

SPECIAL COMMON COUNCIL MEETING  
CITY OF FRANKLIN, WISCONSIN  
FRANKLIN CITY HALL – COMMON COUNCIL CHAMBERS\*  
9229 West Loomis Road, Franklin, Wisconsin  
MONDAY, NOVEMBER 19, 2018 at 5:30 p.m.

- I. Call to Order and Roll Call.
- II. Citizen Comment Period.
- III. Reports and Recommendations:
  - A. A Resolution Authorizing Certain Officials to Accept a Landscape Bufferyard Easement for and as Part of the Review and Approval of a Site Plan for a Senior Housing Development at Ballpark Commons (7220 South Ballpark Drive) (The Boldt Company, Applicant).
  - B. A Resolution Authorizing Certain Officials to Accept a Water Main Easement for and as Part of the Review and Approval of a Site Plan for a Senior Housing Development at Ballpark Commons (7220 South Ballpark Drive) (The Boldt Company, Applicant).
  - C. Confirmation of Interpretation of the 2019 Budget Adoption Ordinance (2018-2345).
  - D. Letters of Understanding Between the City of Franklin and the Franklin Police Officers Association and Franklin Professional Firefighters Association Allowing Such Represented Employees to Participate in the PPO Health Plan Option for 2019.
  - E. Tax Incremental District No. 6 Mixed-Use Industrial, Commercial, Retail, Single-Family Residential and Open Space Uses (of an Approximate 164-Acre Site Generally Located North and South of West Loomis Road, South of West Ryan Road, West of South 112th Street, East of South 124th Street and North of West Oakwood Road) Project Development Agreement (Bear Development, LLC; Loomis and Ryan, Inc. Developers). The Common Council May Enter Closed Session Pursuant to Wis. Stat. § 19.85(1)(e), to Deliberate Upon a Potential Tax Incremental District No. 6 Mixed-Use Industrial, Commercial, Retail, Single-Family Residential and Open Space Uses 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.
  - F. Wholesale Public Water Supply to Franklin 2024. The Common Council May Enter Closed Session Pursuant to Wis. Stat § 19.85(1)(e) to Deliberate Upon Information, Terms and Provisions of the Potential Provision of Public Water Supply to the City of Franklin as Related to the City, the Franklin Municipal Water Utility and its Customers in 2024 and Beyond; and the Potential Negotiation of Terms in Relation Thereto, Including, but not Limited to Potential Amendments to the Agreement for Oak Creek to Provide Water at Wholesale to Franklin, Potential Agreement Terms with Alternate Public Water Supply Sources, and the Investing of Public Funds and Governmental Actions 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.

- IV. Licenses and Permits.  
Miscellaneous License from Special License Committee Meeting of November 19, 2018.
- V. Bills.  
Request for Approval of Vouchers and Payroll.
- VI. Adjournment.

\*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 service. For additional information, contact the City Clerk's office at (414) 425-7500.]

REMINDERS:

November 22 & 23	Thanksgiving Holiday	City Hall Closed
December 4	Common Council Meeting	6:30 p.m.
December 6	Plan Commission Meeting	7:00 p.m.
December 18	Common Council Meeting	6:30 p.m.
December 24 & 25	City Hall Closed	
December 31 & January 1	City Hall Closed	

<b>APPROVAL</b>  <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>November 19, 2018</b>
<b>REPORTS AND RECOMMENDATIONS</b>	A Resolution Authorizing Certain Officials to Accept a Landscape Bufferyard Easement for and as Part of the Review and Approval of a Site Plan for a Senior Housing Development at Ballpark Commons (7220 South Ballpark Drive) (The Boldt Company, Applicant)	<b>ITEM NUMBER</b>  <i>III. A.</i>

Attached is a copy of the above Landscape Bufferyard Easement for the Senior Housing Development property. The Easement was required by the Site Plan approval for the subject property in Plan Commission Resolution No. 2018-008, conditionally approving a Site Plan for a Senior Housing Development within the Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) development, in condition number 11, adopted on June 21, 2018.

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

### **COUNCIL ACTION REQUESTED**

A motion to adopt A Resolution Authorizing Certain Officials to Accept a Landscape Bufferyard Easement for and as Part of the Review and Approval of a Site Plan for a Senior Housing Development at Ballpark Commons (7220 South Ballpark Drive) (The Boldt Company, Applicant).

Department of City Development.: jd

## RESOLUTION NO. 2018-\_\_\_\_\_

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO  
ACCEPT A LANDSCAPE BUFFERYARD EASEMENT FOR AND AS PART  
OF THE REVIEW AND APPROVAL OF A SITE PLAN FOR A SENIOR HOUSING  
DEVELOPMENT AT BALLPARK COMMONS (7220 SOUTH BALLPARK DRIVE)  
(THE BOLDT COMPANY, APPLICANT)

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WHEREAS, the Plan Commission having approved a Site Plan upon the application of BPC Master Developer, LLC, on June 21, 2018, and the Plan Commission having conditioned approval thereof in part upon Common Council approval of a Landscape Bufferyard Easement; and

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

WHEREAS, the City of Franklin Common Council having approved a Certified Survey Map upon the application of Michael E. Zimmerman, Partner, ROC Ventures, LLC/ZIM-MAR Properties, LLC, on September 18, 2018, conditioned in part upon requiring each and any easement shown on the Certified Survey Map shall be the subject of separate written grant of easement instrument in such form as provided within the City of Franklin Design Standards and Construction Specifications and such form and content as may otherwise be reasonably required by the City Engineer or designee to further and secure the purpose of the easement; such landscape bufferyard easement having been depicted upon the Certified Survey Map approved by the Common Council on September 18, 2018; and

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

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

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

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS  
TO ACCEPT A LANDSCAPE BUFFERYARD EASEMENT  
SENIOR HOUSING DEVELOPMENT (BALLPARK COMMONS)  
RESOLUTION NO. 2018-\_\_\_\_\_

Page 2

Introduced at a regular meeting of the Common Council of the City of Franklin this  
\_\_\_\_\_ day of \_\_\_\_\_, 2018.

Passed and adopted at a regular meeting of the Common Council of the City of  
Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

APPROVED:

\_\_\_\_\_  
STEPHEN R. OLSON, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_



7220 S. Ballpark Drive  
TKN: 754 9007 000



Planning Department  
(414) 425-4024

0 230 460 920 Feet

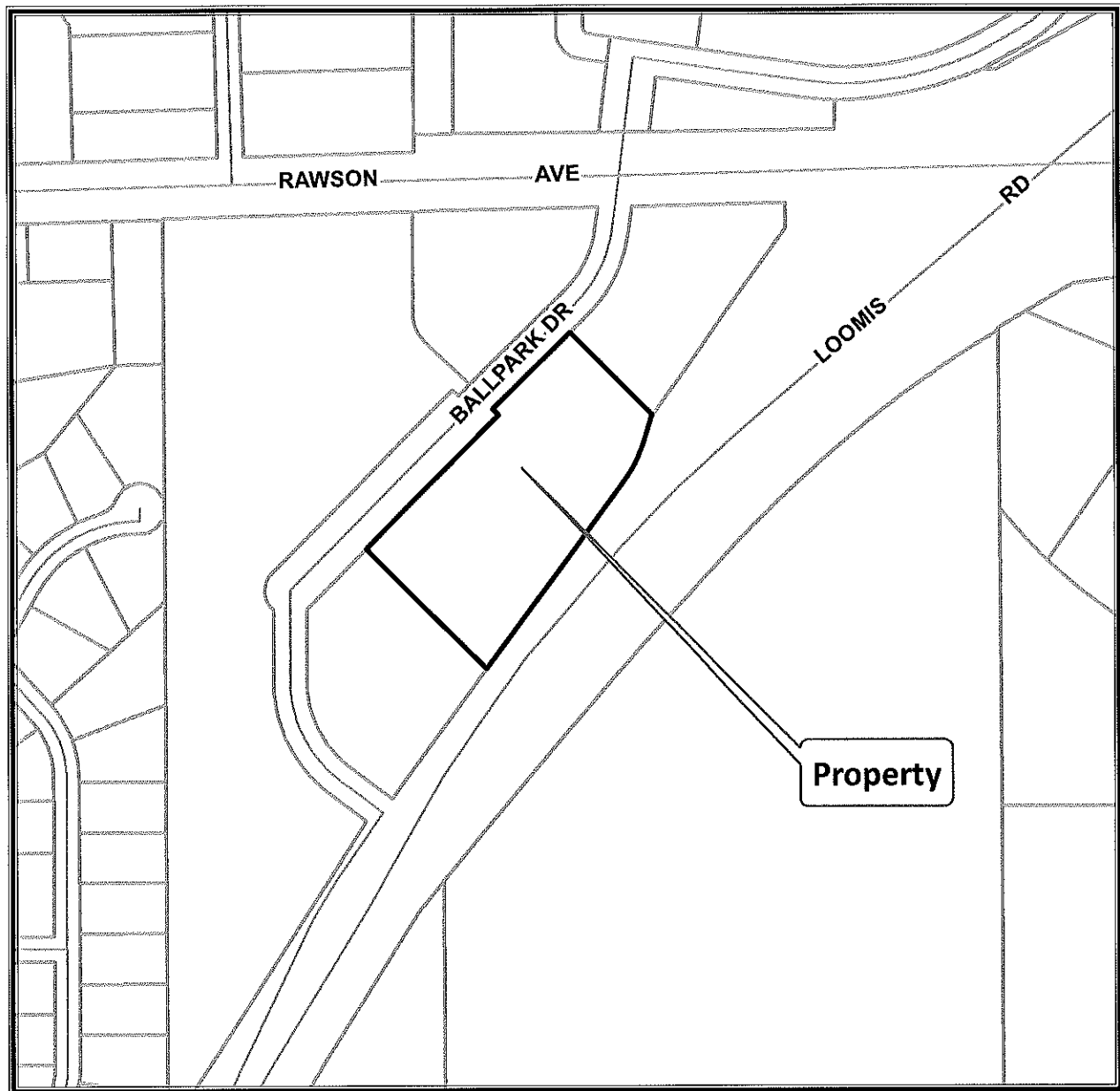
*This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. This map is provided for informational purposes only and may not be sufficient or appropriate for legal, engineering, or surveying purposes.*



2017 Aerial Photo



7220 S. Ballpark Drive  
TKN: 754 9007 000



Planning Department  
(414) 425-4024

0 230 460 920 Feet

*This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. This map is provided for informational purposes only and may not be sufficient or appropriate for legal, engineering, or surveying purposes.*



2017 Aerial Photo

## LANDSCAPE BUFFERYARD EASEMENT

### Ballpark Commons – Senior Living Development

This Landscape Bufferyard easement is made by and between the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "Grantee," and Franklin RE, LLC, a Limited Liability Corporation, hereinafter referred to as "Grantor," and shall become effective upon the recording of this Grant of Landscape Bufferyard Easement, together with the Acceptance following, with the Office of the Register of Deeds for Milwaukee County, pursuant to §700.40(2)(b) of the Wisconsin Statutes.

