CITY OF FRANKLIN
COMMITTEE OF THE WHOLE MEETING*
FRANKLIN CITY HALL – COMMON COUNCIL CHAMBERS
9229 WEST LOOMIS ROAD, FRANKLIN, WISCONSIN
AGENDA**

MONDAY, FEBRUARY 5, 2018 AT 6:30 P.M.

1. Call to Order and Roll Call.

2. Fire Department Presentation Related to Current and Future Staffing Considerations.

3. Tax Incremental District No. 5 Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) Ballpark Commons Sports Anchored Mixed-Use Development Project Development Agreement. The Committee of the Whole May Enter Closed Session Pursuant to Wis. Stat. § 19.85(1)(e), to Deliberate Upon a Tax Incremental District No. 5 Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) Development Agreement, the Negotiation of Agreement Terms and the Investing of Public Funds in Relation Thereto, for Competitive and Bargaining Reasons, and to Reenter Open Session at the Same Place Thereafter to Act on Such Matters Discussed Therein as it Deems Appropriate.

4. Adjournment.

*Notice is given that a majority of the Community Development Authority, Economic Development Commission and Plan Commission may attend this meeting to gather information about an agenda item over which the Community Development Authority, Economic Development Commission and Plan Commission has decision-making responsibility. This may constitute a meeting of the Community Development Authority, Economic Development Commission and Plan Commission, per State ex rel. Badke v. Greendale Village Board, even though the Community Development Authority, Economic Development Commission and Plan Commission will not take formal action at this meeting.

**Supporting documentation and details of these agenda items are available at City Hall during normal business hours.

[Note: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information, contact the City Clerk's office at (414) 425-7500.]

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| APPROVAL | COMMITTEE OF THE WHOLE | MEETING DATE |
|---|---|---|
| Slw | | 02/05/2018 |
| REPORTS AND RECOMMENDATIONS | **Fire Department Presentation related to Current and Future Staffing Considerations** | ITEM NUMBER 2. |

The Fire Department will present an overview of Department staffing, deployment, and operations for consideration and determination of future staffing needs and options.

**COUNCIL ACTION REQUESTED**

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| APPROVAL | REQUEST FOR COMMITTEE OF THE WHOLE ACTION | MEETING DATE |
|---|---|---|
| Sw | | February 5, 2018 |
| | Tax Incremental District No. 5 Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) Ballpark Commons Sports Anchored Mixed-Use Development Project Development Agreement. The Committee of the Whole may enter closed session pursuant to Wis. Stat. § 19.85(1)(e), to deliberate upon a Tax Incremental District No. 5 Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) Development Agreement, the negotiation of Agreement terms and the investing of public funds in relation thereto, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate | ITEM NUMBER<br>3. |

Attached is a draft development agreement which at the time of this writing remains under review and negotiation by the developer and consultants and City staff and consultants.

## COMMITTEE ACTION REQUESTED

A motion to enter closed session pursuant to Wis. Stat. § 19.85(1)(e), to deliberate upon a Tax Incremental District No. 5 Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) Ballpark Commons Sports Anchored Mixed-Use Development Project Development Agreement, the negotiation of Agreement terms and the investing of public funds in relation thereto, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

Economic Development Dept.: AMH; Legal Services Dept.: jw

# TAX INCREMENTAL DISTRICT NO. 5
# DEVELOPMENT AGREEMENT
# BETWEEN THE CITY OF FRANKLIN AND
# BPC MASTER DEVELOPER, LLC (Developer)

***Draft terms and provisions below remain under review by the stated parties to the agreement and subject to negotiation***

**BALLPARK COMMONS – FRANKLIN, WISCONSIN (Project )**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is entered into as of February ____, 2018 by and between **BPC MASTER DEVELOPER, LLC**, a Wisconsin limited liability company ("Developer") and the **CITY OF FRANKLIN, WISCONSIN**, a Wisconsin municipal corporation ("City").

## RECITALS

City and Developer acknowledge the following:

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

B. 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 "Tax Increment Law"), the City adopted a plan for redevelopment within the District (the "Project Plan").

C. The Project Plan and District were approved in September, 2016, and the Planned Development District was approved in April, 2016 (collectively, and as amended from time to time, the "Master Development Plan") and pursuant to the Master Development Plan the parties are entering into this Agreement.

D. Developer plans on constructing a mixed-used 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 $130 million (the "Project"). It is acknowledged that development of the Project as described above will be consistent with the Project Plan.

E. The City desires to encourage economic development, eliminate blight, expand its tax base and create new jobs within the City, the District and the Property. The City finds that the development of the Project and the fulfillment of the terms and conditions of this Agreement will further such goals, are in the vital and best interests of the City and its residents, and will serve a public purpose in accordance with state and local law.

F. The development of the Project would not occur without the financial participation of the City as set forth in this Agreement.

G. The City, pursuant to Common Council action dated _____, 2018, has approved this Agreement and authorized its execution by the proper City officials on the City's behalf and may further approve the provisions of this Agreement relating to the issuance of the General Obligation Bonds (GO Bonds) and Municipal Revenue Obligation (MRO)-1 and MRO-2 described herein. "GO Bonds" shall mean all obligations borrowed by the City to finance the City Payment (other than any MROs) regardless of form, such as anticipation notes, general obligation notes/bonds, refunding notes/bonds and or revenue notes/bonds.

H. Developer has approved this Agreement and authorized its execution by the appropriate representatives on its behalf.

## AGREEMENTS

In consideration of the RECITALS and the terms and conditions set forth herein, the parties agree and covenant as follows:

## ARTICLE I
## DEVELOPER ACTIVITIES AND OBLIGATIONS

A. Subject to delay due to Force Majeure Events, Developer shall commence construction or cause commencement of construction of each phase of the Project (each, a "Phase") on or before the applicable Phase commencement date set forth on **Exhibit A-1** (the "Commencement Date") and shall complete construction or cause completion of construction of each Phase of the Project on or before the applicable Phase completion date set forth on **Exhibit A-1** (the "Completion Date"). Subject to Developer's commitment in Section IB below, Developer shall have the right to update **Exhibit A-1** from time to time upon written notice to the City. For purposes of this Article I, "commence construction" or "Commencement of Construction" shall mean that the Developer's construction contractor has commenced demolition, excavation and/or grading work for the applicable Phase of the Project; "Complete Construction" or "Completion of Construction" shall mean the issuance of occupancy permits for the applicable Phase of the Project. The Developer shall arrange for funding for all costs of each Phase of the Project in excess of the funds provided by its construction lender and the City. The Project will include, to the extent necessary, the removal of the existing improvements on the Property, environmental management of the Property, relocation or upgrade of utilities, and the construction of the improvements for each Phase set forth on **Exhibit A-1**. Copies of the Plans and Specifications for each Phase of the Project will be retained at the offices of the City Economic Development Department. Each Phase of the Project shall be deemed to be substantially complete after Developer delivers the certificate of completion attached hereto as **Exhibit B-1** and on the date that the City Building Inspector issues a certificate of occupancy for the Phase, which certificate may be subject to completion of landscaping and similar seasonal items and other non-material corrective actions. The City Building Inspector shall not issue the certificate of occupancy if the Phase does not conform to the Plans and Specifications, subject to any changes to the Plans and Specifications that may have been approved by the City.

B. Developer agrees 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 the covenants contained in this Section B., the City may demand that Developer or Michael E. Zimmerman pay any shortfall on the regularly scheduled principal and interest payments on the GO Bonds caused by such violation and, in the event Developer or Michael E. Zimmerman fails to pay such shortfall within thirty (30) days of written demand therefore, only then shall Developer be in default under this Agreement and thereafter the City many exercise any other rights or remedies contained in this Agreement. Simultaneously with the execution of this Agreement, the Developer shall cause Michael E. Zimmerman to provide an unlimited personal guaranty, acknowledged and consented to by his spouse, of any shortfall on the GO Bonds in the form agreed to by the City in its sole but commercially reasonable discretion. The full amount of any shortfall payments made by Developer or Michael E. Zimmerman shall be reimbursed to Developer or guarantor out of the available excess Tax Increment (after payments are made on the GO Bonds) as provided for in Section II D(4) below. Developer's and Michael E. Zimmerman's guaranty obligations under this Agreement shall be limited in proportion to (1) the actual amounts disbursed under the Disbursing Agreement, as defined below, towards the TIF Improvements and the City expenses expressly permitted under this Agreement, plus interest thereon and (2) based on actual or assumed payment obligations under the GO Bonds which are amortized over the life of the District, regardless of whether the City funds is the City Bond Payments using shorter term debt.

C. The anticipated TIF Improvements and TIF Budget, which amounts include both hard and soft costs for each line item, for the Project are set forth on **Exhibit B** attached hereto. The TIF Improvements identified in **Exhibit B** to be dedicated to the public (the "Public Improvements"), will be completed in accordance with City specifications, including the execution of a City standard form development agreement, with such revisions as Developer shall reasonably agree upon, where applicable terms thereof are not specifically set forth in this Agreement, and, at the City's election, will dedicate same to the City in accordance with City inspection and acceptance procedures. Unless otherwise approved by City, Developer shall obtain bids for the Public Improvements through the publication of a Class 2 Notice, require that a certified check or bid bond for 5% of the bid be provided to Developer as a guaranty, in a form reasonably acceptable to Developer, award the contract to the lowest cost qualified bidder. In accordance with Wis. Stat. 62.15(12), City delegates and instructs the Developer to enter into on the Developer's own behalf and to execute such documents as are necessary to construct the Public Improvements. The Public Improvements shall at all times be subject to City inspection and approval and the City or other public entity shall not be required to accept conveyance of the Public Improvements unless the Public Improvements have been constructed in a good and workmanlike manner, in accordance with the City-approved plans for the Public Improvements, and otherwise are in a condition reasonably acceptable to the City. Following approval by the City of the completed Public Improvements, the Public Improvements shall be conveyed to and accepted by the City. The City may elect whether to accept Public Improvements located on landfill waste through easement, lease or in fee simple, at the City's discretion, and the City may require reasonable assurances from the Wisconsin Department of Natural Resources before acceptance. As part of the public dedications of the Public Improvements, the City reserves the right to require the Developer, or its successors and assigns, to undertake any and all repairs, replacements and maintenance to the Public Improvements located north of Rawson (including

but not limited to underground utilities), to the extent such repair, maintenance or replacement requires the disturbance of land fill waste containing hazardous materials in existence as of the date of such dedication. The Developer shall provide to the City or other public entity from the Developer and all contractors and consultants involved in connection with the construction and installation of the Public Improvements, a one-year warranty against defects in construction, materials and workmanship, in a form reasonably acceptable to the City.

D. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Developer's failure to meet any applicable Commencement Date or Completion Date constitute a breach or Default by Developer hereunder so long as the Tax Increments created by any one or more of the completed Phases of the Project are sufficient or are then reasonably projected by the City to be sufficient to pay the regularly scheduled principal and interest payments on the GO Bonds as set forth on **Exhibit C** attached hereto or so long as Michael E. Zimmerman or the Developer has paid any shortfall on the GO Bonds under his shortfall guaranty.

E. The Developer shall arrange for funding for all costs of each Phase of the Project in excess of the funds provided by its construction lender and the City. Developer will provide evidence to the reasonable satisfaction of the City that Developer has secured sufficient debt and equity financing commitments to enable each Phase of the Project to proceed. In the event that the actual cost of the TIF Improvements exceeds the amount of the proceeds of the GO Bonds, then Developer shall be solely responsible for the payment of such excess costs. In the event the actual cost of the TIF Improvements is less than as set forth in **Exhibit B** and/or if the contingencies of $2,933,672 set forth in **Exhibit B** are not needed, the savings shall be used to establish the Reserve, as defined below, and then to pay down the GO Bonds.

F. Prior to the disbursement of any portion of the City Payment, the Developer shall provide and record a subordinated mortgage (the "City Mortgage") to the City on all of the Project real property owned by Developer south of Rawson Avenue in a form reasonably acceptable to Developer and the City. The City Mortgage shall secure Developer's monetary obligations contained in this Agreement. In connection with the grant of the City Mortgage, the Developer, City and Developer's existing lender shall enter into a subordination agreement on terms and conditions reasonably acceptable to the parties. The City Mortgage shall be released at such time as Developer satisfies the loan and equity conditions set forth in Section II B(2) below. In the event of a default under the City Mortgage beyond all applicable notice and cure periods, then Developer shall cause the first mortgage to be paid off in full within forty-five (45) days after written notice from the City, such that the City Mortgage becomes a first mortgage lien.

G. Developer shall cooperate with the City throughout the development and construction of the Project and the term of this Agreement and shall promptly complete all submissions and applications in accordance with applicable City ordinances.

H. Developer shall enter into the disbursing agreement attached hereto as **Exhibit D** (the "Disbursing Agreement") with respect to disbursing the City Payment to pay for the cost of the TIF Improvements. The City Bond Payments, as defined below, shall be disbursed through the escrow agent pursuant to the Disbursing Agreement.

