.gov" <jdietl@franklinwi.gov>, "MLuberda@franklinwi.gov" <mluberda@franklinwi.gov>, Scott Satula <SSatula@franklinwi.gov>, "bkeyes@foley.com" <bkeyes@foley.com>, Tom Johns <tomj@rocventures.org>, "Mike Zimmerman" <mikez@rocventures.org>

Jesse, Doug –

Attached are my comments to the bond agreement. As I understand it, the total deferred fees are now reduced to \$464,629 (\$232,640 for the LUXE and \$231,989 for the Performance Center).

Please let me know if you have any questions or comments, or would like to discuss.

Thanks, Matt

Matthew K. Impola
Foley & Lardner LLP
777 E Wisconsin Avenue
Milwaukee, Wisconsin 53202
mimpola@foley.com
414-297-5767

From: Jesse Wesolowski <jweslaw@aol.com>
Sent: Tuesday, December 10, 2019 11:37 AM
To: douglas.buck@quarles.com; Impola, Matt <MImpola@foley.com>

Cc: solson@franklinwi.gov; rebecca.speckhard@quarles.com; protzenberg@franklinwi.gov; Calli Berg <cberg@franklinwi.gov>; gmorrow@franklinwi.gov; JDietl@franklinwi.gov; MLuberda@franklinwi.gov; Scott Satula <[SSatula@franklinwi.gov](mailto:ssatula@franklinwi.gov)>

Subject: T5 Ballpark Commons impact fees bond; Fwd: Luxe Golf Building - 7055, 7065,7055 S. Ballpark Drive

**** EXTERNAL EMAIL MESSAGE ****

Begin forwarded message:

From: Scott Satula <[SSatula@franklinwi.gov](mailto:ssatula@franklinwi.gov)>
Subject: Luxe Golf Building - 7055, 7065,7055 S. Ballpark Drive
Date: December 10, 2019 at 11:30:44 AM CST
To: Mark Luberda <MLuberda@franklinwi.gov>, Jesse Wesolowski <jweslaw@aol.com>

Mark/Jesse:

As discussed this morning, representatives from ROC Ventures submitted revised calculations for the Water Impact Fee (WIF) only on the subject facility. It should be noted that the WIF is a separate line item in the overall cost for Impact Fees. The original WIF was calculated to be \$360,903 and the revised WIF is calculated to be \$194,914 (reduction of \$165,989).

The WIF is calculated utilizing employee counts, hours of operation, building use and Standard Industrial Classification (SIC) codes. When the original employee counts were submitted to the City (and used to calculate the original WIF), the developer did not have a firm grasp on the number of employees and work hours for the facility. As facility planning moved forward, the developer had an opportunity to develop a plan that more closely reflects the number of employees and hours of operation for the facility. The revised plan reflects a decrease in both the original employee count and employee hours.

Staff has reviewed the developer's revised calculations and, with one revision, is in agreement with the submittal. Accordingly, staff, with the revision, is recommending approval to decrease the original Impact Fee total amount from \$398,629 to \$232,640 (reduction of \$165,989).

Please let me know if you have any questions regarding this information.

W. Scott Satula
Dir. of Inspection Services
ssatula@franklinwi.gov
9229 W Loomis Road
Franklin, WI 53132
414-425-0084
Franklinwi.gov



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Agreement Regarding Impact Fees

This Agreement Regarding Impact Fees (“**Agreement**”) is made by BPC GOLF ENTERTAINMENT, LLC and BPC COUNTY LAND, LLC (collectively, the “**Developer**”) in favor of the CITY of FRANKLIN, a Wisconsin Body Politic (the “**City**”) on this December __, 2019.

Recitals

WHEREAS, the Developer is the process of constructing two projects in the City: the LUXLUXE Golf facility located on the property legally described in the attached Exhibit A (the “LuxLUXE”) and the Performance Center located on the property legally described in the attached Exhibit B (the “**Performance Center**” and together with the LuxLUXE, the “**Projects**”);

WHEREAS, in connection with the Project, the Developer owes the City \$630,618464,629.00 in impact fees (the “**Impact Fees**”); and

WHEREAS, the Developer has requested and the City has approved the deferral of a portion of the Impact Fees upon the condition that the Developer execute and deliver this Agreement to the City.