### WITNESSETH

WHEREAS, Grantor is the owner in fee simple of certain real property, located within the City of Franklin, Milwaukee County, Wisconsin, at 7220 S. Ballpark Drive, described in Exhibit A attached hereto and hereby made a part hereof (protected property); and

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

WHEREAS, BPC Master Developer, LLC was the applicant for a proposed site plan as set forth in City of Franklin Plan Commission Resolution No. 2018-008, conditionally approving a Site Plan for a Senior Housing Development within the Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) development use, and the City Plan Commission adopted Resolution No. 2018-008, on June 21, 2018. Condition 11 of Resolution 2018-008 thereof providing: Franklin RE, LLC, shall grant a thirty (30) foot-wide Landscape Bufferyard easement to the City of Franklin subject to Common Council approval and recording with the Milwaukee County Registered of Deeds Office.; and

WHEREAS, Grantee is a "holder", as contemplated by §700.41(1)(b)1. of the Wisconsin Statutes, whose purposes include, while exercising regulatory authority granted to it, *inter alia*, under §62.23 and §236.45 of the Wisconsin Statutes, the conservation of land, natural areas, open space, and water areas; and

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

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

NOW, THEREFORE, the Grantor, for and in consideration of the foregoing recitations and of the mutual covenants, terms, conditions, and restrictions subsequently contained, and as an absolute and unconditional dedication, does hereby grant and convey unto the Grantee a Landscape Bufferyard Easement in perpetuity on, over, and across the protected property.

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

1. To establish and ensure the continuance of an area reserved for the planting of trees and shrubs for the private use by the owners of the underlying fee simple interests, to the exclusion of all others, for the purpose of buffering the properties adjoining Certified Survey Map 9078, Lot 2 by requiring this protected property to be open space in perpetuity; the protected property shall consist of natural existing vegetation and approved landscaping of trees, shrubs, fences, and/or berms, designed to provide a screen and buffer between Certified Survey Map 9078, Lot 2 and Loomis Road (STH 36);
2. To enforce by proceeding at law or in equity the covenants subsequently set forth, including, and in addition to all other enforcement proceedings, proceedings to obtain all penalties and remedies set forth under Division 15-9.0500 of the Unified Development Ordinance of the City of Franklin, as amended from time to time, any violation of the covenants subsequently set forth being and constituting a violation of such Unified Development Ordinance, as amended from time to time, or such local applicable ordinance as may be later adopted or in effect to enforce such covenants or the purposes for which they are made, it being agreed that there shall be no waiver or forfeiture of the Grantee's right to insure compliance with the covenants and conditions of this grant by reason of any prior failure to act; and

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

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

1. Construct or place buildings or any structure, beyond those buildings and structures and improvements as identified on any engineering or construction plans approved by the City of Franklin, including, without limitation, the civil engineering plans approved on June 21, 2018 as City of Franklin Plan Commission Resolution 2018-008, are specifically permitted and allowed within the limits of the Easement Area in compliance with this Landscape Bufferyard Easement;
2. Construct or make any improvements, unless, notwithstanding Covenant 1 above, the improvement is specifically and previously approved by the, by the Plan Commission of the City of Franklin, by the Common Council of the City of Franklin, upon the advice of such other persons, entities, and agencies as it may elect; such improvements as may be so approved being intended to enhance the open space buffer value of the protected property to the occupants of land adjoining or neighboring the protected property including, but not limited to fences, berms, and the like.

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

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

To Grantor:  
Franklin RE, LLC  
Attn: Jim Kleinfeldt  
1110 N. Old World 3<sup>rd</sup> St.  
Suite 610  
Milwaukee, WI 53203

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

In witness whereof, the grantor has set its hand and seals this on this date of \_\_\_\_\_, 20\_\_.

Franklin RE, LLC

By: \_\_\_\_\_  
Authorized Officer and Signatory

STATE OF WISCONSIN       )  
  ) ss  
COUNTY OF MILWAUKEE    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_ by

Jim Kleinfeldt as Authorized Officer and Signatory of Franklin, RE, LLC

To me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said Franklin RE, LLC.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

**Acceptance**

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

In witness whereof, the undersigned has executed and delivered this acceptance on the \_\_\_\_ day of \_\_\_\_\_, A.D.20\_\_.

CITY OF FRANKLIN

By: \_\_\_\_\_  
Stephen R. Olson, Mayor

By: \_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN       )  
  ) ss  
COUNTY OF MILWAUKEE    )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_, the above named Stephen R. Olson, Mayor and Sandra L. Wesolowski, City Clerk, of the above named municipal corporation, City of Franklin, to me known to be such Mayor and City Clerk of said municipal corporation, and acknowledged that they executed the foregoing instrument as such officers as the Deed of said municipal corporation by its authority and pursuant to Resolution No. \_\_\_\_\_, adopted by its Common Council on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

This instrument was drafted by the City of Franklin.

Approved as to contents:

_____ Joel Dietl, Planning Manager Department of City Development	_____ Date
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Approved as to form only:

_____ Jesse A. Wesolowski City Attorney	_____ Date
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## MORTGAGE HOLDER CONSENT

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

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

Name of Mortgagee \_\_\_\_\_  
a Wisconsin Banking Corporation

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

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

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

STATE OF WISCONSIN       )  
  )ss  
COUNTY OF MILWAUKEE    )

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

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

Notary Public, State of Wisconsin

My commission expires \_\_\_\_\_

Exhibit A

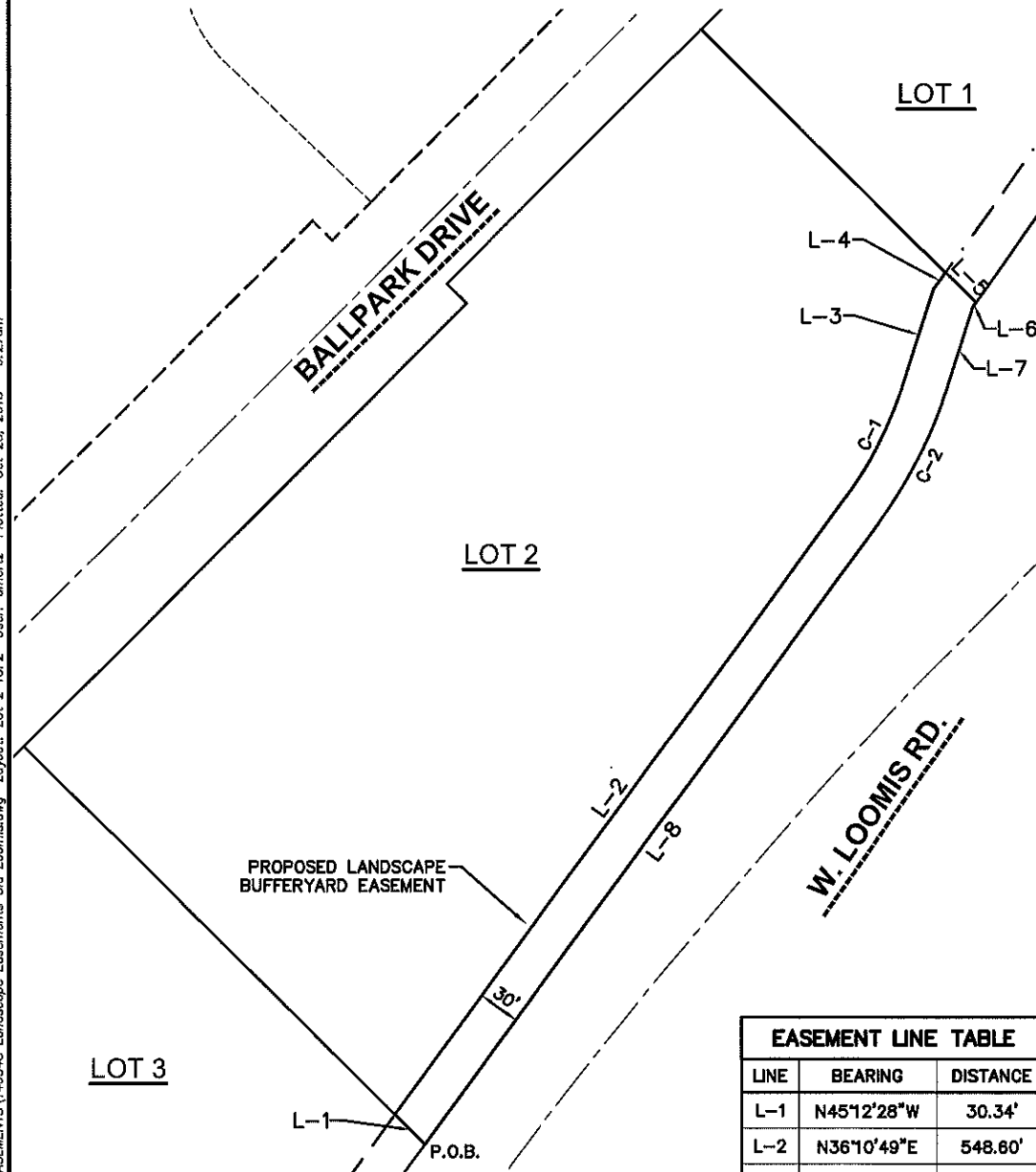
[The Franklin RE, LLC property upon which the open space buffer lands are located is legally described as follows:

Lot 2 of Certified Survey Map No. 9078, recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on October 16, 2018, as Document No. 10820171, being a redivision of Lots 3 and 4 of Certified Survey Map 9042 and lands in the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  and the Northeast  $\frac{1}{4}$  and Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 9, Town 5 North, Range 21 East. Said land being in the City of Franklin, Milwaukee County, State of Wisconsin.