I. Developer's affilate BPC County Land, LLC has or will entered into agreements with Milwaukee County regarding the development of the Property north of West Rawson Avenue, to wit: Developer's Option to Purchase Agreement with Milwaukee County, Development Agreement Ballpark Commons with Milwaukee County, Contribution and Participation Agreement ("Trust Agreement") with Milwaukee County, and the Lease Agreement between Milwaukee County Department of Parks, Recreation and Culture and The Rock Sports Complex, LLC (collectively, "County Agreements"). Developer's obligations under the Trust Agreement shall be obligations under this Agreement and shall be, continue and remain binding upon BPC County Land, LLC, its successors and assigns as owners of the area designated as landfill license number 0081 (the "Landfill") for all of the times and terms set forth in the County Agreements, in conjunction with such times and terms as may be set forth by the Wisconsin Department of Natural Resources, or its successor pursuant to its regulatory authority and jurisdiction. Compliance with all of the Wisconsin Department of Natural Resources laws, rules, regulations, orders, decisions, determinations and directions shall also be obligations under this Agreement and shall be, continue and remain binding on the owner of the Landfill.

## ARTICLE II
## CITY ACTIVITIES AND OBLIGATIONS

A. City shall cooperate with Developer throughout the development and construction of the Project and the term of this Agreement and shall reasonably promptly review and/or process all complete submissions and applications in accordance with applicable City ordinances. Subject to the City's receipt of complete payment applications and any backup required under the Disbursing Agreement from Developer, the City shall promptly review and/or process all such payment applications.

B. Subject to satisfaction of all of the terms and conditions of this Agreement, the City shall make available for the Project the following contributions and assistance:

1. In accordance with time table set forth in **Exhibit B-2**, the City shall disburse up to a maximum amount of $8,783,500 towards the TIF Improvements listed in the attached **Exhibit B** (the "TIF Improvements")

2. At any time after June 1, 2018, and conditioned upon the City's receipt of evidence from the Developer of (A) a binding construction or other loan commitment(s) plus (B) sufficient equity, or binding equity commitments, to construct [$40,000,000] of private improvements on the Property (the "Initial Improvements"), the City will (simultaneously with or prior to the Developer's construction loan closing) disburse [$10,990,387] towards the TIF Improvements; provided however, that if Developer fails to satisfy the contingency set forth in this Section II (B)(2) and/or to substantially complete the Initial Improvements, on or before January 1, 2022, the City's obligations for subsequent disbursements under Sections II B(2) and B(3) shall terminate.

3. Upon the City's receipt of evidence from the Developer of (A) a binding construction or other loan commitment(s) plus (2) sufficient equity, or binding equity commitments, to construct [$10,000,000] of private improvements on the Property (not included in 2 above), the City will disburse [$2,747,597] towards the TIF Improvements. The payments being made by the City to the Developer pursuant to Section II B(1)-(3) for the TIF Improvements are hereinafter referred to collectively (and individually) as the "City Bond Payment" and may be funded by the City through the issuance of one or more general obligation bonds, promissory notes, or note anticipation notes, revenue bonds or combination thereof (the "GO Bonds").

4. On or before April 1, 2018, the City will issue an obligation (the "MRO-1") to the Developer in the amount of $3,500,000.00 with an interest rate of 5.5% per annum. Amounts due the Developer each year under the MRO-1 shall be set forth in **Exhibit C**. The City's obligation to make payments to the Developer under the MRO-1 shall be limited as described below. On or before May 1, 2031, the City will issue an obligation (the "MRO-2") to the Developer (or the then owner(s) of the Property north of Rawson, as appropriate) in the amount of $1,500,000.00 with an interest rate of 0.00% per annum which funds shall be applied toward the reconstruction, maintenance and/or repair of the Project methane system in accordance with Developer's Contribution Agreement with Milwaukee County. Amounts due the Developer each year under the MRO-2 shall be set forth in **Exhibit C**. The City's obligation to make payments to the Developer under the MRO-2 shall be limited as described below. MRO-1 and MRO-2 are hereinafter referred to collectively as the "MROs".

5. The City Bond Payment, MRO-1 and MRO-2 are herein referred to collectively as the "City Payments".

C. All Tax Increments shall be applied in the following order of priority until each of the following is paid in full:

1. Payment of principal and interest on the GO Bonds issued to fund the City Bond Payment as set forth on **Exhibit C** attached hereto.

2. Payment of the TIF Administration Fee as set forth on **Exhibit C** attached hereto in an amount not to exceed the amounts shown on **Exhibit C,** as well as the reimbursement of any and all other fees and expenses of the City which are expressly provided for reimbursement under this Agreement.

3. Payment toward a debt service reserve fund (the "Reserve"), in an amount equal to 100% of the average annual debt service on the financing represented by the GO Bonds. Interest on the Reserve shall be used to pay GO Bond payments, and in the event not previously applied to GO Bond payments, the Reserve shall be applied to the final debt service payments under the GO Bonds. The Reserve may be released early to Developer and applied to the principal and any accrued interest on MRO-1 if the actual debt service coverage on the financing represented by the GO Bonds generated by the Tax Increment commencing after 2021 on the Property is not less than 115% for three consecutive years.

4. Payment of principal and interest on the MRO-1 as set forth on **Exhibit C**

attached hereto.

5. Payment of principal and interest on the MRO-2 as set forth on **Exhibit C** attached hereto.

6. Payment of principal and interest on additional MROs issued by the City in assistance of the Project.

7. Any amounts due in any year, but not paid, including interest reflected in such amounts, shall carry over until paid, without further interest compounded on unpaid amounts.

D. Any Tax Increments remaining in any year after payment of the above obligations shall be held in an account (the "Surplus Account"). Amounts in the Surplus Account shall be used for any of the following and shall be applied in the following order of priority:

1. To pay unpaid current or past due principal and interest on the GO Bonds, including refunding any advances made by the City from other City funds to pay such current or past due amounts.

2. To pay the City for any unpaid current or past-due TIF Administration Fee in an amount not to exceed the amounts shown on **Exhibit C** as well as the reimbursement of any and all other fees and expenses of the City which are expressly provided for reimbursement under this Agreement.

3. To pay unpaid current or past-due principal and interest on the MRO-1.

4. Payment to reimburse the Developer or Michael E. Zimmerman in accordance with Section I C above.

5. Funds in the Surplus Account shall not be used for any other purposes without the mutual consent of the City and Developer until sufficient increment is in place to meet the obligations outlined in this agreement.

E. **Exhibit C** depicts the anticipated increments and the annual debt service schedule on all obligations. **Exhibit C** will be revised by the City if necessary to reflect actual principal and interest on the GO Bonds when they are issued and to reflect the issuance of additional MROs.

F. The MRO-1 and MRO-2 shall be issued in substantially the form attached here to as **Exhibit E**. The MRO-1 and MRO-2 shall have a term that extends no later than the life of the District. Installments of principal and interest on the MRO-1 and MRO-2 will be due and payable on [March 1] of each year commencing on the [March 1 following the issuance of the MRO-1 or MRO-2, as applicable (the "Bond Payment Date"). "Tax Increment" shall mean all tax increments (as defined by the Tax Increment Law) collected and retained by the City solely from the real property described on **Exhibit F**, or as the district may otherwise be amended, attached hereto (the "Increment Property") in a calendar year. "Available Tax Increment" shall

mean all Tax Increment, less amounts applied to payment or funding of the GO Bonds, the TIF Administration Fee, and the Reserve, as provided in Section II.C.1-3 above; and with respect to the MRO-2, less amounts applied to payment of MRO-1, as provided in Section II.C.4 above; and with respect to any additional MROs, less amounts applied to payment of MRO-1 and MRO-2 as provided in Section II.C.4-5. Available Tax Increment appropriated to make payments on the MRO-1 or MRO-2, as applicable, shall first be applied to accrued interest on the MRO-1 or MRO-2 as applicable, with any remaining amount being applied toward principal. If on any Bond Payment Date there shall be insufficient Available Tax Increment to pay the principal or interest due on the MRO-1 or MRO-2, as applicable, the amount due but not paid shall accumulate and be payable on the next Bond Payment Date until the final Bond Payment Date (which shall be no later than the statutory District closure date, as it may be extended), provided, however, that interest shall not compound on any unpaid amounts. The MRO-1 and MRO-2 shall be subject to prepayment in whole or in part at any time at the sole option of the City. The amounts and maturities of the installments of principal of the MRO-1 and MRO-2 which are to be prepaid shall be selected by the City, in its sole discretions, without penalty. The provisions of this subsection F. shall apply to any additional MROs issued by the City with respect to the Project.

THE MRO-1, MRO-2, AND ANY ADDITIONAL MROS SHALL BE SPECIAL, LIMITED REVENUE OBLIGATIONS OF THE CITY PAYABLE ONLY FROM AVAILABLE TAX INCREMENT THAT IS APPROPRIATED BY THE COMMON COUNCIL OF THE CITY FOR THAT PURPOSE. No property or other asset of the City, except Available Tax Increment appropriated to make payments with respect to the MRO-1, MRO-2, or any additional MROs, is or shall be a source of payment of the City's obligations thereunder. The MRO-1, MRO-2, and any additional MROs shall not constitute a debt or obligation of the City, the County in which it is located, the State of Wisconsin or any political subdivision thereof within the meaning of any State constitutional provision, statutory provision or limitation, or charter provision or limitation thereof and shall not be a charge against their general credit or taxing powers.

THE CITY MAKES NO REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, THAT THE AVAILABLE TAX INCREMENT, IF APPROPRIATED, WILL BE SUFFICIENT TO PAY, IN WHOLE OR IN PART, THE AMOUNTS WHICH ARE OR MAY BECOME DUE AND PAYABLE UNDER THE MRO-1, MRO-2, OR ANY ADDITIONAL MROS. THE CITY'S OBLIGATION TO MAKE PAYMENTS ON THE MRO-1, MRO-2, AND ANY ADDITIONAL MROS IS LIMITED TO THE AVAILABILITY OF AVAILABLE TAX INCREMENT AND IS FURTHER SUBJECT TO ANNUAL APPROPRIATION BY THE COMMON COUNCIL.

In each year the Mayor shall include the appropriation of Available Tax Increment in the City budget as submitted to the Common Council for consideration for the next succeeding fiscal year. If the Common Council determines not to appropriate any portion of such Available Tax Increment, written notice thereof shall be provided to the Developer within 14 days of the City's budget adoption.

IF ON THE FINAL BOND PAYMENT DATE, THERE REMAIN AMOUNTS OUTSTANDING AND UNPAID ON THE MRO-1, MRO-2, OR ANY ADDITIONAL MROS,

THEN ALL INTEREST ACCRUED BUT UNPAID AND THE REMAINING BALANCE OF PRINCIPAL OF THE MRO-1, MRO-2, OR ANY ADDITIONAL MROS SHALL BE DEEMED PAID IN FULL, IT BEING UNDERSTOOD THAT UPON THE FINAL BOND PAYMENT DATE, THE OBLIGATION OF THE CITY TO MAKE ANY FURTHER PAYMENTS ON THE MRO-1, MRO-2, OR ANY ADDITIONAL MROS SHALL TERMINATE. THE CITY SHALL HAVE NO OBLIGATION OF ANY KIND WHATSOEVER TO PAY ANY AMOUNT OF PRINCIPAL OR INTEREST ON THE MRO-1, MRO-2, OR ANY ADDITIONAL MROS WHICH REMAINS UNPAID AFTER THE FINAL BOND PAYMENT DATE, AND THE OWNER OF THE MRO-1, MRO-2, OR ANY ADDITIONAL MROS SHALL HAVE NO RIGHT TO RECEIVE PAYMENT OF SUCH AMOUNTS.

The City shall have no obligation to make payments on the MRO-1, MRO-2, or any additional MROs while the Developer is in Default under this Agreement or if no Available Tax Increment is available. If any Available Tax Increment is available, then the City shall make payments on the MRO-1, MRO-2, or any additional MROs to the extent of such Available Tax Increment appropriated by the Council for that purpose.

G. Developer shall provide the City with a budget setting forth all of the reasonably anticipated costs for each Phase of the Project not later than the earlier of: (i) the date that Developer executes a construction contract for each Phase of the Project with a general contractor; or (ii) the date the City issues a building permit for each Phase of the Project. A final reconciliation of the Project costs for each Phase of the Project shall be performed by the City Engineer or designee at such time as an occupancy permit is issued for each Phase of the Project. Developer shall make all of its records substantiating the costs of each Phase of the Project available to the City Engineer or designee, including the monthly construction draws and backup information provided by Developer to its construction lender. Such information shall be held and treated as confidential and shall not be part of the public record associated with the Project, if and as may be permitted under the Wisconsin Open Records Law.

H. In further consideration of the City's participation in this Agreement, if the actual aggregate financial returns from all Phases of the Project that are developed, owned and controlled by Developer are such that the Developer's internal rate of return ("Developer's IRR") on Investor Equity (as such term is hereinafter defined) exceeds 20% as determined herein (such excess hereinafter "Excess Return"), then Developer agrees to pay 35% of such Excess Return to the City ("Contingent Payment"). For purposes hereof, the term "Investor Equity" shall mean the sum of all of the investor equity, developer equity, any manager or member loans, together with any substitutes, replacements or supplements thereof or thereto, in any part of the Project. The determination of the Developer's IRR shall be calculated in accordance with this Section H and the example set forth in **Exhibit H** ("Contingent Payment Example") upon the occurrence of the following, as more particularly provided below:

1. Upon the closing of a sale or a controlling interest in the final Phase of the Project by the Developer to an individual or entity that is not affiliated with or controlled by the Developer or a direct or indirect member of Developer (a "Sale");

2. Upon a cash out refinancing (as defined below) of the final Phase of the Project;

3. Upon a 1031 tax free exchange of the final Phase of the Project; or

4. Pursuant to the Developer's Put (as defined below).

5. Upon the fifteen (15th) anniversary of substantial completion of the final Phase of the Project, but no later than the date that the District terminates.