Agreement

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency thereof Developer hereby acknowledges, the Developer covenants and agrees (for the benefit of the City) as follows:

1. Recitals. The terms and provisions of the above recitals are hereby incorporated by reference.
2. Deferral of Impact Fees. Upon execution of this Agreement, the Developer shall pay the City a portion of the Impact Fees equal to \$231,989-~~110.00~~. In exchange for the City’s agreement to defer the remain \$398,629-~~00~~remaining \$464,629.00 (the “**Deferred Impact Fees**”) of the Impact Fees, the Developer agrees to simultaneously deliver the following to the City:
 - a. A mortgage in favor of the City in the amount of \$~~199,314.50~~232,640.00 to be recorded against the LuxLUXE, which will be released upon payment thereof.
 - b. A mortgage in favor of the City in the amount of \$~~32,674.50~~231,989.00 to be recorded against the Performance Center, which will be released upon payment thereof.
 - c. ~~Am~~Two irrevocable payment ~~bonds~~bonds (one for \$232,640 and one for \$231,989) from Developer’s principal (“**Zimmerman**”) in the form attached hereto as Exhibit C.Developer agrees to pay the reasonable costs and expenses, including reasonable title and attorneys fees, incurred by the City in connection with recording the mortgages provided for herein against the Project. [Note: Can we delete title? We did not obtain title policies for the prior mortgage that BPC granted to the City.]
3. Payment of Deferred Impact Fees. The Deferred Impact Fees shall be payable to the City by the Developer (and/or Zimmerman under the payment bond) upon the earlier to occur:
 - a. At least \$~~_____~~232,640.00 of the Deferred Impact Fees shall be paid to the City upon the closing of a construction loan for the Lux;
 - b. At least \$~~_____~~231,989.00 of the Deferred Impact Fees shall be paid to the City upon the closing of a construction loan for the Performance Center; and
 - c. Any and all outstanding Deferred Impact Fees shall be due and payable on July 1, 2020.

In the event Developer fails to timely pay the Deferred Impact Fees as required hereunder, a ten (10%) percent penalty, plus interest at the prime rate then in effect shall accrue on all unpaid amounts not received by the City within three (3) business days of Developer's receipt of written demand.

4. Modification. No modification of any provision of this Agreement will be binding upon the City except as expressly set forth in a writing duly signed by and delivered on behalf of the City.
5. Time is of the Essence. Time is of the essence with respect to all payment provisions of this Agreement.
6. Severability. In the event any provision of this Agreement is determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, this Agreement and such provision shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, which shall remain in full force and effect.
7. Governing Law. This Agreement shall be interpreted, construed, and enforced according to the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date set forth above.

BPC GOLF ENTERTAINMENT, LLC

By:
Printed Name:
Title:

BPC COUNTY LAND, LLC

By:
Printed Name:
Title:

EXHIBIT A

4813-5019-7934 1

QB\360022 00040\60728206 3

4818-9123-9086 2

Exhibit B

4813-5019-7934-1

QB\360022 00040\60728206 3

4818-9123-9086 2

Exhibit C

IRREVOCABLE PAYMENT BOND (100%) - ~~\$398,629.00~~232,640.00

This IRREVOCABLE PAYMENT BOND or Surety Bond instrument is hereby executed to guarantee payment of deferred impact fees to be paid by the herein named Principal to the City of Franklin, Wisconsin (the "City"). This Payment Bond is dated December , 2019.

Project Title: Ballpark Commons (LUXE Golf)

Project Location: Franklin, Wisconsin

KNOW ALL PEOPLE BY THESE PRESENTS That **BPC GOLF ENTERTAINMENT, LLC**, a Wisconsin limited liability company ("Principal"), and **MICHAEL E. ZIMMERMAN**, an individual resident of Franklin, Wisconsin ("Surety"), are held firmly bound to the City of Franklin, Wisconsin (the "City"), in the amount of ~~\$398,629.00~~232,640.00 for impact fees related to the Project. For the payment of which, well and truly to be made to the City, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that if the said bounded Principal shall promptly make payment of the impact fees, when due, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