A map depicting the open space buffer lands is annexed hereto. The open space buffer lands are legally described as as set forth on EXHIBIT B annexed hereto.]

# EASEMENT EXHIBIT

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



LOT 3

LOT 1

LOT 2

PROPOSED LANDSCAPE  
BUFFERYARD EASEMENT

W. LOOMIS RD.

L-1

P.O.B.

L-2

L-8

L-4

L-3

L-6

L-7

C-1

C-2

## EASEMENT CURVE TABLE

CURVE	LENGTH	RADIUS	TANGENT	DELTA	CHORD	CHORD BEARING
C-1	93.25'	285.00'	47.05	18°44'48"	92.83'	N26°48'25"E
C-2	103.07'	315.00'	52.00	18°44'48"	102.61'	S26°48'25"W

## EASEMENT LINE TABLE

LINE	BEARING	DISTANCE
L-1	N45°12'28"W	30.34'
L-2	N36°10'49"E	548.60'
L-3	N17°26'01"E	69.20'
L-4	N35°32'04"E	14.07'
L-5	S45°04'41"E	30.41'
L-6	S35°32'04"W	4.33'
L-7	S17°26'01"W	64.43'
L-8	S36°10'49"W	553.15'

## EASEMENT EXHIBIT

30' LANDSCAPE BUFFERYARD EASEMENT

PREPARED BY:

**JSD** Professional Services, Inc.  
Engineers • Surveyors • Planners

4336 W1810 BUSSE ROAD,  
SUITE 100  
MILWAUKEE, WISCONSIN 53188  
PHONE: (262)813-0888

PREPARED FOR:

ZIM-MAR  
PROPERTIES, LLC

PROJECT NO: 14-8548

FILE NO: B-\*

FIELDBOOK/PG: -

SHEET NO: 1 OF 2

SURVEYED BY: -

DRAWN BY: APM

CHECKED BY: AWW

APPROVED BY: JJJ



0 100' 200'

SCALE: 1" = 200'

File: R:\2014\14CS548 Ballpark Commons.dwg EASEMENTS\CSM 3 EASEMENTS\145548 Landscape Easements Old Loomis.dwg Layout: Lot 2 10/2/2 User: amertz Plotted: Oct 23, 2018 - 9:27am

## EASEMENT EXHIBIT

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


COMMENCING AT THE SOUTHEASTERLY CORNER OF SAID LOT 2 BEING THE POINT OF  
BEGINNING OF LANDS TO BE DESCRIBED; THENCE N45°12'28"W ALONG THE SOUTH LINE OF  
SAID LOT 2, 30.34 FEET; THENCE N36°10'49"E, 548.60 FEET TO THE START OF CURVE TO  
THE LEFT; THENCE NORTHEASTERLY 93.25 FEET ALONG THE ARC OF SAID CURVE TO THE  
LEFT, WHOSE RADIUS IS 285.00 FEET AND WHOSE CHORD BEARS N26°48'25"E, 92.83 FEET  
TO A POINT OF TANGENCY; THENCE N17°26'01"E, 69.20 FEET; THENCE N35°32'04"E 14.07  
FEET TO A POINT ON THE NORTH LINE OF SAID LOT 2; THENCE S45°04'41"E ALONG SAID  
NORTH LINE, 30.41 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT 2; THENCE  
S35°32'04"W ALONG THE EAST LINE OF SAID LOT 2, 4.33 FEET TO THE EASTERLY CORNER  
OF SAID LOT 2; THENCE S17°26'01"W ALONG SAID EAST LINE, 64.43 FEET TO THE START  
OF CURVE TO THE RIGHT AND TO THE EASTERLY CORNER OF SAID LOT 2; THENCE  
SOUTHWESTERLY 103.07 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT AND ALONG  
THE EAST LINE OF SAID LOT 2, WHOSE RADIUS 315.00 FEET AND WHOSE CHORD BEARS  
S26°48'25"W, 102.61 FEET TO A POINT OF TANGENCY AND TO THE EASTERLY CORNER;  
THENCE S36°10'49"W ALONG THE EAST LINE OF SAID LOT 2, 553.15 FEET TO THE POINT  
OF BEGINNING.

LANDS CONTAINING 21,752 SQUARE FEET OR 0.4994 ACRES

### EASEMENT EXHIBIT

30' LANDSCAPE BUFFERYARD EASEMENT

PREPARED BY:

 Professional Services, Inc.  
Engineers • Surveyors • Planners

N230 W1010 BUSSE ROAD,  
SUITE 100  
MILWAUKEE, WISCONSIN 53188  
PHONE: (262)513-0868

PREPARED FOR:

ZIM-MAR  
PROPERTIES, LLC

PROJECT NO: 14-6548

FILE NO: B-\*

FIELDBOOK/Pg: -

SHEET NO: 2 OF 2

SURVEYED BY: -

DRAWN BY: APM

CHECKED BY: AWW

APPROVED BY: JJJ



0 50' 100'  
SCALE: 1" = 100'

<b>APPROVAL</b> <i>Slur</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> November 19, 2018
<b>REPORTS AND RECOMMENDATIONS</b>	A Resolution Authorizing Certain Officials to Accept a Water Main Easement for and as Part of the Review and Approval of a Site Plan for a Senior Housing Development at Ballpark Commons (7220 South Ballpark Drive) (The Boldt Company, Applicant)	<b>ITEM NUMBER</b> <i>III, B.</i>

Attached is a copy of the above Water Main Easement for the Senior Housing Development property. The Easement was required by the Site Plan approval for the subject property in Plan Commission Resolution No. 2018-008, conditionally approving a Site Plan for a Senior Housing Development within the Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) development, in condition number 11, adopted on June 21, 2018.

Staff would note that unlike the Landscape Bufferyard Easement, this easement does NOT allow buildings and structures within the easement. Staff and applicant are still working through the site plan review process.

### **COUNCIL ACTION REQUESTED**

A motion to adopt A Resolution Authorizing Certain Officials to Accept a Water Main Easement for and as Part of the Review and Approval of a Site Plan for a Senior Housing Development at Ballpark Commons (7220 South Ballpark Drive) (The Boldt Company, Applicant).

Engineering: GEM

## RESOLUTION NO. 2018-\_\_\_\_\_

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO  
ACCEPT A WATER MAIN EASEMENT FOR AND AS PART  
OF THE REVIEW AND APPROVAL OF A SITE PLAN FOR A SENIOR HOUSING  
DEVELOPMENT AT BALLPARK COMMONS (7220 SOUTH BALLPARK DRIVE)  
(THE BOLDT COMPANY, APPLICANT)

---

WHEREAS, the Plan Commission having approved a Site Plan upon the application of BPC Master Developer, LLC, on June 21, 2018, and the Plan Commission having conditioned approval thereof in part upon Common Council approval of a Water Main Easement; and

WHEREAS, §15-5.0109.C of the Unified Development Ordinance requires a minimum of twelve (12) foot-wide utility easement or wider where recommended by the City Engineer; and

WHEREAS, the City Engineer has considered a water main for 7220 S. Ballpark and recommends a minimum twenty (20) foot-wide water main easement to accommodate access and maintenance; and

WHEREAS, the City of Franklin Common Council having approved a Certified Survey Map upon the application of Michael E. Zimmerman, Partner, ROC Ventures, LLC/ZIM-MAR Properties, LLC, on September 18, 2018, conditioned in part upon requiring each and any easement shown on the Certified Survey Map shall be the subject of separate written grant of easement instrument in such form as provided within the City of Franklin Design Standards and Construction Specifications and such form and content as may otherwise be reasonably required by the City Engineer or designee to further and secure the purpose of the easement; such water main easement having been depicted upon the Certified Survey Map approved by the Common Council on September 18, 2018; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the Water Main Easement submitted by The Boldt Company, in the form and content as annexed hereto, be and the same is hereby approved; and the Mayor and City Clerk are hereby authorized to execute such Easement as evidence of the consent to and acceptance of such easement by the City of Franklin.

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS  
TO ACCEPT A WATER MAIN EASEMENT  
SENIOR HOUSING DEVELOPMENT (BALLPARK COMMONS)  
RESOLUTION NO. 2018-\_\_\_\_\_

Page 2

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

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

APPROVED:

\_\_\_\_\_  
STEPHEN R. OLSON, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

## WATER MAIN EASEMENT

(BALLPARK COMMONS – FRANKLIN, WISCONSIN)

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

### WITNESSETH

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

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

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

NOW, THEREFORE, in consideration of the grant of the easement hereinafter described and the payment of One Dollar (\$1.00) and other valuable considerations to the Grantor, receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described does hereby grant unto the City a permanent, non-exclusive easement to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable the Facilities in, upon and across that part of the Property, more particularly described and depicted on Exhibit "B" attached hereto (the "Easement Area").

### UPON CONDITION

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

subject to the legal defenses available under law which the City or Grantor are entitled to raise, excepting the defense of so-called "sovereign immunity."