In the event that none of the events described in paragraphs 1 through 4 above have occurred by the tenth (10th) anniversary of substantial completion of the first Phase of the Project, such that the Contingent Payment has actually been determined, then, upon not less than thirty (30) days prior written notice to the City, the Developer can unilaterally elect to commence a valuation process that establishes a fair market value of any Phases of the Project that have not be subject to any of the events described in paragraphs 1 through 4 above (the "Developer Put"). If the City and the Developer cannot agree upon the fair market value of such portions of the Project within ninety (90) days subsequent to the Developer's written notice, then the fair market value as of the date of the giving of the Developer's notice shall be determined by an appraiser mutually selected by the City and the Developer, which appraiser shall be agreed to by the parties within thirty (30) days after Developer's initial notice. The cost of the appraiser shall be borne equally by the Developer and as an added administrative cost of the TID, not subject to administrative caps outlined elsewhere. The fair market value as so determined shall be used in lieu of an actual sales price for purposes of calculating the Developer's IRR and the Contingent Payment on those Phases of the Project.

For purposes of this Agreement, the term "cash out refinancing" shall mean a refinancing of a Phase of the Project that generates sufficient cash that said refinancing directly results in a cash distribution to the members of the Developer (including any Developer affiliated members) and that results in the members receiving a return of all of their capital and preferred returns. As necessary, the amount of Net Proceeds for purposes of calculating the Developer's IRR from partial cash out financings, where cash is distributed to the members but insufficient amounts to return all of the capital and preferred returns and partial Sale events after which the Developer retains a continued ownership interest in a Phase of the Project will be accumulated for purposes of establishing the total amount of Net Proceeds for purposes of calculating the Developer's IRR and will not be paid until the total amount of the Net Proceeds can be calculated. Unless otherwise agreed to by Developer and City, the Contingent Payment shall be paid in one lump sum pursuant to the terms and provisions herein and as more particularly set forth below.

Upon the occurrence of an event or events that triggers the requirement that Developer make the Contingent Payment, Developer shall have up to 180 days subsequent to the determination of the amount of the Contingent Payment to make such payment. Notwithstanding the preceding sentence, in the event that Developer does not have sufficient cash to make the Contingent Payment, then Developer may elect to pay the Contingent Payment in installments with any increment that is available to pay the MRO-1; however, in in any event the Contingent Payment shall be due in full on or before the closing of the District.

"Net Proceeds" is herein defined to mean the gross sale proceeds, less:

(a) Costs of the sale;

(b) Amounts due lender(s) under the financing agreements for the Project and the amounts of any other indebtedness, the proceeds of which were used for the any Phase of the Project;

(c) Investor Equity, including any accrued and unpaid preferred return thereon;

(d) Any deferred portion of Developer's developer fee, land contribution costs and other deferred fees (collectively, "Deferred Fees"), including any accrued and unpaid preferred return thereon.

I. If Developer disputes the conclusions of the City's financial consultant under paragraphs G. or H. of this Article and the parties are unable to reach agreement, then the disputed matter shall be submitted to arbitration before an independent consultant mutually selected by the parties. If the parties are unable to agree upon an arbitrator within fifteen (15) days following a written demand for arbitration submitted by either party, then the selection of an arbitrator shall be submitted to the Chief Judge of the Circuit Courts for Milwaukee County. The costs of all arbitration proceedings shall be split equally between the parties and the decision of the arbitrator shall be final and binding. The City portion of such fee shall be added to administrative costs of the District and shall not be subject to any caps outlined elsewhere herein. "Substantial completion" with respect to each Phase of the Project shall mean that the building improvements for the applicable Phase are substantially constructed (except for minor punch list items) and that an occupancy certificate has been issued by the applicable governmental authorities for such Phase.

## ARTICLE III
## PAYMENT OF TAXES; PAYMENT IN LIEU OF TAXES

Throughout the life of District 5, Developer or its successor owners to all or any portion of the Property will pay (or cause to be paid) all ad valorem property taxes properly assessed by all the overlapping taxing authorities against the Property before such taxes become delinquent. Provided that Developer has created the new assessed values set forth in Section I B above, or if Developer has failed to create such new assessed values, provided Michael E. Zimmerman is not in default under his shortfall payment guaranty, then the foregoing shall not prohibit the Developer from contesting, in good faith, the assessed value of any portion of the Property.

In the event that any portion of the Property becomes exempt from ad valorem taxes during the statutory life of the District and for a period of twenty (20) years thereafter, the owner of such exempt portion of the Property shall make (or cause to be made) annual payments in lieu of taxes in amounts equal to what the ad valorem property taxes would have been for such portion of the Property (as determined by the City assessor, subject to the owner's right to contest such determination) had it not been exempt. The notice of such assessment shall be given in the

same manner and timeframe as if the exempt portion of the Property was not exempt. Such payment in lieu of taxes ("PILOT") shall be due and payable at the same time and in the same manner as the ad valorem taxes would have been due and payable for such year. Developer's obligations under this Article III upon any default shall be collectible as a debt upon an action at law; and shall also be otherwise collectible as are delinquent real estate taxes and any such delinquent amount shall constitute a lien upon the Property, as and in the same method, manner, status and legal existence as levied taxes are a lien against property pursuant to Wis. Stat. § 70.01; and shall also be otherwise collectible as are delinquent special charges pursuant to Wis. Stat. § 66.0627; and in addition to the foregoing, shall also be otherwise collectible by any other available legal and/or equitable remedy and as otherwise provided by law. If the then owner fails to make a payment in lieu of taxes when due, the City may, in addition to all other remedies available to it, levy a special assessment against the exempt portion of the Property owned by such owner(s) in the amount of the unpaid payments provided any recoveries are limited to the payment in lieu of taxes amount then due. Notwithstanding the levying of such special assessment, the payment obligation under this Article III shall be the personal obligation of the then owner of the exempt portion of the Property. The covenant contained in this Article III shall be deemed to be a covenant running with the land and shall be binding upon the then owners of any portion of the Property. The City is hereby expressly declared to be a beneficiary of such covenant and entitled to enforce same against all of the then owners of an exempt portion of the Property. The covenants and obligations set forth in this Article may be embodied in a separate document and recorded against the Property.

## ARTICLE IV
## NO PARTNERSHIP OR VENTURE

Developer, its successors and/or assigns and/or owners of the Property, and their contractors or subcontractors shall be solely responsible for the completion of the Project. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between the City and Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor employed by Developer, its successors and/or assigns and/or owners of the Property, in the construction of the Project.

## ARTICLE V
## CONFLICT OF INTEREST

No member, officer or employee of the City, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof, unless such member or officer abstained from any participation in the City review and process of the Project and the Agreement from the point of time when a potential conflict of interest arose and thereafter.

## ARTICLE VI
## WRITTEN 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 Article 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:

BPC Master Developer, LLC
c/o Michael E. Zimmerman
510 West Kilbourn Avenue, 2nd Floor
Milwaukee, WI 53202
Facsimile No.:

With a copy to:

Matthew K. Impola
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306

## ARTICLE VII
## DEFAULT

A. The occurrence of any one or more of the following events shall constitute a default by Developer hereunder ("Default"):

1. Developer fails to pay any amounts when due under this Agreement and further fails to pay such amounts on or before ten days following written notice of such failure; or

2. Any material representation or warranty made by Developer pursuant to this Agreement proves to have been false in any material respect as of the time when made or given; or

3. Developer materially breaches or fails to perform timely or observe timely any of its covenants or obligations under this Agreement (other than relating to the payment of money), and such failure shall continue for thirty (30) days following notice thereof from the City (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as the Developer has commenced the cure of the default within the thirty (30) day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred twenty (120) days following the notice thereof from the City or such longer period of time as is reasonably agreed to by the City); or

4. Developer:

(a) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its/his assets; or

(b) becomes the subject of an "order for relief' within the meaning of the United States Bankruptcy Code, or files a petition in bankruptcy, for reorganization or to effect a plan or other arrangement with creditors; or

(c) has a petition or application filed against it in bankruptcy or any similar proceeding, or has such a proceeding commenced against it and such petition, application or proceeding shall remain undismissed for a period of ninety (90) days or Developer shall file an answer to such a petition or application, admitting the material allegations thereof; or

(d) applies to a court for the appointment of a receiver or custodian for any of its/his assets or properties, with or without consent, and such receiver shall not be discharged within ninety days after his appointment; or

(e) adopts a plan of complete liquidation of its/his assets; or

(f) shall cease to exist.

The City shall be deemed to be in default in the event it materially breaches or fails to perform timely or observe timely any of its covenants or obligations under this Agreement, and such failure shall continue for thirty (30) days following notice thereof from Developer (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as the City has commenced the cure of the default within the thirty (30) day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred twenty (120) days following the notice thereof from Developer or such longer period of time as is reasonably agreed to by the Developer).

Upon the occurrence of any Default by either party, upon ten (10) days' notice, without further demand or action of any kind by the nondefaulting party and except as expressly set forth below, the nondefaulting party may, at its option, pursue any or all rights and remedies available at law or in equity. The City's rights shall include, but not be limited to temporary suspension of any payment of the City Payments during the continuance of any Default by Developer, or City performance of any Developer obligation under this Agreement. Upon the cure of any such Default on the part of Developer, then, if and to the extent the City suspended

any payments of the City Payments, the City shall promptly distribute to Developer any payments so suspended and promptly resume payments of amounts due as outlined in this agreement.

B. No remedy shall be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, and/or now or hereafter existing at law or in equity. No failure or delay on the part of any party in exercising any right or remedy shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude other or further exercise thereof or the exercise of any other right or remedy.

Notwithstanding the foregoing, the City shall not terminate this Agreement or pursue, exercise or claim any rights or remedies arising out of a Default by Developer hereunder, except injunctive relief, specific performance or the temporary suspension of the City Payments, unless Developer, its mortgage lender or their designees have not commenced commercially reasonable efforts to cure any such Default within 30 days after receipt of written notice from the City to Developer and its mortgage lender that if such efforts to cure such Default are not so commenced, then the City intends to pursue its other rights and remedies hereunder, including, without limitation, the right to terminate this Agreement.

C. In the event of a Default by either party, all reasonable fees, costs and expenses incurred by the nondefaulting party, including reasonable attorneys fees, in connection with the enforcement of this Agreement shall be paid by the defaulting party, including without limitation the enforcement of the nondefaulting party's rights in any bankruptcy, reorganization or insolvency proceeding.

## ARTICLE VIII
## MISCELLANEOUS

A. Developer shall have in effect at all times all permits, approvals and licenses as may be required by any governmental authority or non-governmental entity in connection with Developer's construction of each Phase of the Project and the management and operation of each Phase of the Project, as applicable.

B. Developer shall maintain or cause to be maintained the following insurance policies (the "Insurance Policies") issued by insurers licensed in the State of Wisconsin, with ratings and in the financial size category as reasonably requested by the City (provided that a Best's Rating of A or reasonable equivalent thereof shall be deemed satisfactory to the City), covering loss by perils, hazards, liabilities and other risks and casualties and in such amounts as may be reasonably required by the City:

i. Following Completion of Construction of each Phase of the Project, "all risks" property insurance insuring against such risks as are insured against by owners of similar projects, in amounts equal to 100% replacement cost of all buildings, improvements, fixtures, equipment and other real and personal property constituting such Phase with an extended replacement cost endorsement, if available;

ii. During the construction of each Phase of the Project, builder's risk insurance in form and amounts reasonably satisfactory to the City;

iii. During the term of this Agreement, commercial general liability insurance covered under a comprehensive general liability policy including contractual liability in amounts maintained by owners of similar projects, and insuring against bodily injury, including personal injury, death and property damage;

iv. Environmental liability insurance as required under the County Agreements naming the City as an insured. Upon expiration or termination of such coverage, Developer shall cause BPC County Land, LLC and the City to reach an agreement on a replacement policy for the remaining term of this Agreement, if available upon commercially reasonable terms; and

v. Such other insurance as may be reasonably requested by the City.

vi. Each Insurance Policy shall require the insurer to provide at least thirty (30) days prior written notice to the City of any material change or cancellation of such policy. The City shall be named as an additional insured on all policies of liability insurance except worker's compensation insurance.

C. Developer hereby indemnifies, defends, covenants not to sue and holds the City harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by the City to the extent resulting from the following: (a) the failure of Developer or its contractors, subcontractors, agents, employees, or invitees to comply with any applicable environmental law, rule, regulation or ordinance, or any order of any regulatory or administrative authority with respect thereto relating to the Project or the presence of any hazardous substances at, in or on the Project in violation of applicable environmental law, rule, regulation or ordinance; (b) claims arising in connection with the Project under the Americans With Disabilities Act (the "ADA") and any other laws, rules, regulations or ordinances and caused by the failure of the Project to be in compliance with the ADA and such other laws, rules, regulations or ordinances, in each case, as in effect as of the date of the issuance of the building permit for the Project and then only to the extent then applicable to such construction; (c) the failure by Developer to comply with any term or condition of this Agreement which failure constituted a default that remained uncured beyond any applicable cure period; (d) failure to comply with any public bidding requirements and other applicable laws with respect to the construction of the Public Improvements; and (e) injury to or death of any person at the Project or injury to any property caused by or at the Project, in each case, during construction of the Project. The foregoing indemnity shall not apply to any claims or damages arising under clauses (a) through (e) of the previous sentence to the extent such claims or damages are attributable to the negligence or willful misconduct of the City or are the responsibility of the City as set forth in Paragraph E below. The term "hazardous substances" means any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation, any substances defined as or included in the definition of

"hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances" under any applicable federal or state or local laws or regulations.