FURTHER, that this Payment Bond is being provided pursuant to Section 66.0617(6)(g) Wis. Stats. so that the Principal may obtain a deferral of all or a portion of the impact fees in accordance with such statute. If this Payment Bond is placed in the hands of an attorney for collection following the occurrence of an event of default hereunder, Surety agrees to pay to the City upon demand all costs and expenses, including, all attorneys' fees and court costs incurred by the City in connection with the enforcement or collection of all sums due under this Payment Bond (whether or not any action has been commenced by the City to enforce or collect such sums as are due under this Payment Bond) or in successfully defending any counterclaim or other legal proceeding brought by Surety contesting the City's right to collect the sums due under this Payment Bond.

FURTHER, that no change or extension of time shall in any way affect Principal's or Surety's obligations on this bond, and Surety does hereby waive notice of any change or extension of time.

FURTHER, In the event the Principal fail to timely pay the Deferred Impact Fees as required and defined by that certain Agreement Regarding Impact Fees, between the City and the Principal, then the Surety agrees to pay all the outstanding Deferred Impact Fees immediately after receipt of a written demand from the City. The City may, at its option, proceed directly without notice against Surety to collect and recover the full amount of the Deferred Impact Fees from the Surety hereunder, without proceeding against Principal or any collateral securing the Deferred Impact Fees. Demand for payment delivered hereunder shall be deemed delivered and received when sent to Surety's counsel via e-mail with a copy via regular mail: Matthew K. Impola, Foley & Lardner LLP, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202 mimpola@foley.com.

PROVIDED, FURTHER, that the undersigned Surety states that he has the authority to enter into and deliver this Payment Bond to the City.

My commission expires _____

~~13-5019-7934-1~~

QB\360022 00040\60728206 3

4818-9123-9086 2

Summary report:
Litera® Change-Pro for Word 10.5.0.0 Document comparison done on
12/10/2019 12:01:34 PM

Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: BPC - Payment Bond - Impact Fees.doc	
Modified filename: BPC - Payment Bond - Impact Fees(1).doc	
Changes:	
Add	25
Delete	24
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	49

Agreement Regarding Impact Fees

This Agreement Regarding Impact Fees (“**Agreement**”) is made by BPC GOLF ENTERTAINMENT, LLC and BPC COUNTY LAND, LLC (collectively, the “**Developer**”) in favor of the CITY of FRANKLIN, a Wisconsin Body Politic (the “**City**”) on this December __, 2019.

Recitals

WHEREAS, the Developer is the process of constructing two projects in the City: the LUXE Golf facility located on the property legally described in the attached Exhibit A (the “**LUXE**”) and the Performance Center located on the property legally described in the attached Exhibit B (the “**Performance Center**” and together with the LUXE, the “**Projects**”);

WHEREAS, in connection with the Project, the Developer owes the City \$464,629.00 in impact fees (the “**Impact Fees**”); and

WHEREAS, the Developer has requested and the City has approved the deferral of the Impact Fees upon the condition that the Developer execute and deliver this Agreement to the City.

Agreement

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency thereof Developer hereby acknowledges, the Developer covenants and agrees (for the benefit of the City) as follows:

1. Recitals. The terms and provisions of the above recitals are hereby incorporated by reference.
2. Deferral of Impact Fees. Upon execution of this Agreement, the Developer shall pay the City a portion of the Impact Fees equal to \$0.00. In exchange for the City’s agreement to defer the remaining \$464,629.00 (the “**Deferred Impact Fees**”) of the Impact Fees, the Developer agrees to simultaneously deliver the following to the City:
 - a. A mortgage in favor of the City in the amount of \$232,640.00 to be recorded against the LUXE, which will be released upon payment thereof.
 - b. A mortgage in favor of the City in the amount of \$231,989.00 to be recorded against the Performance Center, which will be released upon payment thereof.
 - c. Two irrevocable payment bonds (one for \$232,640 and one for \$231,989) from Developer’s principal (“**Zimmerman**”) in the form attached hereto as Exhibit C.Developer agrees to pay the reasonable costs and expenses, including reasonable title and attorneys fees, incurred by the City in connection with recording the mortgages provided for herein against the Project. [Note: Can we delete title? We did not obtain title policies for the prior mortgage that BPC granted to the City.]
3. Payment of Deferred Impact Fees. The Deferred Impact Fees shall be payable to the City by the Developer (and/or Zimmerman under the payment bond) upon the earlier to occur:
 - a. At least \$232,640.00 of the Deferred Impact Fees shall be paid to the City upon the closing of a construction loan for the Lux;
 - b. At least \$231,989.00 of the Deferred Impact Fees shall be paid to the City upon the closing of a construction loan for the Performance Center; and
 - c. Any and all outstanding Deferred Impact Fees shall be due and payable on July 1, 2020.