3. That no structure may be placed within the limits of the Easement Area by the Grantor except those improvements such as walks, pavements for driveways and parking lot surfacing, retaining walls and landscaping may be constructed or placed within the Easement Area. The City acknowledges any structures or improvements placed within the limits of the Easement Area as identified on any engineering or construction plans approved by the City, including, without limitation, the civil engineering plans approved on June 21, 2018 as Resolution No. 2018-008, are specifically permitted and allowed within the limits of the Easement Area in compliance with this Water Main Easement.
4. That, in connection with the construction by the Grantor of any structure or building abutting said Easement Area, the Grantor will assume all liability for any damage to the Facilities in the above described Easement Area caused by such construction. The Grantor will also save and keep the City clear and harmless from any claims for personal injuries or property damage caused by any negligence or wrongful acts or omissions of the Grantor or persons acting on behalf of the Grantor, arising out of the construction by the Grantor of any structure or building abutting the said Easement Area, and shall reimburse the City for the full amount of such loss or damage; provided that if the above loss, claim, cost, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence.
5. That no charges will be made against the Property for the cost of maintenance or operation of said Facilities in the Property. Whenever the Grantor makes application for a service connection associated with the services provided by virtue of the Facilities, the regular and customary service connection charge in effect at the time of the application shall be charged and paid. The Grantor shall be responsible for the routine maintenance of land on which the easement is located.
6. All conditions pertaining to the "Maintenance of Water Service Piping" as set forth in Chapter 5.12 of the "Rules and Regulations Governing Water Service" and subsequent amendments thereto shall apply to all water services which are within the easement defined limits and also within the limits of any adjoining easements; except that the City of Franklin Water Works, a utility owned by the City of Franklin shall in no case be responsible for maintaining at its expense any portion of said water services outside of the easement defined limits and outside the limits of any adjoining easements regardless of any statement to the contrary in said "Rules and Regulations Governing Water Service."
7. The Facilities shall be accessible for maintenance by the City at all times upon at least forty-eight (48) hours advance notice to the Grantor, except in the event of an emergency, in which case notice shall be provided as soon as reasonably possible. The Grantor shall submit plans for approval to the City Engineer for any underground installation within the Easement Area, which approval shall not be unreasonably withheld, conditioned or delayed.
8. That the Grantor shall submit plans for all surface alterations of plus or minus 1 foot or greater within the limits of said Easement Area. Said alterations shall be made only with the approval of the City Engineer of the City of Franklin, which approval shall not be unreasonably withheld, conditioned or delayed.
9. The City and Grantor shall each use, and take reasonable measures to cause their employees, officers, customers, agents, contractors and assigns to use, the Easement Area in a reasonable manner and so as not to obstruct or otherwise use the Easement Area in a manner that would unreasonably interfere with the use thereof by the other party hereto or its employees, officers, customers, agents, contractors and assigns.

10. The City and Grantor each hereby waives all rights of subrogation that either has or may hereafter have against the other for any damage to the Easement Area or any other real or personal property or to persons covered by such party's insurance, but only to the extent of the waiving party's insurance coverage; provided, however, that the foregoing waivers shall not invalidate any policy of insurance now or hereafter issued, it being hereby agreed that such a waiver shall not apply in any case which would result in the invalidation of any such policy of insurance and that each party shall notify the other if such party's insurance would be so invalidated.
11. Either party hereto may enforce this easement by appropriate action, and should it prevail in such litigation, that party shall be entitled to recover, as part of its costs, reasonable attorneys' fees.
12. This easement may not be modified or amended, except by a writing executed and delivered by the City and Grantor or their respective successors and assigns. This easement shall be binding upon and inure to the benefit of the Grantor and the City and their respective successors and assigns, it being the intent that all of the covenants hereunder shall be "covenants running with the land."
13. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.
14. If any term or provision of this easement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this easement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by applicable law.
15. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
16. It is understood that the above described Easement Area may become portions of public streets, in which event, in the proceedings for the acquisition of the property needed for such streets by purchase, dedication or by condemnation, said lands shall be considered the same as though this easement had not been executed or any rights granted thereby exercised.
17. That the Grantor shall submit as-built drawings of the installed facilities on mylar for approval to the City Engineer, which approval shall not be unreasonably withheld, conditioned, or delayed.
18. This easement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

*(Signatures follow on next pages)*

IN WITNESS WHEREOF, the Parties have hereunto set their hand and seals this

ON THIS DATE OF: \_\_\_\_\_, 2018.

GRANTOR:

Zim-Mar Properties, LLC

By: \_\_\_\_\_  
Michael E. Zimmerman, Manager

By: \_\_\_\_\_  
Greg Marso, Manager

STATE OF \_\_\_\_\_ ss  
COUNTY OF \_\_\_\_\_

Before me personally appeared on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above named Michael E. Zimmerman, the Manager of Zim-Mar Properties, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires \_\_\_\_\_

STATE OF \_\_\_\_\_ ss  
COUNTY OF \_\_\_\_\_

Before me personally appeared on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above named Greg Marso, the Manager of Zim-Mar Properties, LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires \_\_\_\_\_

CITY OF FRANKLIN

By: \_\_\_\_\_  
Stephen R. Olson, Mayor

By: \_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN     )  
                                      SS  
COUNTY OF MILWAUKEE    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared Stephen R. Olson and Sandra L. Wesolowski, who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority and pursuant to resolution file No. \_\_\_\_\_ adopted by its Common Council on \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires \_\_\_\_\_

This instrument was drafted by the City of Franklin.

Approved as to contents  
Date:

\_\_\_\_\_  
City Engineer

Approved as to form only  
Date:

\_\_\_\_\_  
City Attorney

MORTGAGE HOLDER CONSENT

The undersigned, CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin ("Mortgagee"), as Mortgagee under that certain Real Estate Mortgage encumbering the Property and recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin, on March 5, 2018, as Document No. 10756660, hereby consents to the execution of the foregoing easement and its addition as an encumbrance against title to the Property.

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

CITY OF FRANKLIN

By: \_\_\_\_\_  
Stephen R. Olson, Mayor

By: \_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN       )  
  SS  
COUNTY OF MILWAUKEE    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared Stephen R. Olson and Sandra L. Wesolowski, who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority and pursuant to resolution file No. \_\_\_\_\_ adopted by its Common Council on \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires \_\_\_\_\_

Exhibit A

Description and Depiction of the Property

Lot 2 of Certified Survey Map No. 9078, recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin on October 16, 2018, as Document No. 10820171, being a redivision of Lots 3 and 4 of Certified Survey Map 9042 and lands in the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  and the Northeast  $\frac{1}{4}$  and Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 9, Town 5 North, Range 21 East. Said land being in the City of Franklin, Milwaukee County, State of Wisconsin.

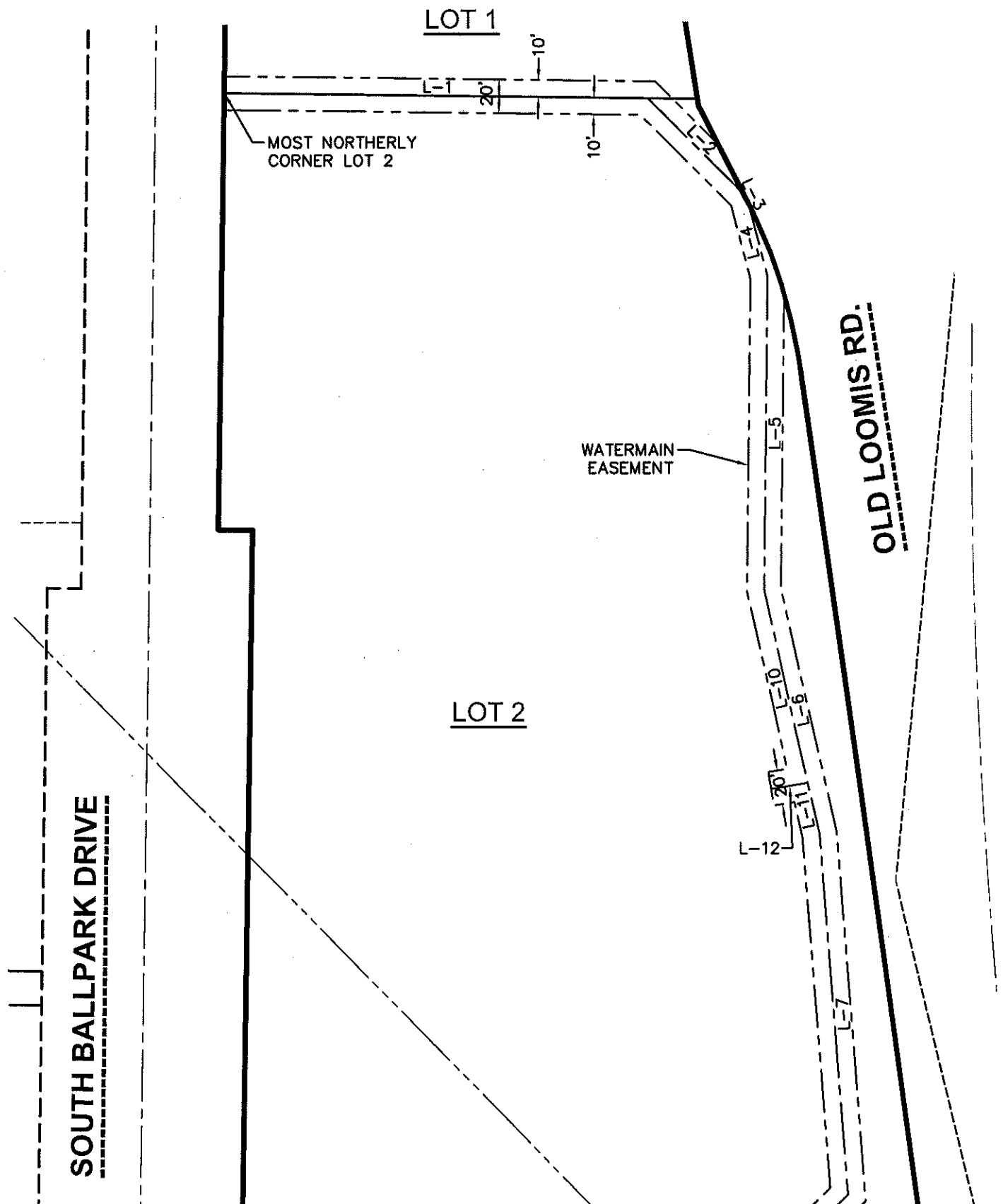
Exhibit B

Description and Depiction of Easement Area

*(See Attached)*

# EASEMENT EXHIBIT

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



# EASEMENT EXHIBIT

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

## LEGAL DESCRIPTION


PART OF LOTS 1, 2 AND 3 OF CERTIFIED SURVEY MAP NO. \_\_\_\_\_, BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, THE CENTERLINE OF A WATERMAIN EASEMENT DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID LOT 2, BEING THE POINT OF BEGINNING OF LANDS TO BE DESCRIBED; THENCE S45°04'41"E ALONG THE NORTHEASTERLY LINE OF SAID LOT A DISTANCE OF 248.41 FEET; THENCE S00°24'03"E 79.26 TO A POINT ON THE RIGHT OF WAY LINE OF OLD LOOMIS ROAD; THENCE S17°26'01"W ALONG SAID RIGHT OF WAY LINE 5.96 FEET; THENCE S29°28'48"W 44.45 FEET; THENCE S44°52'25"W 184.53 FEET; THENCE S31°22'46"W 147.48 FEET; THENCE S39°43'02"W 212.53 FEET; THENCE S89°18'35"W 72.75 FEET; THENCE N45°12'28"W AND PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID LOT 303.35 FEET TO A POINT ON THE EASTERLY LINE OF SOUTH BALLPARK DRIVE, BEING THE POINT OF TERMINUS OF THIS DESCRIPTION.