D. Developer, its successors and/or assigns and/or owners of the Property, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property, shall indemnify and save harmless the City, its officers, agents and employees, and shall defend the same, from and against any and all liability, claims, loss, damages, interest, actions, suits, judgments, costs, expenses, and attorneys' fees, to whomsoever owed and by whomsoever and whenever brought or obtained, which in any manner results from or arises in connection with:

(i) The negligent or willfully wrongful performance of this Agreement by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property;

(ii) The negligent or willfully wrongful construction of the Project by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property;

(iii) The negligent or willfully wrongful operation of the Project by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property, during construction of the Project;

(iv) The violation by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property, of any law, rule, regulation, order or ordinance; or

(v) The infringement by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property, of any patent, trademark, trade name or copyright.

E. The City hereby indemnifies, defends, covenants not to sue and holds the Developer harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by the City to the extent resulting from the failure by the City to comply with any term or condition of this Agreement which failure constituted a default that remained uncured beyond any applicable cure period.

F. Time is of the essence for each and every obligation or agreement contained in this Agreement.

G. All financial reports and information required to be provided by Developer to the City under this Agreement shall be provided to the City's outside financial consultant for review on behalf of the City. Any such review shall be paid out of District administrative expenses and shall not be subject to any applicable caps on such expenses contained herein. The Developer warrants and represents the accuracy of all such financial

reports and information. At the request of the Developer, all financial reports and information provided to the City or its financial consultant in connection with this Agreement shall be held and treated as confidential and shall not be part of the public record associated with the Project, if and as may be permitted under the Wisconsin Open Records Law. During the life of Tax Incremental District No. 5, City of Franklin, Wisconsin, the Developer shall provide annual income and expense information for the Project as requested by the City Assessor as is customary for the purposes of property valuation, which information shall be maintained in confidence pursuant to laws and other rules.

H. If the Developer is delayed or prevented from timely commencing or completing construction of any Phase of the Project by reason of fire, earthquake, war, flood, material or labor shortages, market or economic conditions, riot, strikes, labor disputes, governmental restrictions, judicial order, public emergency, lack of timely performance by public utilities or permitting authorities, or other causes beyond the reasonable control of the party obligated to perform ("Force Majeure Event"), performance of such act shall be excused for the period of such delay and the time for the performance of any such act shall be extended for a period equivalent to such delay.

I. A Memorandum of Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin, prior to the recording of the mortgages securing any construction loan, or any other mortgage on the Project, it being understood by the parties that this Agreement will run with the land and will be binding upon the Project and any owner of all or any portions of the Project and their successors and assigns in a form in substantial conformance with the attached **Exhibit G**.

J. Nothing contained in this Agreement is intended to or has the effect of releasing Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

K. This Agreement may be assigned in whole or in part by the Developer to (i) any entity controlled by Michael E. Zimmerman, without the City's consent, and (ii) any owner(s) of all or any portion of the Property, with the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. In the event of any assignment as described above, Developer shall be released from its obligations hereunder with respect to such portion of the Property provided the assignee(s) agree to be bound by the applicable terms of this Agreement. In addition, the Developer may collaterally assign this Agreement and the MRO-1 or any additional MRO to the Developer's construction lender or to other lenders for the Project. In the event that such construction lender or any other lender forecloses on its collateral and succeeds to ownership of all or a portion of the Property, the City shall fulfill its obligations hereunder provided that such construction lender or other lender assumes in writing all of the obligations of the Developer, if any, hereunder.

L. After Completion of Construction of each Phase of the Project, Developer shall be released from its obligations hereunder with respect to such completed Phase. Upon the sale or other conveyance of the Property to any entity controlled by Michael E. Zimmerman Developer shall be released from its obligations hereunder with respect to such portion of the Property.

M. Developer may assign, or partially assign, this Agreement or all or any portion of the City Payment to the following affiliates: BPC Park Land Manager, Inc. and/or BPC Master Developer, Inc. However, in the event of any such assignment, Developer shall not be released from its obligations hereunder.

N. If the State laws regarding ad valorem taxation are amended or modified during the term of this Agreement such that the projected Tax Increments from the Property are materially reduced, i.e., seven percent (7%) or more, and there are no corresponding amendments or modifications to the Tax Increment Law to compensate for such reduction, the parties agree to work in good faith to consider amendments to this Agreement toward the end of rendering the respective positions of the parties generally equivalent to the positions set forth herein.

O. The form of each MRO shall be as set forth in **Exhibit E**.

P. In the event that any term or provision of this Agreement is determined to be invalid or unenforceable for any reason, then the other terms and provisions of this Agreement shall not be affected thereby and said terms and provisions shall remain in full force and effect, unless to do so would be inequitable to either party hereto.

Q. This Agreement shall be construed pursuant to the laws of the State of Wisconsin. Except as otherwise specifically and expressly set forth in this Agreement, the venue for any disputes arising under this Agreement shall be the Circuit Court for Milwaukee County. The prevailing party shall be entitled to its costs, including its reasonable attorneys' fees, incurred in any litigation.

R. Nothing contained within this agreement is intended to be a waiver or estoppels of the contracting municipality or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained within Wis. Stats. 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the municipality or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law.

## ARTICLE IX
## TERMINATION; SURVIVAL OF TERMS

A. At any time before the first payment for TIF Improvements is made by the City in accordance with **Exhibit B-2**, Developer shall have the right to terminate this Agreement immediately upon written notice to the City in the event that Developer determines that it will not be able to satisfy the City's preconditions to funding the City Payment set forth in Section II B(2).

B. If this Agreement has not been terminated, then subject to the survival of certain terms and provisions as provided herein (including without limitation the PILOT provisions) this Agreement shall automatically terminate and be of no further force or effect upon the closing of the District or upon the last to occur of all of the following:

i. Timely Completion of Construction of all Phases of the Project in accordance with the Project Plans.

ii. Repayment in full of the GO Bonds.

iii. Payment in full by Developer to the City of any amounts due the City.

iv. Payment in full by the City to Developer of the MROs and any sums due pursuant to this Agreement or in connection with a demand or claim that has been made by Developer upon the City in connection with an alleged default in the City's obligations under this Agreement.

C. Upon the occurrence of all of the foregoing, the City agrees to execute and record in the Office of the Register of Deeds for Milwaukee County a memorandum of termination of this Agreement.

[Signature page(s) follow.]

**IN WITNESS WHEREOF**, this Agreement is executed as of the date first above written.

**DEVELOPER:**

**BPC Master Developer, LLC**

By: BPC Master Developer Manager, LLC,
Its Manager

By: _____
Michael E. Zimmerman, Manager

Date:_____

The undersigned hereby executes this Agreement in his individual capacity solely for the purposes of acknowledging his obligations to deliver a guaranty under Section I(B) above

_____
Michael E. Zimmerman

STATE OF WISCONSIN )
)ss.
MILWAUKEE COUNTY )

Personally appeared before me this ____ day of _____, 2018, the above-named Michael E. Zimmerman, the Manager of BPC Master Developer Manager, LLC, the Manager of BPC Master Developer, LLC, to me known to be the persons who executed the foregoing agreement both individually and on behalf of the BPC Master Developer, LLC and by its authority.

_____
Notary Public State of Wisconsin
My commission expires:_____

**City of Franklin, Wisconsin**

By:_____
Stephen R. Olson, Mayor
Date:_____

By:_____
Paul Rotzenberg, Director of Finance and Treasurer
Date:_____

Attest: _____
Sandra L. Wesolowski, City Clerk
Date:_____

STATE OF WISCONSIN )
)ss.
MILWAUKEE COUNTY )

Personally appeared before me this ____ day of _____, 2018, the above-named Stephen R. Olson, Paul Rotzenberg and Sandra L. Wesolowski, Mayor, Director of Finance and Treasurer, and City Clerk, respectively, of the City of Franklin, Wisconsin, to me known to be the persons who executed the foregoing agreement on behalf of the City and by its authority.

_____
Notary Public State of Wisconsin
My commission expires:_____

Approved as to form:

_____
Jesse A. Wesolowski, City Attorney
Date:_____

This instrument was drafted by:

# EXHIBIT A

## Property Legal Description

Parcel 1:
That part of the Southwest 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 a point on the East line of said Southwest ¼ of Section 4, which is 918.61 feet North of the Southeast corner of said ¼ Section; thence North on the East line 400.00 feet to a stone monument; thence West on the East and West 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 ¼ line 544.50 feet to the place of beginning.

For Informational Purposes Only:
Tax Key No. 745-9996-000

Parcel 2:
Outlot 1, in Block 1 in Whitnall View Addition No. 1, being a subdivision of a part of the Southeast ¼ of the Southwest ¼ 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 ¼ 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. 745-9989-004

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 Southwest ¼ 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 Southwest ¼ 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.

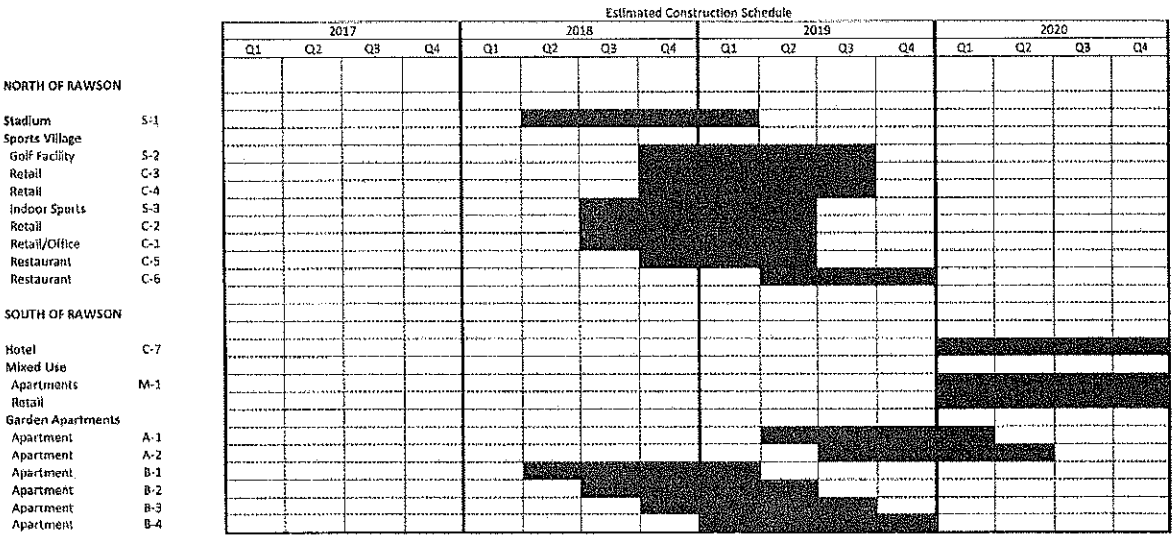
For Informational Purposes Only:
Property Address: 8230 W. Rawson Avenue
Tax Key No. 744-8985-001

# EXHIBIT A-1

## Description of Project Phases and Construction Schedule

BALLPARK COMMONS
FRANKLIN, WISCONSIN
CONSTRUCTION SCHEDULE

25-Jan-18 10:07 AM



## EXHIBIT B
## TIF Improvements and TIF Improvements Budget

| NORTH OF RAWSON | | | TOTAL BUDGET |
|---|---|---|---|
| * | Sanitary Sewer | | 499,495 |
| *+ | Storm Sewer | | 2,015,848 |
| * | Water | | 551,404 |
| * | Streets | | 3,294,435 |
| | Shared Parking | | 1,930,196 |
| | County Methane Collection System (2017-18) | | 3,887,300 |
| | County Methane Collection System (2035) | | |
| | Relocate Methane Gas Line | | 458,000 |
| | Excavate Unsuitable Soils | | 2,602,500 |
| * | Oak Leaf Trail | | 95,000 |
| | Sound & Light Modifications | | 100,000 |
| | Privacy Berms | | 340,000 |
| | Contingency @ | 15% | 2,366,127 |
| | **TOTAL -- NORTH OF RAWSON** | | **18,140,305** |
| **SOUTH OF RAWSON** | | | |
| * | Sanitary Sewer | | 282,771 |
| * | Storm Sewer | | 548,179 |
| * | Water | | 459,720 |
| * | Streets | | 1,862,964 |
| * | Oak Leaf Trail | | 50,000 |
| | Privacy Berms | | 580,000 |
| | Contingency @ | 15% | 567,545 |
| | **TOTAL -- SOUTH OF RAWSON** | | **4,351,179** |
| **TIF CREATION & ADMINISTRATION** | | | **30,000** |
| **GRAND TOTALS** | | | **[MISSING]** |

***Public Improvements, but only to the extent accepted by the City and located within public easements or rights of way.**

**+ Preliminary but limited Storm Sewer work North of Rawson, associated with the WDNR approved landfill project, may, as needed, be commenced immediately without further bid.**

**EXHIBIT B-1**

**Form of Certification of Completion**

**FORM OF CERTIFICATE OF COMPLETION**

_____, 20__

City of Franklin
Attn: _____
_____
_____

Re: Certificate of Completion

Ladies & Gentleman,

This Certificate is being delivered pursuant to the Development Agreement dated as of _____, 2018 between the undersigned and the City of Franklin, Wisconsin.