In the event Developer fails to timely pay the Deferred Impact Fees as required hereunder, a ten (10%) percent penalty, plus interest at the prime rate then in effect shall accrue on all unpaid amounts not received by the City within three (3) business days of Developer's receipt of written demand.

4. Modification. No modification of any provision of this Agreement will be binding upon the City except as expressly set forth in a writing duly signed by and delivered on behalf of the City.
5. Time is of the Essence. Time is of the essence with respect to all payment provisions of this Agreement.
6. Severability. In the event any provision of this Agreement is determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, this Agreement and such provision shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, which shall remain in full force and effect.
7. Governing Law. This Agreement shall be interpreted, construed, and enforced according to the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date set forth above.

BPC GOLF ENTERTAINMENT, LLC

By:
Printed Name:
Title:

BPC COUNTY LAND, LLC

By:
Printed Name:
Title:

EXHIBIT A

Exhibit B

Exhibit C

IRREVOCABLE PAYMENT BOND (100%) - \$232,640.00

This IRREVOCABLE PAYMENT BOND or Surety Bond instrument is hereby executed to guarantee payment of deferred impact fees to be paid by the herein named Principal to the City of Franklin, Wisconsin (the "City"). This Payment Bond is dated December 12, 2019.

Project Title: Ballpark Commons (LUXE Golf)

Project Location: Franklin, Wisconsin

KNOW ALL PEOPLE BY THESE PRESENTS That **BPC GOLF ENTERTAINMENT, LLC**, a Wisconsin limited liability company ("Principal"), and **MICHAEL E. ZIMMERMAN**, an individual resident of Franklin, Wisconsin ("Surety"), are held firmly bound to the City of Franklin, Wisconsin (the "City"), in the amount of \$232,640.00 for impact fees related to the Project. For the payment of which, well and truly to be made to the City, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that if the said bounded Principal shall promptly make payment of the impact fees, when due, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

FURTHER, that this Payment Bond is being provided pursuant to Section 66.0617(6)(g) Wis. Stats. so that the Principal may obtain a deferral of all or a portion of the impact fees in accordance with such statute. If this Payment Bond is placed in the hands of an attorney for collection following the occurrence of an event of default hereunder, Surety agrees to pay to the City upon demand all costs and expenses, including, all attorneys' fees and court costs incurred by the City in connection with the enforcement or collection of all sums due under this Payment Bond (whether or not any action has been commenced by the City to enforce or collect such sums as are due under this Payment Bond) or in successfully defending any counterclaim or other legal proceeding brought by Surety contesting the City's right to collect the sums due under this Payment Bond.

FURTHER, that no change or extension of time shall in any way affect Principal's or Surety's obligations on this bond, and Surety does hereby waive notice of any change or extension of time.

FURTHER, In the event the Principal fail to timely pay the Deferred Impact Fees as required and defined by that certain Agreement Regarding Impact Fees, between the City and the Principal, then the Surety agrees to pay all the outstanding Deferred Impact Fees immediately after receipt of a written demand from the City. The City may, at its option, proceed directly without notice against Surety to collect and recover the full amount of the Deferred Impact Fees from the Surety hereunder, without proceeding against Principal or any collateral securing the Deferred Impact Fees. Demand for payment delivered hereunder shall be deemed delivered and received when sent to Surety's counsel via e-mail with a copy via regular mail: Matthew K. Impola, Foley & Lardner LLP, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202 mimpola@foley.com.

PROVIDED, FURTHER, that the undersigned Surety states that he has the authority to enter into and deliver this Payment Bond to the City.