LANDS CONTAINING 25,683 SQUARE FEET OR 0.5896 ACRES

EASEMENT LINE TABLE		
LINE	BEARING	DISTANCE
L-1	S45°04'41"E	248.41'
L-2	S00°24'03"E	79.26'
L-3	S17°26'01"W	5.96'
L-4	S29°28'48"W	44.45'
L-5	S44°52'25"W	184.53'
L-6	S31°22'46"W	147.48'
L-7	S39°43'02"W	212.53'
L-8	S89°18'35"W	72.75'
L-9	N45°12'28"W	303.35'
L-10	S31°22'46"W	116.55'
L-12	N55°14'03"W	22.16'
L-13	N45°12'28"W	138.85'
L-14	N45°12'28"W	164.50'
L-15	S44°47'32"W	38.87'

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<b>APPROVAL</b> 	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>11/19/2018</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Confirmation and Ratification of Interpretation of the 2019 Budget Adoption Ordinance (2018-2345)</b>	<b>ITEM NUMBER</b> <b>III. C.</b>

**EXECUTIVE SUMMARY:** The Director of Administration has determined, under the authority specifically assigned to him by the Common Council, that the motion on the budget made by Alderman Barber increased the Personnel Services Contingency appropriation but did not increase the total Contingency appropriation, and that the impact is best reported by separating the Restricted Contingency from the Personnel Services Contingency (designated but unrestricted contingency) into two separate lines on the Official Budget Appropriation Units document. By doing it in this manner, the intent of the motion is served and there is no unintended consequence of losing State Expenditure Restraint revenue.

**DETAILED DISCUSSION:** At the meeting of November 13, 2018, the Common Council approved Ordinance 2018-2345, "An Ordinance Adopting the 2019 Annual Budgets for the General, Civic Celebrations, St. Martin's Fair, Donations, Grant, Solid Waste Collection, Sanitary Sewer, Capital Outlay, Equipment Replacement, Street Improvement, Capital Improvement, Debt Service, Development, Utility Development, TID3, TID4, TID5, and Internal Service Funds and Establishing the Tax Levy and Other Revenue for the City of Franklin and Establishing the Solid Waste Fee", as amended. Relative to the budget adjustments added at the meeting as amendments to the ordinance, the motion stated that the "adjustments shall be incorporated into a final form of the ordinance and the Official Budget Appropriation Units document, as determined by the Director of Administration."

The purpose of this Council Action is to confirm and ratify a determination that the Director of Administration has reached under the authority granted by that motion.

The draft minutes indicate the following: "Alderman Barber moved to add a \$39,000 expenditure to General Fund Contingency #5111 for the purpose of moving the start date of the 1.55% wage increase to 1/01/2019 for any non-represented employee who joins WRS effective 1/01/2019 and would suffer a commensurate reduction in take-home pay by joining. Seconded by Alderman Mayer. All voted Aye; motion carried."

The Director of Administration drafted the motion at Alderman Barber's request to achieve his intent of using available Contingency appropriations. The motion was drafted taking into consideration the format of the Contingency Department on page 116 of the budget binder, as evidenced by the specific reference to line item #5111. The intent of the motion as crafted was to increase this specific component of the Personnel Services Contingency by \$39,000, but not increase the overall "Contingency" total. It is possible that someone might construe that motion as increasing the total Contingency. As such, the Director of Administration is seeking this confirmation and ratification in order to create and establish a more clear legislative intent.

Besides the specific reference to line item #5111 in the motion, it is very clear that the intent would not be to increase the total amount of the Contingency (Dept. 0199) because such an increase would cause the City to exceed its expenditure restraint limit. Exceeding that limit would cause the City to lose Expenditure Restraint revenues estimated at \$160,200. That action would have significant impact upon the budget that far exceeds


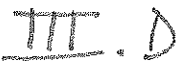
the intent of the motion. Additionally, such a result was clearly not part of the discussion on or intent of Alderman Barber's motion. Furthermore, this obvious conclusion is supported by the budget hearing presentation which included a slide specifically on the intent and use of Restricted Contingency which noted, in part, that "Its level is limited to an allowable expense appropriation up to the level of the Expenditure Restraint Program." With that discussion, the public was made clearly aware of the guidelines surrounding and intent of the Restricted Contingency component of the Contingency department.

The Director of Administration has determined, therefore, that Alderman Barber's motion as approved did "add a \$39,000 expenditure to General Fund Contingency #5111" but did not alter the total contingency in the Contingency (Dept. 0199, p. 166 of the budget binder). As such, an offsetting \$39,000 reduction to the Restricted Contingency as shown on p. 116 will be recorded. The overall total expenditure is not increasing.

It is important to note that the applicable page of the Official Budget Appropriation Units (page 19 of the Council packet and page 17 of the budget binder) reflects each of these items in the same single line titled "Contingency – Personnel Services." As a technical step and for the purpose of enhancing public disclosure, the Director of Administration has determined that the most appropriate manner to reflect the inclusion of the motion made by Alderman Barber into the final form of the documents is to separate the Restricted Contingency from the Personnel Services Contingency (designated but unrestricted contingency) into two separate line items on the Official Budget Appropriation Units document.

## **COUNCIL ACTION REQUESTED**

Motion to confirm and ratify the Director of Administration's determination that a portion of the motion amending and approving the 2019 budget did increase the Personnel Services Contingency expenditure appropriation by \$39,000 but did not alter the total contingency in the Contingency (Dept. 0199, p. 166 of the budget binder) and that the Restricted Contingency and Personnel Services Contingency should be reflected as two separate line items on the Official Budget Appropriation Units document.

<b>APPROVAL</b> 	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>11/19/2018</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Letters of Understanding Between the City of Franklin and the Franklin Police Officers Association and Franklin Professional Firefighters Association allowing such represented employees to participate in the PPO health plan option for 2019</b>	<b>ITEM NUMBER</b>  

At the meeting of September 18, 2018, the Common Council established the primary health insurance plan benefit as a High-Deductible Health Plan (HSA). Additionally, a new PPO was created as an alternative for eligible employees with a reduced benefit level at a higher employee premium share. Importantly, the Council Action Sheet indicated the following: "Note that it will be necessary for the City to enter into a Letter of Understanding with the Police and Fire Unions in order to be able to offer the new PPO to represented employees."

The approved motion gave the Director of Administration the charge to move many of the action steps forward, and in fact open enrollment is well under way; however, the Director of Administration realized the form of the motion did not delegate the authority to execute the Letters of Understanding. As such, the attached documents are provided for the Common Council's authorization. It is being presented at this meeting so that it can be adopted prior to the end of open enrollment and to provide union members greater confidence that the City will allow their participation in the PPO.

The attached documents provide for the following:

- Provide access to the PPO for represented Police and Fire employees.
- Establish the same employee premium shares for represented employees as available to non-represented employees.
- Preserve the Union's right to discuss premium shares during upcoming labor negotiations.
- Set the High-Deductible Health Plan premium as the basis for new retiree premium share calculations until such time that the basis is altered through the labor negotiation process. (The negotiation of premium share is the remaining negotiable topic with relation to health care.)

These agreements accomplish the intended action initiated by the Common Council in September. Absent approval, Police and Fire Department represented employees would only be able to participate in the High-Deductible Health Plan.

The Director of Administration recommends approval.

### COUNCIL ACTION REQUESTED

Motion to approve the Letter of Understanding Between the Franklin Police Officers Association (WPPA, Local No. 280) and the City of Franklin.

AND

Motion to approve the Letter of Understanding Between the Franklin Professional Firefighters (I.A.F.F., Local No. 2760) and the City of Franklin.

**Letter of Understanding Between the Franklin Police Officers Association (WPPA, Local No. 280) and the City of Franklin: (Prepared November 15, 2018)**

Effective beginning January 1, 2019 (with an open enrollment period occurring in part of the last quarter of 2018) the City has created a High Deductible Health Insurance Plan as the primary health insurance plan for City employees. This plan is available to members of the Franklin Police Officers Association (WPPA, Local No. 280, hereafter the "Association") in accordance with Article XV of the labor agreement.

As an alternative, the City has created a new, second health plan in a more traditional PPO style, which has benefits and premiums that are substantively different than the prior PPO plan previously offered by the City. In accordance with the spirit of cooperation between the parties related to health insurance, as evidenced by the current language of "Article XV – Health Insurance," the City desires to offer participation in this second plan (the PPO) to the members of the Association. The purpose of this Letter of Understanding is to enable participation by members of the Association in advance of contract settlement for a successor contract to the 2016-2018 Agreement.

1. The new 2019 PPO shall be administered consistent with the current language applying to the City's primary plan, except as noted below in number 2. Therefore, to make the plan available for participation, the parties agree, subject to the exception below (#3), that "Employees will pay a percentage of the applicable monthly health insurance premium as determined by the Common Council from time-to-time and as subsequently incorporated into the Employee handbook, which rate shall be the same as generally applies to non-supervisory employees," which language is from the existing labor agreement.
2. In order for the City to allow participation and for the Association to gain participation in this new PPO plan, the parties agree, subject to the exception below, that the maximum rate caps included as part of Section 15.01 do not apply to the premiums or premium shares for this new PPO plan.
3. Exception: This letter of understanding does not supplant nor negate the ability of the Union to negotiate, during negotiations for the successor to the current labor agreement, the employee premium share (including effective dates) for this new PPO health plan. Association members are encouraged not to rely upon or anticipate a deviation from number 1 above, which rates have generally been distributed in accordance with the City's open enrollment process.
4. The premiums set by the City for the City's primary plan, the High Deductible Plan, shall remain the premium that applies under Section 15.02, except as may be subsequently amended as per number 3 above. The new PPO plan premiums referenced above may be used in applying contract language for Sections 15.03 and 15.04.