The undersigned hereby certifies that the building with an address of [_____ _____] constituting a portion of the Project has been completed in accordance with the requirements of the terms and conditions of the Development Agreement and that an occupancy certificate for the building with an address of [_____] has been issued, a copy of which is attached hereto.

_____

By: _____
Title: _____

# EXHIBIT B-2

# MILESTONE SCHEDULE

## EXHIBIT C

## PROJECTED ANNUAL INCREMENTS AND DEBT SERVICE

*See attached.*

# City of Franklin, Wisconsin

## Tax Increment District #5

### Estimated Project List

| Project ID | Project Name/Type | Phase I 2017 | Phase I 2018 | Phase II 2018 | Phase III 2017 | Phase IV 2019 | Phase V 2020 | Phase VI 2021 | Total (Note 1) |
|---|---|---|---|---|---|---|---|---|---|
| **North of Rawson** | | | | | | | | | |
| 1 | Sanitary Sewer (with 100% Special Assessed with Cap) | | 249,748 | 249,748 | | | | | 499,496 * |
| 2 | Storm Sewer | | 1,007,924 | 1,007,924 | | | | | 2,015,848 |
| 3 | Water (with 100% Special Assessed with Cap) | | 275,702 | 275,702 | | | | | 551,404 * |
| 4 | Streets (with 100% Special Assessed with Cap) | | 1,647,218 | 1,647,218 | | | | | 3,294,436 * |
| 5 | Shared Parking | | 965,098 | 965,098 | | | | | 1,930,196 |
| 6 | County Methane Collection System | | 1,943,650 | 1,943,650 | | | | | 3,887,300 |
| 7 | Relocate Methane Gas Line | | 229,000 | 229,000 | | | | | 458,000 |
| 8 | Excavate Unsuitable soils | | 1,301,250 | 1,301,250 | | | | | 2,602,500 |
| 9 | Oak Leaf Trail | | | 95,000 | | | | | 95,000 |
| 10 | Sound and Light Modifications | | 100,000 | | | | | | 100,000 |
| 11 | Privacy Berms | | 340,000 | | | | | | 340,000 |
| 12 | Contingency @ 15% | | 1,208,939 | 1,157,188 | | | | 0 | 2,366,127 |
| **South of Rawson** | | | | | | | | | |
| 13 | Sanitary Sewer (with 100% Special Assessed with Cap) | | 141,386 | 141,386 | | | | | 282,772 * |
| 14 | Storm Sewer | | 274,090 | 274,090 | | | | | 548,180 |
| 15 | Water (with 100% Special Assessed with Cap) | | 229,860 | 229,860 | | | | | 459,720 * |
| 16 | Streets (with 100% Special Assessed with Cap) | | 931,482 | 931,482 | | | | | 1,862,964 * |
| 17 | Oak Leaf Trail | | | 50,000 | | | | | 50,000 |
| 18 | Privacy Berms | | 580,000 | | | | | | 580,000 |
| 19 | Contingency @ 15% | | 323,523 | 244,023 | | | | | 567,545 |
| **Overall TIF Area** | | | | | | | | | 0 |
| 19 | TIF Creation and Administration ** | 30,000 | | | | | | | 30,000 |
| 20 | Developer Incentive for delivery of additional development | | | | | 3,500,000 | | 1,500,000 | 5,000,000 |
| Total Projects | | 30,000 | 11,748,869 | 10,742,619 | 0 | 3,500,000 | 0 | 1,500,000 | 27,521,488 |

Notes:

Note 1 Project costs are estimates and are subject to modification
Infrastructure Costs Provided by Developer

** The City anticipates incurring ongoing administration expenses and the cost of water and air quality monitoring

Scenario E Aggressive Debt Service 1/16/18

EHLERS
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# City of Franklin, Wisconsin

## Tax Increment District # 5

### Development Assumptions

| Construction Year | | Artual | Existing Rock Facilities | North of Rawson: Stadium | North of Rawson: Indoor Sports Venue | North of Rawson: Sports Village | South of Rawson: Mixed Use | South of Rawson: Hotel | South of Rawson: Garden Apartments | Total | Construction Year | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2016 | 1,211,500 | | | | | | | | 1,211,500 | 2016 | 1 |
| 2 | 2017 | | | | 0 | 0 | | | 0 | 0 | 2017 | 2 |
| 3 | 2018 | | 840,000 | 2,850,000 | 3,073,158 | 11,147,239 | | | 12,838,250 | 30,749,647 | 2018 | 3 |
| 4 | 2019 | | | 950,000 | 4,609,737 | 17,124,953 | | 0 | 30,685,000 | 53,369,690 | 2019 | 4 |
| 5 | 2020 | | | | | 2,125,000 | 21,887,500 | 10,625,000 | 5,571,750 | 40,209,250 | 2020 | 5 |
| 6 | 2021 | | | | | | | | | 0 | 2021 | 6 |
| 7 | 2022 | | | | | | | | | 0 | 2022 | 7 |
| 8 | 2023 | | | | | | | | | 0 | 2023 | 8 |
| 9 | 2024 | | | | | | | | | 0 | 2024 | 9 |
| 10 | 2025 | | | | | | | | | 0 | 2025 | 10 |
| 11 | 2026 | | | | | | | | | 0 | 2026 | 11 |
| 12 | 2027 | | | | | | | | | 0 | 2027 | 12 |
| 13 | 2028 | | | | | | | | | 0 | 2028 | 13 |
| 14 | 2029 | | | | | | | | | 0 | 2029 | 14 |
| 15 | 2030 | | | | | | | | | 0 | 2030 | 15 |
| 16 | 2031 | | | | | | | | | 0 | 2031 | 16 |
| 17 | 2032 | | | | | | | | | 0 | 2032 | 17 |
| 18 | 2033 | | | | | | | | | 0 | 2033 | 18 |
| 19 | 2034 | | | | | | | | | 0 | 2034 | 19 |
| 20 | 2035 | | | | | | | | | 0 | 2035 | 20 |
| | Totals | 1,211,500 | | 3,800,000 | 7,682,895 | 30,397,192 | 21,887,500 | 10,625,000 | 49,096,000 | 125,540,087 | | |

Notes: Development Values provided by Developer November 14, 2017 based upon 85% of construction costs

Indoor Sports Venue value reflected assumed to be taxable for this analysis, if tax exempt due to location on County owned land, a comparable PILOT will be necessary to meet the cash flow projections in this analysis

No taxable value has been identified for the Developer's improvements to the Stadium

Payment in Lieu of Taxes (PILOT) payments may be negotiated for all improvements on tax exempt property within the District.

**Scenario E Aggressive Debt Service 1/16/18**

# City of Franklin, Wisconsin

## Tax Increment District # 5

### Tax Increment Projection Worksheet

| | | |
|---|---|---|
| Type of District | Mixed Use | |
| District Creation Date | September 6, 2016 | |
| Valuation Date | Jan 1, | 2016 |
| Max Life (Years) | 20 | |
| Expenditure Period/Termination | 15 | 9/6/2031 |
| Revenue Periods/Final Year | 20 | 2037 |
| Extension Eligibility/Years | Yes | 3 |
| Recipient District | No | |

| | |
|---|---|
| Base Value | 3,043,900 |
| Appreciation Factor | 0.00% |
| Base Tax Rate | $25.18 |
| Rate Adjustment Factor | 100% |
| Tax Exempt Discount Rate | |
| Taxable Discount Rate | 1.50% |

Apply to Base Value

| | Construction Year | Value Added | Valuation Year | Inflation Increment | Total Increment | Revenue Year | Tax Rate | Tax Increment | Tax Exempt NPV Calculation | Taxable NPV Calculation |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2016 | 1,211,500 | 2017 | 0 | 1,211,500 | 2018 | $25.18 | 30,500 | 30,500 | 30,049 |
| 2 | 2017 | 0 | 2018 | 0 | 1,211,500 | 2019 | $24.92 | 30,195 | 60,695 | 59,359 |
| 3 | 2018 | 30,749,647 | 2019 | 0 | 31,961,147 | 2020 | $24.67 | 788,627 | 849,323 | 813,537 |
| 4 | 2019 | 53,369,690 | 2020 | 0 | 85,330,837 | 2021 | $24.43 | 2,084,446 | 2,933,769 | 2,777,469 |
| 5 | 2020 | 40,209,250 | 2021 | 0 | 125,540,087 | 2022 | $24.18 | 3,036,004 | 5,969,773 | 5,595,671 |
| 6 | 2021 | 0 | 2022 | 0 | 125,540,087 | 2023 | $23.94 | 3,005,644 | 8,975,417 | 8,344,459 |
| 7 | 2022 | 0 | 2023 | 0 | 125,540,087 | 2024 | $23.70 | 2,975,588 | 11,951,005 | 11,025,544 |
| 8 | 2023 | 0 | 2024 | 0 | 125,540,087 | 2025 | $23.47 | 2,945,832 | 14,896,836 | 13,640,591 |
| 9 | 2024 | 0 | 2025 | 0 | 125,540,087 | 2026 | $23.23 | 2,916,373 | 17,813,210 | 16,191,229 |
| 10 | 2025 | 0 | 2026 | 0 | 125,540,087 | 2027 | $23.00 | 2,887,210 | 20,700,419 | 18,679,043 |
| 11 | 2026 | 0 | 2027 | 0 | 125,540,087 | 2028 | $22.77 | 2,858,338 | 23,558,757 | 21,105,580 |
| 12 | 2027 | 0 | 2028 | 0 | 125,540,087 | 2029 | $22.54 | 2,829,754 | 26,388,511 | 23,472,351 |
| 13 | 2028 | 0 | 2029 | 0 | 125,540,087 | 2030 | $22.32 | 2,801,457 | 29,189,968 | 25,780,827 |
| 14 | 2029 | 0 | 2030 | 0 | 125,540,087 | 2031 | $22.09 | 2,773,442 | 31,963,410 | 28,032,444 |
| 15 | 2030 | 0 | 2031 | 0 | 125,540,087 | 2032 | $21.87 | 2,745,708 | 34,709,117 | 30,228,602 |
| 16 | 2031 | 0 | 2032 | 0 | 125,540,087 | 2033 | $21.65 | 2,718,251 | 37,427,368 | 32,370,668 |
| 17 | 2032 | 0 | 2033 | 0 | 125,540,087 | 2034 | $21.44 | 2,691,068 | 40,118,436 | 34,459,974 |
| 18 | 2033 | 0 | 2034 | 0 | 125,540,087 | 2035 | $21.22 | 2,664,157 | 42,782,593 | 36,497,818 |
| 19 | 2034 | 0 | 2035 | 0 | 125,540,087 | 2036 | $21.01 | 2,637,516 | 45,420,109 | 38,485,470 |
| 20 | 2035 | 0 | 2036 | 0 | 125,540,087 | 2037 | $20.80 | 2,611,141 | 48,031,250 | 40,424,165 |
| Totals | | 125,540,087 | | 0 | | | Future Value of Increment | 48,031,250 | | |

Notes:

Actual results will vary depending on development, inflation of overall tax rates.

NPV calculations represent estimated amount of funds that could be borrowed (including project cost, capitalized interest and issuance costs).