For the City of Franklin

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Steve Olson, Mayor

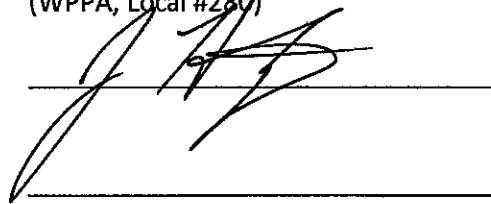
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Mark W. Lubarda, Dir. of Administration

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Sandra L. Wesolowski, Dir. of Clerk Services

For the Franklin Police Officers Association  
(WPPA, Local #280)



**Letter of Understanding Between the Franklin Professional Firefighters (I.A.F.F., Local No. 2760) and the City of Franklin: (Prepared November 15, 2018)**

Effective beginning January 1, 2019 (with an open enrollment period occurring in part of the last quarter of 2018) the City has created a High Deductible Health Insurance Plan as the primary health insurance plan for City employees. This plan is available to members of the Franklin Professional Firefighters (I.A.F.F., Local No. 2760, hereafter the "Association") in accordance with Article XIV of the labor agreement.

As an alternative, the City has created a new, second health plan in a more traditional PPO style, which has benefits and premiums that are substantively different than the prior PPO plan previously offered by the City. In accordance with the spirit of cooperation between the parties related to health insurance, as evidenced by the current language of "Article XIV – Hospital and Surgical Insurance," the City desires to offer participation in this second plan (the PPO) to the members of the Association. The purpose of this Letter of Understanding is to enable participation by members of the Association in advance of contract settlement for a successor contract to the 2016-2018 Agreement.

1. The new 2019 PPO shall be administered consistent with the current language applying to the City's primary plan, except as noted below in number 2. Therefore, to make the plan available for participation, the parties agree, subject to the exception below (#3), that "Employees will pay a percentage of the applicable monthly health insurance premium as determined by the Common Council from time-to-time and as subsequently incorporated into the Employee Handbook, which rate shall be the same as generally applies to non-represented, non-supervisory employees," which language is from the existing labor agreement.
2. In order for the City to allow participation and for the Association to gain participation in this new PPO plan, the parties agree, subject to the exception below, that the maximum rate caps included as part of Article XIV, Section 1., do not apply to the premiums or premium shares for this new PPO plan.
3. Exception: This letter of understanding does not supplant nor negate the ability of the Union to negotiate, during negotiations for the successor to the current labor agreement, the employee premium share (including effective dates) for this new PPO health plan. Association members are encouraged not to rely upon or anticipate a deviation from number 1 above, which rates have generally been distributed in accordance with the City's open enrollment process.
4. The premiums set by the City for the City's primary plan, the High Deductible Plan, shall remain the premium that applies under Article XIV Section 2. (a), except as may be subsequently amended as per number 3 above. The new PPO plan premiums referenced above may be used in applying contract language for Article XIV Sections 2.(b) and (c).

For the City of Franklin

For the Franklin Professional Firefighters  
(I.A.F.F., Local #2760)

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Steve Olson, Mayor

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Mark W. Luberd, Dir. of Administration

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Sandra L. Wesolowski, Dir. Of Clerk Services

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<b>APPROVAL</b>  <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  November 19, 2018
<b>REPORTS AND RECOMMENDATIONS</b>	Tax Incremental District No. 6 Mixed-Use Industrial, Commercial, Retail, Single-Family Residential and Open Space Uses (of an approximate 164-acre site generally located north and south of West Loomis Road, south of West Ryan Road, west of South 112th Street, east of South 124th Street and north of West Oakwood Road) Project Development Agreement (Bear Development, LLC; Loomis and Ryan, Inc. Developers). The Common Council may enter closed session pursuant to Wis. Stat. § 19.85(1)(e), to deliberate upon a Potential Tax Incremental District No. 6 Mixed-Use Industrial, Commercial, Retail, Single-Family Residential and Open Space Uses 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	<b>ITEM NUMBER</b>  <u>III. E.</u>

Attached is a Developer redraft (changes highlighted) of the draft development agreement which was included in the 11/13/18 Common Council meeting agenda packet, which at the time of this writing remains under review and negotiation by the developer and consultants and City staff and consultants. City professional consultant Ehlers is performing necessary work at this time which may require a change order/services agreement to be brought forward at a future meeting.

### COUNCIL ACTION REQUESTED

A motion to enter closed session pursuant to Wis. Stat. § 19.85(1)(e), to deliberate upon a Tax Incremental District No. 6 Mixed-Use Industrial, Commercial, Retail, Single-Family Residential and Open Space Uses 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.

~~{ROUGH DRAFT 11/9/18 n.b.: terms and provisions hereof remain under negotiation.}~~

**TAX INCREMENTAL DISTRICT NO. 6  
DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF FRANKLIN AND  
LOOMIS AND RYAN, INC.**

***Developer Redraft 11/16/18***

**Mixed-Use Development generally located to the north and south of West Loomis Road,  
south of West Ryan Road, west of South 112th Street, east of South 124th Street, and  
north of West Oakwood Road, Franklin, Wisconsin**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is entered into as of \_\_\_\_\_, 2018 by and between **LOOMIS AND RYAN, INC.**, a Wisconsin domestic business corporation, its successors and/or assigns ("Developer"), and the **CITY OF FRANKLIN, WISCONSIN**, a Wisconsin municipal corporation ("City").

**RECITALS**

City and Developer acknowledge the following:

A. Developer ~~is or~~ Developer's affiliate is or will be the Owner 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. 6, 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"), in which certain costs incurred by the Developer for development of the Property may be reimbursed from the property tax increment as provided by the Tax Increment Law, the details of which are set forth herein.

C. Developer plans on developing and constructing mixed-uses, ~~which shall in the District (as it may be expanded from time to time), which may~~ include without limitation an approximately 168,000 square foot manufacturing facility on approximately 27.47 acres ~~of the Property~~, with an estimated assessed value in excess of \$20 million; approximately 160,000 square feet of light industrial and commercial use space on approximately 18.5 acres ~~of the Property~~, with an estimated assessed value of \$13.5 million; ~~three single family lots on approximately 4.76 acres of the Property and a commercial use space lot on approximately 4.75 acres of the Property located north of West Loomis Road; and 7679~~ single family lots on approximately 30.87 acres (the actual residential development of such acreage in part thereof only is in compliance with the residential density ~~or of~~ at least 3 units per acre requirement pursuant to Wis. Stat. § 66.1105(2)(f)3.a.) ~~of the Property~~, with an estimated assessed value of \$30.4 million; all such development for a total of estimated assessed value of \$63.9 million (the "Project"). It is acknowledged that development of the Project as described above will be consistent with the Project Plan.

D. The City desires to encourage economic development, eliminate blight, expand its tax base and create new jobs within the City, the District and upon 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.

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

F. 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 has further approved the issuance of the Bonds described herein.

G. 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. ~~Developer shall~~ It is anticipated that the Project will be developed in Phases in accordance with the schedule as set forth on Exhibit A-1 (the "Schedule"). Developer may update the Schedule and Exhibit A-1 from time to time upon written notice to the City. Developer shall use to commercially reasonable efforts to construct or cause the commencement of the construction of each phase of the Project in accordance with the Schedule, as updated from time to time, and all applicable City zoning and building codes, ordinances and regulations. Developer warrants and represents to the City that the Project will contain approximately \_\_\_\_\_ square feet of developed building space and that total development estimates that the costs expended on all phases of the Project (inclusive of personal property) shall be not less than \$\_\_\_\_\_ approximately \$63.9 million. Developer shall use commercially reasonable efforts to substantially complete construction of each phase of the Project in accordance with the Schedule and with final plans and specifications (including landscaping plans) approved by the City, including, but not limited to the terms, provisions and conditions of \_\_\_\_\_ for the Project, and of which this Agreement and its terms and conditions are a condition thereof (the "Plans and Specifications"), on or before \_\_\_\_\_, 20\_\_ (the "Completion Date"). Copies of the Plans and Specifications will be retained at the offices of the City Economic Development Department. The Each phase of the Project shall be deemed to be substantially complete on the date that the City Building Inspector issues a certificate of occupancy for the such phase of the Project, 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 applicable phase of the Project 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. B.~~ To the extent any improvements that will be dedicated to the public are included within the scope of work for the Project (the "Public Improvements"), City hereby contracts with Developer to complete the ~~to~~ oversee the completion of the installation of the Public Improvements of behalf of the City in accordance with City specifications, including the execution of a City standard form development agreement where applicable terms thereof are not specifically set forth in this Agreement, and will dedicate same to the City in accordance with City inspection and acceptance procedures. If required by applicable law, Developer agrees to comply with public bidding requirements under the Wisconsin Statutes for all work involving improvements to public rights of way or public property or that constitutes public improvements under applicable law (together referred to as 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~~ dedicated to the City or other public entity, to the extent appropriate. 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. The Developer shall not be released of its obligations hereunder to construct the Public Improvements without the prior written consent of the City. Once the Public Improvements, or any portion thereof applicable to a particular portion of the Project, are complete, the City shall acknowledge satisfaction of such Public Improvements in writing and release Developer from the applicable Public Improvement requirements of this Agreement with respect to said portion of the Project. In the event that the City so determines that all of the Public Improvements hereunder have been so met, the City shall execute a recordable release of Developer from such obligations.

~~B. C.~~ Unless consented to in writing by the City, Developer shall not demolish any existing improvements on the Property prior to the calendar year in which construction of the first phase of the Project commences and in no event, earlier than six (6) months prior to the start of construction.

~~C. D.~~ Developer shall enter into a separate City standard form development agreement to provide for the installation of the "Extension of North / South Roadway" Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof ~~no later than \_\_\_\_\_,~~ as set forth on Exhibit A-2 (the "Public Improvements Schedule"), and complete construction of the Extension of North / South Roadway ~~no later than \_\_\_\_\_,~~ as set forth in the Public Improvements Schedule. Developer shall deliver to the City, as soon as available but in no event later than sixty (60) days after substantial completion of the Extension of North / South Roadway Public Improvement, an accounting of all its project costs, detailing the actual cost of the project.

~~D. E.~~ Developer shall enter into a separate City standard form development agreement to provide for the installation of the "Interior Public Roadway" Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof ~~no~~

later than \_\_\_\_\_, \_\_\_\_\_ as set forth in the Public Improvements Schedule, and complete construction of the Interior Public Roadway no later than \_\_\_\_\_, \_\_\_\_\_ as set forth in the Public Improvements Schedule. Developer shall deliver to the City, as soon as available but in no event later than sixty (60) days after substantial completion of the Interior Public Roadway Public Improvement, an accounting of all its project costs, detailing the actual cost of the project.

E. ~~F. F.~~ Developer shall enter into a separate City standard form development agreement to provide for the installation of the "Off-Site Public Water" Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than \_\_\_\_\_, \_\_\_\_\_ as set forth in the Public Improvements Schedule, and complete construction of the Off-Site Public Water no later than \_\_\_\_\_, \_\_\_\_\_ as set forth in the Public Improvements Schedule. Developer shall deliver to the City, as soon as available but in no event later than sixty (60) days after substantial completion of the Off-Site Public Water Public Improvement, an accounting of all its project costs, detailing the actual cost of the project.

F. ~~G. G.~~ Developer shall enter into a separate City standard form development agreement to provide for the installation of the "Off-Site Public Water Phase II" Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than \_\_\_\_\_, \_\_\_\_\_ as set forth in the Public Improvements Schedule, and complete construction of the Off-Site Public Water Phase II no later than \_\_\_\_\_, \_\_\_\_\_ as set forth in the Public Improvements Schedule. Developer shall deliver to the City, as soon as available but in no event later than sixty (60) days after substantial completion of the Off-Site Public Water Phase II Public Improvement, an accounting of all its project costs, detailing the actual cost of the project.

G. ~~H. H.~~ Developer shall enter into a separate City standard form development agreement to provide for the installation of the "Off-Site Roadways" Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than \_\_\_\_\_, \_\_\_\_\_ as set forth in the Public Improvements Schedule, and complete construction of the Off-Site Roadways no later than \_\_\_\_\_, \_\_\_\_\_ as set forth in the Public Improvements Schedule. Developer shall deliver to the City, as soon as available but in no event later than sixty (60) days after substantial completion of the Off-Site Roadways Public Improvement, an accounting of all its project costs, detailing the actual cost of the project.

H. ~~I. I.~~ The Developer shall arrange for funding for all costs 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 the Project to proceed.~~

## 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 submissions and applications in accordance with applicable City ordinances.

On or before [ ] the City shall issue bonds in the maximum principal amount of [ ] with a maximum interest rate of [ ] (the "City Bonds") to be used to fund the payment of Public Improvements as set forth below.

B. ~~Upon~~ On a monthly draw basis, during Developer's completion of the construction and installation of the Extension of the North / South Roadway Public Improvement, the approval thereof by the City, the approval of the accounting of all the Improvement project costs by the City, ~~and the City's acceptance of the dedication of the Improvement by Developer to the City,~~ the City shall pay ~~to Developer a cash grant in the not-to-exceed~~ directly for such costs in an amount of ~~estimated to be~~ \$1,900,000. Should the accounting of project costs amount be less than the aforesaid amount, ~~the cash grant~~ City payment of such costs shall be reduced to an amount equal to the actual cost of the project cost. Should the accounting of project costs amount be more than the aforesaid amount, the City payment of such costs shall be made out of the funds in subsections B. through F., to the extent there are any excess funds.

C. ~~Upon~~ On a monthly draw basis, during Developer's completion of the construction and installation of the Interior Public Roadway Public Improvement, the approval thereof by the City, the approval of the accounting of all the Improvement project costs by the City, ~~and the City's acceptance of the dedication of the Improvement by Developer to the City,~~ the City shall pay ~~to Developer a cash grant in the not-to-exceed~~ directly for such costs in an amount of ~~estimated to be~~ \$4,600,000. Should the accounting of project costs amount be less than the aforesaid amount, ~~the cash grant~~ City payment of such costs shall be reduced to an amount equal to the actual cost of the project cost. Should the accounting of project costs amount be more than the aforesaid amount, the City payment of such costs shall be made out of the funds in subsections B. through F., to the extent there are any excess funds.

D. ~~Upon~~ On a monthly draw basis, during Developer's completion of the construction and installation of the Off-Site Public Water Public Improvement, the approval thereof by the City, the approval of the accounting of all the Improvement project costs by the City, ~~and the City's acceptance of the dedication of the Improvement by Developer to the City,~~ the City shall pay ~~to Developer a cash grant in the not-to-exceed~~ directly for such costs in an amount of ~~estimated to be~~ \$1,300,000. Should the accounting of project costs amount be less than the aforesaid amount, ~~the cash grant~~ City payment of such costs shall be reduced to an amount equal to the actual cost of the project cost. Should the accounting of project costs amount be more than the aforesaid amount, the City payment of such costs shall be made out of the funds in subsections B. through F., to the extent there are any excess funds.

E. ~~Upon~~ On a monthly draw basis, during Developer's completion of the construction and installation of the Off-Site Public Water Phase II Public Improvement, the approval thereof by the City, the approval of the accounting of all the Improvement project costs by the City, ~~and the City's acceptance of the dedication of the Improvement by Developer to the City,~~ the City shall pay ~~to Developer a cash grant in the not-to-exceed~~ directly for such costs in an amount of ~~estimated to be~~ \$200,000. Should the accounting of project costs amount be less than the aforesaid amount, ~~the cash grant~~ City payment of such costs shall be reduced to an amount equal to the actual cost of the project cost. Should the accounting of project costs

amount be more than the aforesaid amount, the City payment of such costs shall be made out of the funds in subsections B. through F., to the extent there are any excess funds.

F. ~~Upon~~On a monthly draw basis, during Developer's completion of the construction and installation of the Off-Site Roadways Public Improvement, the approval thereof by the City, the approval of the accounting of all the Improvement project costs by the City, and the City's acceptance of the dedication of the Improvement by Developer to the City, the City shall pay to Developer a cash grant in the not to exceeddirectly for such costs in an amount estimated to be \$1,000,000. Should the accounting of project costs amount be less than the aforesaid amount, the cash grantCity payment of such costs shall be reduced to an amount equal to the actual cost of the project cost. Should the accounting of project costs amount be more than the aforesaid amount, the City payment of such costs shall be made out of the funds in subsections B. through F., to the extent there are any excess funds.

G. Intentionally Omitted.

H. ~~G.~~ All of the aforesaid Public Improvement project costs, and all Project costs under this Agreement, may include contingency costs specific to and only for the subject individual Improvement project, or the specific project development improvement component to which it applies; contingency costs for the specific item may include engineering, legal, administrative and/or inspection costs, the total of which in combination for the specific item shall not exceed 15% of the entire Improvement or project development improvement component project cost to which it applies.

~~H. I.~~ All of the aforesaid in this Article II cash grantsdirect payments to be paid by the City to the Developercontractors, material suppliers or service providers are subject to the pre-condition occurrence of Developer's sale of and the closing upon the sale of: i) an industrial use property in the District to a purchaser who has; i) Developer shall have executed and delivered to the City a tax assessment agreement for payments in lieu of taxes to guarantee payments to the City based upon an annual real estate tax assessment for the industrial property with a minimum assessed value for the tax year 2021 of \$10,000,000.00 and \$20,000,000.00 for the tax year 2022 and thereafter until the earlier of 2041 or the year the City general obligation debt and tax increment revenue municipal special, limited revenue obligation debt is paid in full; and ii) a commercial use property(ies) in the District to a purchaser(s) who has/Developer shall have executed and delivered to the City a tax assessment agreement(s) for payments in lieu of taxes to guarantee payments to the City based upon an annual real estate tax assessment for the commercial property(ies) with a minimum assessed value(s) for the tax year 2021 of \$500,000.00 and \$1,000,000.00 for the tax year 2022 and thereafter until the earlier of 2041 or the year the City general obligation debt and tax increment revenue municipal special, limited revenue obligation debt is paid in full. In addition to the foregoing, Developer shall have executed and delivered to the City a tax assessment agreement for payments in lieu of taxes to guarantee payments to the City based upon an annual real estate tax assessment for any other property in the District with a minimum assessed value for the tax year 2021 of \$10,000,000.00 and thereafter until the earlier of 2041 or the year the City general obligation debt and tax increment revenue municipal special, limited revenue obligation debt is paid in full. Subject to the City's prior written approval, the Developer may request that the foregoing tax assessment agreements be terminated and replaced with equivalent tax assessment agreements by the

industrial and commercial users. Any payments made by Developer under this paragraph I shall be added to the principal amount of the MRO Bond.

I. In the event of any shortfall on the regularly scheduled principal and interest payments on the City Bonds, as set forth on Exhibit H attached hereto, the City may demand that Developer pay any such shortfall (the "Shortfall Obligation"). In the event that Developer fails to pay the Shortfall Obligation within thirty (30) days after written demand, then the Developer shall be in default hereunder and the City may exercise any and all remedies as contained herein. The full amount of any Shortfall Obligation payments made by Developer shall be reimbursed to Developer out of any excess tax increment as provided for herein. Developer's Shortfall Obligation shall be (i) limited in proportion to the actual amounts disbursed out of the City Bonds proceeds toward the Public Improvements and the City expenses expressly permitted under this Agreement, and (ii) based upon the assumed payment obligations under the City Bonds as set forth on Exhibit H, regardless of whether the City funds the Public Improvements using shorter term debt or debt at a higher interest rate. Notwithstanding anything to the contrary contained herein, in no event shall the City declare a default under this Agreement or exercise any right or remedy hereunder, so long as Developer has paid any Shortfall Obligation then due and payable. As security for the Shortfall Obligation, Developer shall post a letter of credit in a form reasonable acceptable to the City, in the amount of one year of regularly scheduled principal and interest payments on the City Bonds, as set forth on Exhibit H. As further provided for herein, portions of any excess tax increment shall be used to fund a debt service reserve equal to one year of regularly scheduled principal and interest payments on the City Bonds (the "Reserve"). At such time as the Reserve is fully-funded, the Shortfall Obligation shall automatically terminate and be of no further force and effect and the letter of credit securing such obligation shall be promptly returned to Developer.