**Scenario E Aggressive Debt Service 1/16/18**

# City of Franklin, Wisconsin

## Tax Increment District #5

### Estimated Financing Plan

| | | Taxable G.O. Bond 2018 | | Municipal Revenue Obligation (MRO) 2018 | | Municipal Revenue Obligation (MRO) 2022 | Totals |
|---|---|---|---|---|---|---|---|
| Projects | | | | | | | |
| Phase I & II | | 22,521,488 | | | | | 22,521,488 |
| Phase IV | | | | 3,500,000 | | | 3,500,000 |
| Phase V | | | | | | 0 | 0 |
| Phase VI | | | | | | 1,500,000 | 1,500,000 |
| Total Project Funds | | 22,521,488 | | 3,500,000 | | 1,500,000 | 27,521,488 |
| Funds on Hand from NAN | | | | | | | |
| Estimated Finance Related Expenses | | | | | | | |
| Municipal Advisor | | 44,400 | | | | | |
| Bond Counsel | | 30,000 | | | | | |
| Disclosure Counsel ( if engaged) | | 18,000 | | | | | |
| Rating Agency Fee | | 21,000 | | | | | |
| Paying Agent | | 675 | | | | | |
| Underwriter Discount | 0.2% | 303,063 | 0.0% | 0 | 0.0% | 0 | |
| Debt Service Reserve | | | | | | | |
| Reserve Funds | | | | | | | |
| Capitalized Carrying Costs | | 1,293,243 | | | | | |
| Total Financing Required | | 24,231,869 | | 3,500,000 | | 1,500,000 | |
| Estimated Interest | 0.25% | (28,152) | 0.25% | 0 | 0.25% | 0 | |
| Assumed spend down (months) | 6 | | 6 | | 6 | | |
| Rounding | | 41,283 | | 0 | | 0 | |
| Net Issue Size | | 24,245,000 | | 3,500,000 | | 1,500,000 | 29,245,000 |
| MRO Carring Costs (Negative Interest Accrual) | | | | 432,584 | | | |
| Principal Paid on MRO | | | | 3,432,584 | | | |

Notes: Project costs proposed to be finance above include the amount anticipated to be special assessed to benefitting property

## City of Franklin, Wisconsin

Tax Increment District # 5

Cash Flow Projection

| Year | Tax Increments | Interest Earnings/ (Cost) | Capitalized Interest | Bond Proceeds | Total Revenues | Taxable G.O. Bond 24,245,000 Dated Date: 04/01/18 Principal | Est. Rate | Interest | Municipal Revenue Obligation (MRO) 9,500,000 Dated Date: 04/01/18 Principal | Est. Rate | Interest Accrued | Interest Paid | Outstanding MRO | Municipal Revenue Obligation (MRO) 1,500,000 Dated Date: 05/01/31 Principal | Interest | Project Costs | Issuance Expenses | Admin. (Including Water & Air Quality Monitoring) | Total Expenditures | Annual | Cumulative | Principal Outstanding | Year |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 0.25% | | | | | | | | | | | | | | | | | | | | | |
| 2016 | | | | | 0 | | | | | | | | | | | | | | 0 | 0 | 0 | | 2016 |
| 2017 | | | | | 0 | | | | | | | | | | | | | 30,000 | 30,000 | (30,000) | (30,000) | 24,245,000 | 2017 |
| 2018 | 30,500 | 28,152 | 1,293,243 | 22,848,695 | 24,000,590 | | | 431,081 | | | 0 | | 3,500,000 | | | 22,491,488 | 114,075 | | 22,922,569 | 1,078,020 | 1,048,020 | 29,677,584 | 2018 |
| 2019 | 30,195 | 2,620 | | 0 | 32,815 | | | 862,162 | | 5.50% | 216,292 | 0 * | 3,716,292 | | | | | 35,000 | 897,162 | (864,347) | 183,673 | 29,677,584 | 2019 |
| 2020 | 788,627 | 459 | | | 789,087 | | | 862,162 | | 5.50% | 216,292 | 0 * | 3,932,584 | | | | | 35,000 | 897,162 | (108,075) | 75,598 | 29,677,584 | 2020 |
| 2021 | 2,084,446 | 189 | | | 2,084,635 | 200,000 | 2.55% | 859,612 | 0 | 5.50% | 216,292 | 216,292 | 3,932,584 | | | | | 35,000 | 1,310,904 | 773,731 | 849,329 | 29,477,584 | 2021 |
| 2022 | 3,036,004 | 2,123 | | | 3,038,127 | 400,000 | 2.77% | 851,522 | 0 | 5.50% | 216,292 | 216,292 | 3,932,584 | | | | | 35,000 | 1,502,814 | 1,535,313 | 2,384,643 | 29,077,584 | 2022 |
| 2023 | 3,005,644 | 5,962 | | | 3,011,606 | 1,000,000 | 2.95% | 831,232 | 250,000 | 5.50% | 209,417 | 209,417 | 3,682,584 | | | | | 35,000 | 2,325,649 | 685,956 | 3,070,599 | 27,827,584 | 2023 |
| 2024 | 2,975,588 | 7,676 | | | 2,983,264 | 1,100,000 | 3.12% | 799,322 | 250,000 | 5.50% | 195,667 | 195,667 | 3,432,584 | | | | | 30,000 | 2,374,989 | 608,275 | 3,678,874 | 26,477,584 | 2024 |
| 2025 | 2,945,892 | 9,197 | | | 2,955,029 | 1,600,000 | 3.20% | 756,562 | 250,000 | 5.50% | 181,917 | 181,917 | 3,182,584 | | | | | 30,000 | 2,818,479 | 136,550 | 3,815,424 | 24,627,584 | 2025 |
| 2026 | 2,916,373 | 9,539 | | | 2,925,912 | 1,700,000 | 3.35% | 702,487 | 250,000 | 5.50% | 168,167 | 168,167 | 2,932,584 | | | | | 30,000 | 2,850,654 | 75,258 | 3,890,681 | 22,677,584 | 2026 |
| 2027 | 2,887,210 | 9,727 | | | 2,896,936 | 1,800,000 | 3.42% | 643,232 | 250,000 | 5.50% | 154,417 | 154,417 | 2,682,584 | | | | | 30,000 | 2,877,649 | 19,287 | 3,909,969 | 20,627,584 | 2027 |
| 2028 | 2,858,338 | 9,775 | | | 2,868,112 | 1,850,000 | 3.54% | 579,707 | 250,000 | 5.50% | 140,667 | 140,667 | 2,432,584 | | | | | 30,000 | 2,850,374 | 17,738 | 3,927,707 | 18,527,584 | 2028 |
| 2029 | 2,829,754 | 9,819 | | | 2,839,573 | 1,900,000 | 3.59% | 512,857 | 250,000 | 5.50% | 126,917 | 126,917 | 2,182,584 | | | | | 30,000 | 2,819,774 | 19,799 | 3,947,506 | 16,377,584 | 2029 |
| 2030 | 2,801,457 | 9,869 | | | 2,811,325 | 1,940,000 | 3.64% | 443,444 | 250,000 | 5.50% | 113,167 | 113,167 | 1,932,584 | | | | | 30,000 | 2,776,611 | 34,714 | 3,982,221 | 14,187,584 | 2030 |
| 2031 | 2,773,442 | 9,956 | | | 2,783,398 | 1,955,000 | 3.72% | 371,773 | 300,000 | 5.50% | 98,042 | 98,042 | 1,632,584 | | | | | 30,000 | 2,754,815 | 28,582 | 4,010,803 | 11,932,584 | 2031 |
| 2032 | 2,745,708 | 10,027 | | | 2,755,735 | 2,000,000 | 3.77% | 297,710 | 300,000 | 5.50% | 81,542 | 81,542 | 1,332,584 | | | | | 30,000 | 2,709,252 | 46,483 | 4,057,286 | 9,632,584 | 2032 |
| 2033 | 2,718,251 | 10,143 | | | 2,728,394 | 2,100,000 | 3.82% | 218,900 | 300,000 | 5.50% | 65,042 | 65,042 | 1,032,584 | | | | | 20,000 | 2,704,942 | 23,451 | 4,080,737 | 7,232,584 | 2033 |
| 2034 | 2,691,068 | 10,202 | | | 2,701,270 | 2,200,000 | 3.82% | 137,770 | 300,000 | 5.50% | 48,542 | 48,542 | 732,584 | | | | | 20,000 | 2,706,312 | (5,042) | 4,075,695 | 4,732,584 | 2034 |
| 2035 | 2,664,157 | 10,189 | | | 2,674,347 | 2,500,000 | 3.83% | 47,875 | 300,000 | 5.50% | 32,042 | 32,042 | 432,584 | 1,500,000 | | | | | 4,379,917 | (1,705,571) | 2,370,124 | 1,932,584 | 2035 |
| 2036 | 2,637,516 | 5,925 | | | 2,643,441 | | 3.83% | 0 | 300,000 | 5.50% | 15,542 | 15,542 | 132,584 | | | | | | 315,542 | 2,327,899 | 4,698,023 | 132,584 | 2036 |
| 2037 | 2,611,141 | 11,745 | | | 2,622,886 | 0 | 3.84% | 0 | 132,584 | 5.50% | 3,646 | 3,646 | 0 | | | | | | 136,230 | 2,486,656 | 7,184,679 | 0 | 2037 |
| | | | | | | | | | | 5.50% | | | | | | | | | 0 | | | | |
| Total | 48,051,250 | 173,294 | 1,293,243 | 22,848,695 | 72,146,481 | 24,245,000 | | 10,210,410 | 3,932,584 | | | 2,067,320 | | 1,500,000 | 0 | 22,491,488 | 114,075 | 515,000 | 64,961,902 | | | | Total |

Notes: Interest estimates based upon AA taxable 1/11/18 plus .25 for first issue and additional .25 for second issue
Unpaid accrued interest on MRO rolled into principal

Projected TID Closure

Scenario E Aggressive Debt Service 1/16/18

EHLERS
LEADERS IN PUBLIC FINANCE



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# City of Franklin, Wisconsin

## Tax Increment District # 5

### Estimated Financing Plan

| | | Taxable G.O. Bond 2034 | | Taxable G.O. Bond 2018 | | Municipal Revenue Obligation (MRO) 2018 | | Municipal Revenue Obligation (MRO) 2034 | Totals |
|---|---|---|---|---|---|---|---|---|---|
| Projects | | | | | | | | | |
| Phase I & II | | 11,138,793 | | 11,382,695 | | | | | 22,521,488 |
| Phase IV | | | | | | 3,500,000 | | | 3,500,000 |
| Phase V | | | | | | | | 0 | 0 |
| Phase VI | | | | | | | | 1,500,000 | 1,500,000 |
| Total Project Funds | | 11,138,793 | | 11,382,695 | | 3,500,000 | | 1,500,000 | 27,521,488 |
| Funds on Hand from NAN | | | | | | | | | |
| Estimated Finance Related Expenses | | | | | | | | | |
| Municipal Advisor | | 32,500 | | 32,600 | | | | | |
| Bond Counsel | | 20,000 | | 20,000 | | | | | |
| Disclosure Counsel (if engaged) | | 12,000 | | 12,000 | | | | | |
| Rating Agency Fee | | 21,000 | | 21,000 | | | | | |
| Paying Agent | | 675 | | 675 | | | | | |
| Underwriter Discount | [illegible] | 150,313 | [illegible] | 151,000 | [illegible] | 0 | [illegible] | 0 | |
| Debt Service Reserve | | | | | | | | | |
| Capitalized Interest | | | | | | | | | |
| Capitalized Carrying Costs | | 642,585 | | 460,346 | | | | | |
| Total Financing Required | | 12,017,866 | | 12,080,316 | | 3,500,000 | | 1,500,000 | |
| Estimated Interest | 0.25% | (13,923) | 0.25% | (14,228) | 0.00% | 0 | 0.00% | 0 | |
| Assumed spend down (months) | 6 | | 6 | | 6 | | 6 | | |
| Rounding | | 21,058 | | 13,912 | | 0 | | 0 | |
| Net Issue Size | | [illegible] | | [illegible] | | [illegible] | | [illegible] | [illegible] |
| MRO Carring Costs (Negative Interest Accrual) | | | | | | 432,584 | | | |
| Principal Paid on MRO | | | | | | [illegible] | | | |

Notes: Project costs proposed to be finance above include the amount anticipated to be special assessed to benefitting property

EHLERS
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## City of Franklin, Wisconsin

Tax Increment District # 5

Cash Flow Projection

| Year | Tax Increments | Interest Earnings/ (Cost) | Capitalized Interest | Bond Proceeds | Total Revenues | Taxable G.O. Bond 12,025,000 Dated Date: 03/01/18 Principal | Est. Rate | Interest | Taxable G.O. Bond 12,080,000 Dated Date: 10/01/18 Principal | Est. Rate | Interest | Municipal Revenue Obligation (MRO) 3,500,000 Dated Date: 05/01/18 Principal | Est. Rate | Interest Accrued | Interest Paid | Outstanding Balance | Municipal Revenue Obligation (MRO) 1,500,000 Dated Date: 06/01/21 Principal | Interest | Project Costs | Issuance Expenses | Admin. (Including Water & Air Quality Monitoring) | Total Expenditures | Annual | Cumulative | Principal Outstanding | Year |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 0.25% | | | | | | | | | | | | | | | | | | | | | | | | |
| 2016 | | | | | 0 | | | | | | | | | | | | | | | | | 0 | 0 | 0 | | 2016 |
| 2017 | | | | | 0 | | | | | | | | | | | | | | | | 30,000 | (30,000) | (30,000) | (30,000) | 24,105,000 | 2017 |
| 2018 | 30,600 | 28,152 | 1,102,931 | 22,700,757 | 23,862,340 | | | 214,135 | | | | | | 0 | | 3,500,000 | | | 22,491,488 | 172,450 | | 22,705,683 | 1,156,656 | 1,126,656 | 25,537,584 | 2018 |
| 2019 | 30,195 | 2,817 | | | 33,012 | | | 428,990 | | | 460,346 | | 5.50% | 216,292 | 0 * | 3,716,292 | | | | | 35,000 | 523,736 | (890,724) | 235,932 | 25,537,584 | 2019 |
| 2020 | 783,627 | 590 | | | 784,217 | | | 428,990 | | | 460,346 | | 5.50% | 216,292 | 0 * | 3,932,584 | | | | | 35,000 | 523,736 | (134,519) | 101,413 | 25,537,584 | 2020 |
| 2021 | 2,084,046 | 254 | | | 2,084,300 | 150,000 | 2.96% | 426,478 | 150,000 | 2.80% | 460,346 | 0 | 5.50% | 216,292 | 216,292 | 3,932,584 | | | | | 35,000 | 1,438,116 | 646,184 | 747,598 | 25,237,584 | 2021 |
| 2022 | 3,036,004 | 1,870 | | | 3,037,874 | 200,000 | 2.77% | 421,795 | 200,000 | 3.02% | 456,146 | 0 | 5.50% | 216,292 | 216,292 | 3,932,584 | | | | | 35,000 | 1,529,253 | 1,508,621 | 2,256,638 | 25,837,584 | 2022 |
| 2023 | 3,006,694 | 3,642 | | | 3,011,286 | 400,000 | 2.95% | 413,125 | 400,000 | 3.20% | 450,106 | 250,000 | 5.50% | 209,417 | 209,417 | 3,682,584 | | | | | 35,000 | 2,157,648 | 853,637 | 3,110,276 | 27,787,584 | 2023 |
| 2024 | 2,975,585 | 7,775 | | | 2,983,360 | 500,000 | 3.12% | 399,425 | 500,000 | 3.37% | 437,306 | 250,000 | 5.50% | 195,667 | 195,667 | 3,432,584 | | | | | 30,000 | 2,312,358 | 670,965 | 3,781,241 | 26,537,584 | 2024 |
| 2025 | 2,945,892 | 9,453 | | | 2,955,285 | 500,000 | 3.20% | 378,825 | 500,000 | 3.48% | 420,456 | 250,000 | 5.50% | 181,917 | 181,917 | 3,182,584 | | | | | 30,000 | 2,851,188 | 94,087 | 3,875,328 | 24,687,584 | 2025 |
| 2026 | 2,916,375 | 9,688 | | | 2,926,062 | 850,000 | 3.35% | 351,788 | 850,000 | 3.60% | 392,356 | 250,000 | 5.50% | 168,167 | 168,167 | 2,932,584 | | | | | 30,000 | 2,892,811 | 33,251 | 3,908,579 | 22,737,584 | 2026 |
| 2027 | 2,887,210 | 9,771 | | | 2,896,981 | 850,000 | 3.42% | 323,015 | 900,000 | 3.67% | 362,256 | 250,000 | 5.50% | 154,417 | 154,417 | 2,682,584 | | | | | 30,000 | 2,869,688 | 27,293 | 3,935,872 | 20,737,584 | 2027 |
| 2028 | 2,858,338 | 9,840 | | | 2,868,177 | 900,000 | 3.54% | 292,550 | 900,000 | 3.78% | 329,226 | 250,000 | 5.50% | 140,667 | 140,667 | 2,432,584 | | | | | 30,000 | 2,842,443 | 25,734 | 3,961,606 | 18,687,584 | 2028 |
| 2029 | 2,829,764 | 9,804 | | | 2,839,568 | 900,000 | 3.59% | 260,465 | 950,000 | 3.54% | 295,116 | 250,000 | 5.50% | 126,917 | 126,917 | 2,182,584 | | | | | 30,000 | 2,812,498 | 27,160 | 3,988,766 | 16,587,584 | 2029 |
| 2030 | 2,801,457 | 9,972 | | | 2,811,429 | 950,000 | 3.64% | 227,020 | 950,000 | 3.89% | 258,826 | 250,000 | 5.50% | 113,167 | 113,167 | 1,932,584 | | | | | 30,000 | 2,778,823 | 32,605 | 4,021,371 | 14,437,584 | 2030 |
| 2031 | 2,773,442 | 10,053 | | | 2,783,495 | 950,000 | 3.72% | 192,060 | 950,000 | 3.97% | 221,651 | 300,000 | 5.50% | 98,042 | 98,042 | 1,632,584 | | | | | 30,000 | 2,771,753 | 11,712 | 4,033,084 | 12,207,584 | 2031 |
| 2032 | 2,745,708 | 10,083 | | | 2,755,790 | 1,000,000 | 3.77% | 156,540 | 1,000,000 | 4.02% | 182,775 | 300,000 | 5.50% | 81,542 | 81,542 | 1,332,584 | | | | | 30,000 | 2,749,857 | 5,933 | 4,039,017 | 9,907,584 | 2032 |
| 2033 | 2,718,251 | 10,058 | | | 2,728,309 | 1,100,000 | 3.82% | 119,580 | 1,050,000 | 4.07% | 142,575 | 300,000 | 5.50% | 65,042 | 65,042 | 1,032,584 | | | | | 20,000 | 2,794,297 | (65,949) | 3,974,068 | 7,457,584 | 2033 |
| 2034 | 2,691,068 | 9,935 | | | 2,701,003 | 1,225,000 | 3.82% | 71,273 | 1,200,000 | 4.07% | 99,840 | 300,000 | 5.50% | 48,542 | 48,542 | 732,584 | | | | | 20,000 | 2,964,895 | (263,892) | 3,710,416 | 4,732,584 | 2034 |
| 2035 | 2,664,157 | 9,276 | | | 2,673,433 | 1,250,000 | 3.82% | 23,938 | 1,250,000 | 4.08% | 51,000 | 300,000 | 5.50% | 32,042 | 32,042 | 432,584 | 1,500,000 | | | | | 4,406,980 | (1,733,547) | 1,976,870 | 432,584 | 2035 |
| 2036 | 2,637,616 | 4,842 | | | 2,642,458 | | | 0 | | | 0 | 300,000 | 5.50% | 16,542 | 16,542 | 132,584 | | | | | | 315,542 | 2,326,916 | 4,303,786 | 132,584 | 2036 |
| 2037 | 2,611,141 | 10,759 | | | 2,621,900 | 0 | 3.84% | 0 | 0 | 4.09% | 0 | 132,584 | 5.50% | 3,646 | 3,646 | 0 | | | | | | 136,230 | 2,485,670 | 6,789,456 | 0 | 2037 |
| | | | | | | | | | | | | | | | | | | | | | | 0 | | | | |
| Total | 48,031,250 | 170,874 | 1,102,931 | 22,700,757 | 72,005,811 | 12,025,000 | | 5,123,950 | 12,080,000 | | 5,481,013 | 3,932,584 | | | 2,067,320 | | 1,500,000 | 0 | 22,491,488 | 172,450 | 515,000 | 69,216,355 | | | | Total |

Notes: Interest estimates based upon AA taxable 1/11/18 plus .25 for first issue and additional .25 for second issue

Unpaid accrued interest on MRO rolled into principal

Scenario E Aggressive Debt Service 1/16/18

**EXHIBIT D**

**Form of Disbursing Agreement**

**TIF FUNDS DISBURSING AGREEMENT**
File No.

THIS TIF FUNDS DISBURSING AGREEMENT ("Agreement") is entered into this ____ day of February, by and among **KNIGHT-BARRY TITLE INSURANCE COMPANY, INC.**, ("Escrow Agent"), the **CITY OF FRANKLIN, WISCONSIN**, a Wisconsin municipal corporation ("City"), and **BPC MASTER DEVELOPER, LLC**, a Wisconsin limited liability company ("Owner").

WHEREAS, City has agreed to make to Owner advances of TIF proceeds (the "Advances") for the construction of certain infrastructure improvements on the land described in "Exhibit A" attached hereto (the "Land"), in connection with the Ballpark Commons development (the "Project");

WHEREAS, the City has agreed to make the Advances to Owner in the aggregate principal amount of $22,521,484.00 for previously-incurred costs and for the payment of costs in connection with the Project ("Project Costs");

WHEREAS, pursuant to the terms of and upon satisfying the conditions set forth in the TIF Development Agreement and this Agreement, the City will wire funds to the Escrow Agent's separate account. Escrow Agent is willing to disburse funds from its separate account on the terms set forth herein; and

WHEREAS, Escrow Agent has been requested to issue a title policy with respect to the Land insuring against loss by reason of mechanics' or materialmen's liens ("Policy"). Escrow Agent will issue said Policy in material reliance on each of the covenants, agreements, representations and warranties set forth in this Agreement.

THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. At the request of Owner and in accordance and upon satisfaction of the conditions set forth in the TIF Development Agreement and this Agreement, City will deposit with Escrow Agent from time to time the Advances.

2. Escrow Agent is authorized and directed to disburse Advances pursuant to this Agreement to pay Project Costs pursuant to statements of amounts due, which must be approved by Owner and the City.

3. Prior to each disbursement of an Advance, the following items must be delivered to Escrow Agent and the City (the "Documents"):

A. A Sworn Construction Statement setting forth the contractors and material suppliers with whom contracts have been entered into;

B. AIA Document Nos. G702 and G703, as applicable, signed by Owner and Owner's general contractor ("General Contractor");

C. The draw request signed by Owner for the Advance;

D. Unconditional lien waivers for all sums previously disbursed in form and substance reasonably satisfactory to Escrow Agent and the City. The lien waivers shall set forth the amounts to be received from said disbursements, the official capacity of the signatory to the waivers, the name and address of the project, and be property acknowledged. Each such lien waiver, whether partial or final, must stipulate that all lien rights are waived with respect to the total amount disbursed up to and including the last date upon which labor or material was supplied and for which payment was made. Notwithstanding anything to the contrary in this Agreement, subcontractors may submit lien waivers on a "one draw delay" basis (except for the final disbursement); and

E. Statements, waivers, affidavits, supporting waivers and releases relating to mechanics' liens as reasonably required by, and in a form reasonably satisfactory to, Escrow Agent. The parties acknowledge that Escrow Agent's responsibility for collecting lien waivers does not relieve the Owner and the General Contractor of responsibility for notifying Escrow Agent of the identity of any suppliers or subcontractors that may have lien rights and from whom Escrow Agent may require lien waivers. General Contractor remains ultimately responsible for assuring that subcontractors pay for all material and services incorporated into the improvements in the event that the providers of such materials and services are not identified to Escrow Agent.

F. Evidence reasonably satisfactory to the City that Owner has achieved the relevant construction and development milestones set forth on Exhibit "B" attached hereto for such Advance.

4. On each day upon which a disbursement is requested, if all terms and conditions of this Agreement and the TIF Development Agreement have been complied with to the satisfaction of the City, the City shall deliver the Advance to Escrow Agent for disbursement by transfer of the Advance to Escrow Agent pursuant to Escrow Agent's wire instructions. Upon receipt of the Advance transmitted by the City, Escrow Agent will disburse directly to General Contractor or other parties identified in the relevant draw request, the amounts shown therein or, if less, the amount approved by the City.

6. Provided there are no intervening liens or other matters of title requiring notice to Owner, Escrow Agent will increase the amount of title insurance coverage by the amount of the Advance and date down the coverage for mechanics' liens with the pending disbursement endorsement attached hereto as "Exhibit C" with respect to disbursements prior to the final disbursement of proceeds and as "Exhibit C-1" with respect to the final disbursement of proceeds.

8. The parties hereto agree to all of the conditions of this Agreement and further agree as follows:

A. Escrow Agent shall not be liable for interest on funds or advances deposited with it.

B. Escrow Agent will keep and maintain books and records in sufficient detail to reflect the disbursements made by it pursuant to this Agreement.

C. No liability is assumed by Escrow Agent to Owner for protection against any mechanic's liens, except for liens arising out of Escrow Agent's gross negligence, bad faith or willful misconduct in carrying out its duties under this Agreement. Owner agrees to construct the improvements to the Land and that construction will be clear of any liens imposed by law for service, labor or material.

D. Functions and duties assumed by Escrow Agent include only those described in this Agreement, and Escrow Agent is not obligated to act except in accordance with the terms and conditions of this Agreement. Escrow Agent does not insure that the Project will be completed, or that any improvements for the Project will be in accordance with the plans and specifications, or that sufficient funds will be available for the completion of the Project.

9. Each individual executing this Agreement on behalf of a party which is an entity, represents, warrants, and covenants to the other parties that (a) such entity is duly formed and authorized to do business in the state in which the Land is located ("State"); (b) such person is duly authorized to execute and deliver this Agreement on behalf of such entity in accordance with authority granted under the organizational documents of such entity, and (c) such entity is bound under the terms of this Agreement.

10. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. This Agreement is only between the parties hereto, and is not intended to be, nor shall it be construed as being, for the benefit of any third party. This Agreement can be amended or modified only by a written amendment signed by the parties hereto. This Agreement and any modifications to this Agreement may be executed in several counterparts, and as so executed, shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

11. This Agreement shall be construed according to its fair meaning as if prepared by all parties to this Agreement. This Agreement shall be interpreted in accordance with the laws of the State of Wisconsin (the "State"), and the parties hereby agree to submit to the jurisdiction of any state or federal court having competent jurisdiction located in the State, and to make no objection to venue therein should any action at law or in equity be necessary to enforce or interpret this Agreement. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party in such action shall be entitled to have and to

recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding in addition to its recoverable court costs.

IN WITNESS WHEREOF, the parties execute this Agreement as of the date written above.

ESCROW AGENT:

KNIGHT-BARRY TITLE INSURANCE COMPANY, INC.

By:_____
Print Name:_____
Title:_____

[Signature Page to Disbursing Agreement]

CITY:

CITY OF FRANKLIN

By:_____
Stephen R. Olson, Mayor

By:_____
Sandra L. Wesolowski, City Clerk

[Signature Page to Disbursing Agreement]

OWNER:

BPC MASTER DEVELOPER, LLC,
a Wisconsin limited liability company

By:_____
Name:_____
Title:_____

[Signature Page to Disbursing Agreement]

# Exhibit A

## Description of the Land

# Exhibit B

## TIF Milestones and Disbursement Schedule

# Exhibit C

## Endorsement

[See Attached FA 61.1 Endorsement]

## Exhibit C-1

### Endorsement

[See Attached FA 61.2 Endorsement]

**EXHIBIT E**

UNITED STATES OF AMERICA
STATE OF WISCONSIN
COUNTY OF MILWAUKEE
CITY OF FRANKLIN

TAXABLE TAX INCREMENT PROJECT MUNICIPAL SPECIAL, LIMITED REVENUE OBLIGATION BOND ("**Bond**")

| Number | Date of Original Issuance | Amount |
|---|---|---|
| 1 | _____ _____, 20 | _____ |

FOR VALUE RECEIVED, the City of Franklin, Milwaukee County, Wisconsin (the "**City**"), promises to pay to _____ (the "**Developer**"), or registered assigns, but only in the manner, at the times, from the source of revenue and to the extent hereinafter provided, the principal amount of _____ Dollars ($_____), with interest payable at the rate of ____% per annum, said interest rate and this Bond subject to the terms and provisions of the Development Agreement between the City and _____, dated _____, 2018.

This Bond shall be payable in installments of principal and interest due on March 1 (the "**Payment Dates**") in each of the years and in the amounts set forth on the debt service schedule attached hereto as Schedule 1.

This Bond has been issued to finance a project within the City's Tax Incremental District No. __, pursuant to Article XI, Section 3 of the Wisconsin Constitution and Section 66.0621, as applicable, of the Wisconsin Statutes and acts supplementary thereto, and is payable only from the income and revenues herein described, which income and revenues have been set aside as a special fund for that purpose and identified as the "Special Redemption Fund" provided for under the Resolution adopted on _____, 20__, by the Common Council of the City (the "**Resolution**"). This Bond is issued pursuant to the Resolution and pursuant to the terms and conditions of the Tax Incremental District No. 5 Development Agreement dated as of _____, 2018 between the City and the Developer ("**Development Agreement**"). This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation or provision. This Bond shall be payable solely from Available Tax Increments generated by the Increment Property and appropriated by the Common Council to the payment of this Bond (the "**Revenues**"). Reference is hereby made to the Resolution and the Development Agreement for a more complete statement of the revenues from which and conditions and limitations under which this Bond is payable and the general covenants and provisions pursuant to which this Bond has been issued. The Resolution and Development Agreement are incorporated herein by this reference. All capitalized terms that are not otherwise defined in this Bond shall take on the meaning given to such terms in the Development Agreement.

If on any Payment Date there shall be insufficient Revenues appropriated to pay the principal due on this Bond, the amount due but not paid shall be deferred. If on any Bond Payment Date there shall be insufficient Revenues appropriated to pay the interest due on this Bond, the amount due but not paid shall be deferred, provided however, that interest shall not compound on any unpaid amounts. The deferred principal and interest shall be payable on the next Payment Date to the extent the City has Available Tax Increment until the Final Payment Date (as defined below). The City shall have no obligation to pay any amount of this Bond which remains unpaid after the Final Payment Date. The owner of this Bond shall have no right to receive payment of any deferred amounts, unless there are available Revenues which are appropriated by the Common Council to principal payment of this Bond. If, in any calendar year, the Revenues exceed the amount payable in that year on the Bond ("**Surplus Increment**"), the City may, subject to appropriation of such payment by the Common Council, apply the Surplus Increment to prepayment of principal on the Bond. The "**Final Payment Date**" is _____, 20__.

At the option of and in the sole discretion of the City, this Bond is subject to prepayment in whole or in part at any time.

The City makes no representation or covenant, express or implied, that the Available Tax Increments or other Revenues will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City's payment obligations hereunder are subject to appropriation, by the Common Council, of Available Tax Increments to make principal and interest payments due on this Bond. In addition, as provided in Article II of the Development Agreement, the total principal amount to be paid shall in no event exceed $_____. When that amount of Revenue has been appropriated and applied to payment of principal of this Bond, the Bond shall be deemed to be paid in full and discharged, and the City shall have no further obligation with respect hereto. Further, as provided in Article II Section G. of the Development Agreement, the City shall have no obligation to make payments on this Bond in the event the Developer is in default under any of the terms and conditions of the Development Agreement.

This Bond is a special, limited revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. This Bond is not a general obligation of the City, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal or interest of this Bond. Further, no property or other asset of the City, except the above-referenced Revenues, is or shall be a source of payment of the City's obligations hereunder.

This Bond is issued by the City pursuant to, and in full conformity with, the Constitution and laws of the State of Wisconsin.

This Bond may be transferred or assigned, in whole or in part, only with the consent of the City. Interests in this Bond may not be split, divided or apportioned. In order to transfer or assign the Bond, the transferee or assignee shall surrender the same to the City either in exchange for a new, fully-registered municipal revenue obligation or for transfer of this Bond on the registration records for the Bond maintained by the City. Each permitted transferee or

assignee shall take this Bond subject to the foregoing conditions and subject to all provisions stated or referenced herein and in the Development Agreement.

It is hereby certified and recited that all conditions, things and acts required by law to exist or to be done prior to and in connection with the issuance of this Bond have been done, have existed and have been performed in due form and time.

IN WITNESS WHEREOF, the Common Council of the City of Franklin has caused this Bond to be signed on behalf of the City by its duly qualified and acting Mayor and City Clerk, and its corporate seal to be impressed hereon, all as of the date of original issue specified above.

City of Franklin

_____

Stephen R. Olson, Mayor

(CITY SEAL)

_____

Sandra L. Wesolowski, City Clerk

## Schedule 1 of Bond Payment Schedule

Subject to the City's actual receipt of Available Tax Increment and the terms and conditions of the Development Agreement, the City shall make the following payments on the Bond to the Developer:

| Payment Date | Bond Payment |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| Total | _____ |

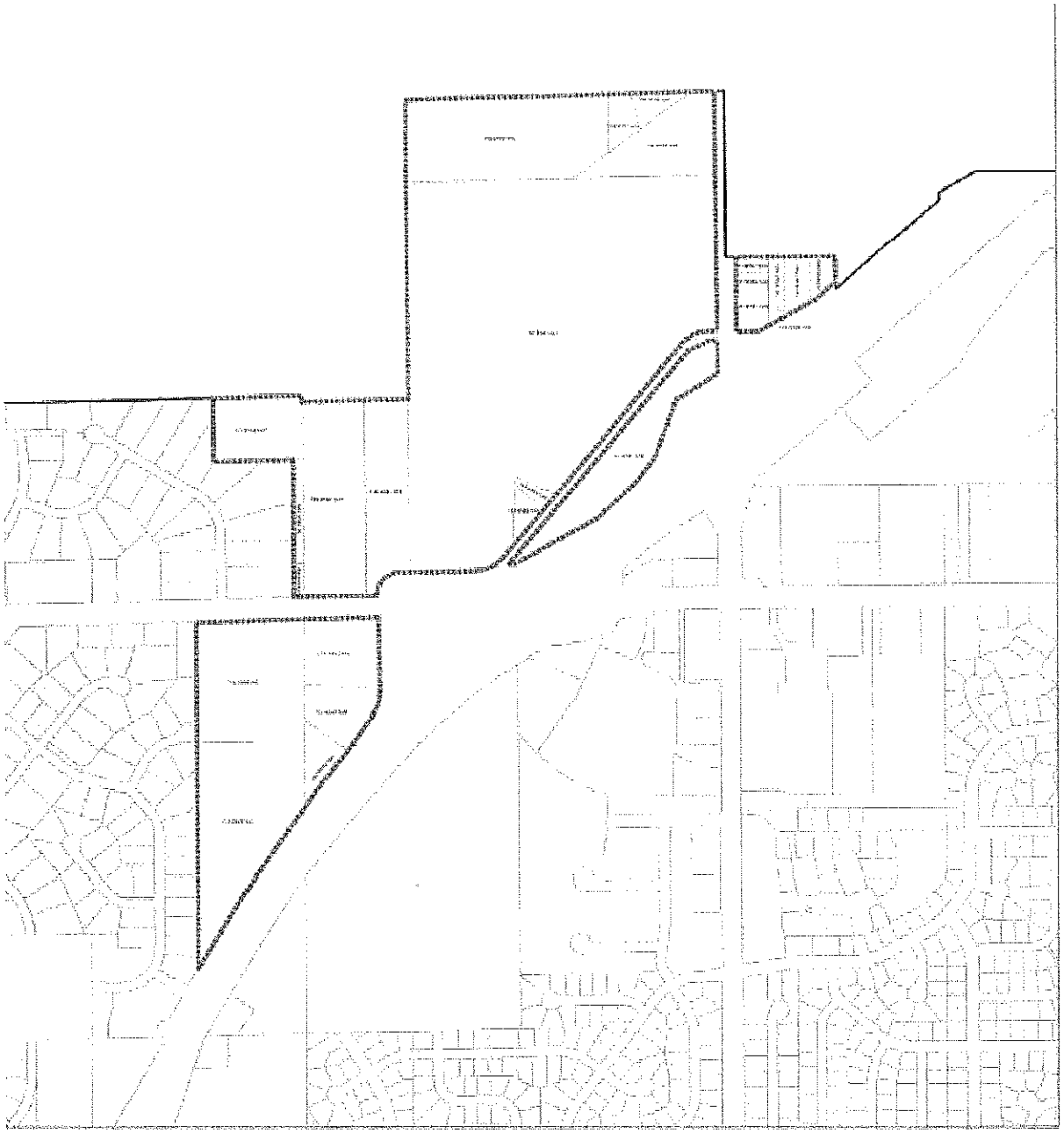
## REGISTRATION PROVISIONS

This Bond shall be registered in registration records kept by the City Clerk of the City of Franklin, Milwaukee County, Wisconsin, such registration to be noted in the registration blank below and upon said registration records, and this Bond may thereafter be transferred only upon presentation of this Bond together with a written instrument of transfer approved by the City and duly executed by the Registered Owner or his or her or its attorney, such transfer to be made on such records and endorsed hereon.

| Date of Registration | Name of Registered Owner | Signature of City Clerk |
|---|---|---|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

# EXHIBIT F

## Description of Increment Property



**Ball Park Commons TIF Map**

# EXHIBIT G

## Memorandum of Development Agreement

| Document Number | MEMORANDUM OF DEVELOPMENT AGREEMENT<br><br>Document Title |
|---|---|

**THIS MEMORANDUM OF DEVELOPMENT AGREEMENT** ("**Memorandum**") is made effective as of the ____ day of _____, 2018, by and between [_____, a Wisconsin _____, and assigns] ("**Developer**"), and the **CITY OF FRANKLIN**, a municipal corporation of Milwaukee County, Wisconsin ("**City**").

Recording Area

Name and Return Address

PIN:

**WITNESSETH:**

**WHEREAS,** Developer and the City entered into that certain Development Agreement dated _____ ___, 2018 ("**Development Agreement**"). The full Development Agreement is available for inspection and copies can be obtained at the City of Franklin City Hall; and

**WHEREAS,** this Memorandum is being executed for the purpose of providing notice of the Development Agreement and certain terms thereof in the Office of the Register of Deeds for Milwaukee County, State of Wisconsin in order to place third parties on notice of the Development Agreement and Developer's and the City's rights and obligations thereunder, some of which are hereinafter summarized.

**NOW, THEREFORE,** in consideration of the mutual covenants and promises contained in the Development Agreement, Developer and the City hereby acknowledge as follows:

1. **PROPERTY.** The "**Property**" is land located in the City of Franklin, Milwaukee County, State of Wisconsin, legally described on Exhibit A attached hereto.

2. **TERM.** The Development Agreement shall run with the land pursuant to its terms unless terminated pursuant to its terms.

3. **NO MODIFICATION; DEVELOPMENT AGREEMENT CONTROLLING.** This Memorandum is only a summary of some of the terms and conditions contained in the Development

Agreement and this Memorandum is not intended in any way to amend, alter, modify, abrogate, substitute or otherwise affect any of the terms or conditions contained in the Development Agreement, all of which are hereby incorporated herein in full by this reference. It is hereby understood and agreed that, notwithstanding this Memorandum, the terms and conditions contained in the Development Agreement shall in all events control the relationship between Developer and the City with respect to the subject matter therein contained. This Memorandum is solely for recording and notice purposes.

4. **COUNTERPART SIGNATURES.** This Memorandum may be signed in two or more counterparts, all of which, when taken together, shall constitute one and the same instrument.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF,** Developer and the City have executed this Memorandum effective as of the date first written above.

**DEVELOPER**:

BPC MASTER DEVELOPER, LLC

By: _____
Name: Michael E. Zimmerman
Title: Manager

**CITY**:

CITY OF FRANKLIN

By:_____
Stephen R. Olson, Mayor

By:_____
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN )
)ss.
_____ COUNTY )

Personally appeared before me this ____ day of _____, 2018, the above-named _____, the _____ of _____, to me known to be the persons who executed the foregoing agreement on behalf of the City and by its authority.

_____
Notary Public State of Wisconsin
My commission expires:_____

STATE OF WISCONSIN )
)ss.
MILWAUKEE COUNTY )

Personally appeared before me this ____ day of _____, 2018, the above-named Stephen R. Olson and Sandra L. Wesolowski, Mayor and City Clerk, respectively, of the City of Franklin, Wisconsin, to me known to be the persons who executed the foregoing agreement on behalf of the City and by its authority.

_____
Notary Public State of Wisconsin
My commission expires:_____

This Document was drafted by:

**EXHBIT A**

**LEGAL DESCRIPTION**

Certified Survey Map No._____

Tax Key No. _____

# EXHIBIT H

## Contingent Payment Example

*To be provided by Ehlers.*