I. Interest on the Reserve shall be used to pay City Bond payments, and in the event not previously applied to City Bond payments, the Reserve shall be applied to the final debt service payment under the City Bonds. The Reserve shall be released early to Developer and applied to the principal and interest on the MRO Bond if the actual debt service coverage on the financing represented by the City Bond generated by the tax increment commencing after 2023 on the Project is not less than 115% for three consecutive years. In such event, the Reserve shall be released to the City, to pay down the City Bonds, and to Developer to pay down the MRO Bond in proportion to the then outstanding balances of the City Bonds and MRO Bond.

K. I.-I-Developer and City recognize the provisions of the Tax Increment Law pursuant to Wis. Stat. § 66.1105, including the provisions of Wis. Stat. § 66.1105(2)(f)1., that project costs of public works or improvements within a tax incremental district, or subject to terms applicable to the Public Improvements in part hereunder, without the tax incremental district, are to be diminished by any income, special assessments, or other revenues, including user fees or charges, other than tax increments, received or reasonably expected to be received by the City in connection with the implementation of the Project Plan. Developer and City also recognize the provisions of the Municipal Code of the City of Franklin as they pertain to the costs of construction of public water service extension facilities and public sanitary sewer service extension facilities and the potential reimbursement of the costs of the oversize portions of such facilities to the Developer by the City if funds are available in the City Development or

Utility Development Funds, and the potential reimbursement of the costs of the nonoversize portions of such facilities to the Developer by the City as the amount may be recovered by the City from abutting property owners as they connect and receive service for a period of not more than 10 years from the date the facilities are placed into service, pursuant to §207-23.C.(2)(a) and (b), respectively, for water service extension, and §207-26.C.(2)(a) and (b), respectively, for sanitary sewer service extension.

In regard to the foregoing State and City laws, Developer and City note the Project Plan inclusion of and the provisions of this Agreement providing for off-site public water service and off-site public sanitary sewer service public improvements, and Developer and City agree that any reimbursement payments pursuant to the Municipal Code of the costs of the oversize portions of such facilities and any reimbursement payments pursuant to the Municipal Code of the costs of the nonoversize portions of such facilities shall be paid by the City first to reduce the {G.O. bond borrowing}, and when the {G.O. bond borrowing} has been paid in full, any further such payments available shall be paid and applied to the {paygo M.R.O. bond} until it is paid in full.

The Developer and the City hereby agree that the cost and value of the Public Improvements within the boundaries of Tax Incremental District No. 6 will become an integral part of the value of the District development and that no future lot assessments or other types of special assessments of any kind will be made against the within the District properties for the Public Improvements within the District in connection with the implementation of the Project Plan by the Developer or by the City for the benefit of the Developer, to recoup or obtain the reimbursement of any improvement costs for the Developer.

L. ~~J. K.~~ In consideration of the performance by Developer of its obligations under this Agreement, the City agrees to issue to the Developer a tax increment revenue bond (the "Bond") in a principal amount not to exceed \$\_\_\_\_\_ million, subject to downward adjustment as set forth in paragraphs F. and G. of this Article ~~H of \$3,100,000 (as it may be increased or decreased as expressly provided for herein).~~ The City shall issue the Bond to the Developer not later than fifteen (15) days following the date Developer submits to the City a written certification of completion of the first phase of the Project in the form attached hereto as **Exhibit B.**

M. ~~K. L.~~ Interest shall begin to accrue on the Bond on the date that the first phase of the Project is substantially complete. The Bond shall bear interest at the rate of 5.5% per annum; provided, however that if the interest rate on the funds borrowed by Developer that are being repaid by proceeds of the Bond is less than \_\_\_\_\_% per annum (the "Matching Funds Interest Rate"), then the interest rate on the Bond shall be reduced by the difference between \_\_\_\_\_% and the Matching Funds Interest Rate. (For example, if the Matching Funds Interest Rate is \_\_\_\_\_%, then the interest rate on the Bond shall be \_\_\_\_\_%.) Developer shall inform and provide verifiable documentation thereof to the City of the Matching Funds Interest Rate at such time as Developer procures and executes a loan commitment for such funds.

N. ~~L. M.~~ The Bond shall be issued in substantially the form attached here to as **Exhibit C.** The Bond shall have a term that extends to March 1, 2038. Installments of interest on the Bond will be due and payable on March 1 of each year commencing on the March 1

following the year the TID development (including any paid PILOT provisions) exceeds \$45 million ~~million~~ generates sufficient increment to make regularly scheduled payments of principal and interest on the City Bonds and there is sufficient increment (after payment of Administrative costs) to pay on the Bond. Interest shall be paid from current year 'tax increment' (including any paid PILOT payments) after deducting all City principal and interest payments and City administrative costs (Administrative costs not to exceed \$25,000). Any unpaid interest shall be deferred until sufficient 'tax increment' is available to pay interest. No interest on unpaid interest shall accrue. Principal installments on the Bond will be due and payable on March 1 of each year commencing on March 1 following the retirement of City Bonds (including any refundings thereof) from available 'Tax Increment' after deducting City administrative costs (Administrative costs not to exceed \$25,000). The amount of the annual payment of principal and/or interest due on each Bond Payment Date shall be equal to ~~ninety five~~ fifty ~~ninety-five~~ percent (95%) of the amount of available 'Tax Increment' including any PILOT as of the date the Bond payment is due. "Tax Increment" shall mean all tax increments (as defined by the Tax Increment Law, including any PILOT payments) collected and retained by the City solely from the real and personal property described on **Exhibit D**, attached hereto (the "Increment Property") in a calendar year. Tax Increment appropriated to make payments on the Bond shall first be applied to accrued interest on the Bond, with any remaining amount being applied toward principal. If on any Bond Payment Date there shall be insufficient Tax Increment to pay the principal or interest due on the Bond, the amount due but not paid shall accumulate and be payable on the next Bond Payment date until the final Bond Payment Date, provided however, that interest shall not compound on any unpaid amounts. The Bond 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 bond which are to be prepaid shall be selected by the City, in its sole discretion, without penalty. Notwithstanding anything to the contrary contained herein, all tax increment generated by the Project shall be applied only as follows: (i) first, to the payment of the administrative cost of the City, not to exceed \$25,000 per annum, (ii) second, to regularly scheduled principal and interest payments on the City Bonds as set forth on **Exhibit H**, (iii) third, payments to fund the Reserve until there is a balance equal to one year of debt service on the City Bond as set forth on **Exhibit H**, (iv) fourth, to payment of outstanding principal on the MRO Bond, (v) fifth, toward payment of any reimbursement for a Shortfall Obligation paid by Developer, and (vi) sixth, unpaid interest that has accrued on the MRO Bond and any Shortfall Obligation (at the same rate of interest as the MRO Bond).

THE BOND SHALL BE A SPECIAL, LIMITED REVENUE OBLIGATION OF THE CITY PAYABLE ONLY FROM TAX INCREMENT THAT IS APPROPRIATED BY THE COMMON COUNCIL OF THE CITY FOR THAT PURPOSE. No property or other asset of the City, except Tax Increment appropriated to make payments with respect to the Bond, is or shall be a source of payment of the City's obligations thereunder. The Bond 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 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 BOND. THE CITY'S OBLIGATION TO MAKE PAYMENTS ON THE BOND IS LIMITED TO THE AVAILABILITY OF TAX INCREMENT AND IS FURTHER SUBJECT TO ANNUAL APPROPRIATION BY THE COMMON COUNCIL.

In each year the staff of the City shall include the appropriation of 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 Tax Increment, written notice thereof shall be provided to the Developer within 14 days. The City agrees that, subject to annual appropriation of said funds, ~~on an annual basis for the years after the receipt by the City of the first \$ \_\_\_\_\_, \_\_\_\_\_%~~ of all funds in the special fund of the District which constitute Tax Increment will be used first to make the payments due under the Bond and only after such payments have been paid in full for any particular year, or prior to the closing of the District, shall such funds in said special fund be used to pay any other project costs of the District.

IF ON THE FINAL BOND PAYMENT DATE, THERE REMAIN AMOUNTS OUTSTANDING AND UNPAID ON THE BOND, THEN ALL INTEREST ACCRUED BUT UNPAID AND THE REMAINING BALANCE OF PRINCIPAL OF THE BOND 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 BOND SHALL TERMINATE. THE CITY SHALL HAVE NO OBLIGATION OF ANY KIND WHATSOEVER TO PAY ANY AMOUNT OF PRINCIPAL OR INTEREST ON THE BOND WHICH REMAINS UNPAID AFTER THE FINAL BOND PAYMENT DATE, AND THE DEVELOPER OF THE BOND SHALL HAVE NO RIGHT TO RECEIVE PAYMENT OF SUCH AMOUNTS.

The City shall have no obligation to make payments on the Bond while the Developer is in default of any of its obligations under this Agreement or if no Tax Increment is available.

O. ~~M. N.~~ The City agrees that if: (i) the Developer is not in default of any of its obligations hereunder, (ii) there is Tax Increment available on a Bond Payment Date to make a payment on the Bond, and (iii) the Common Council determines not to appropriate all (up to, but not exceeding the amount of the payment then due) or any portion (if the amount available is less than the amount of the payment then due) of such Tax Increment for such year, then:

1. If any other tax increment revenue bonds issued by the City to other parties are then outstanding within the District or any other district within the City (the "Other Bonds"), the City shall not appropriate any allocable tax increments and make payments on any of the Other Bonds in a greater proportion than the City has done for the Bond (for example, assume that in a given year, the City appropriates only 25% of the available Tax Increment for payment on the Bond; then as to such year, the City shall not appropriate more than 25% of the amount of any tax increments that, under the terms of any of the Other Bonds, are to be made available for such Other Bonds); and

2. Until such time as the City subsequently makes an annual appropriation ~~for the years after the receipt by the City of the first \$ \_\_\_\_\_, \_\_\_\_\_%~~ of all Tax

Increment available on a Bond Payment Date toward payments due on the Bond, the City shall not issue any new tax increment revenue bonds similar to the Bond to other parties or as related to other properties within the District or within any other district within the City.

3. Until such time as the City subsequently makes an annual appropriation of all Tax Increment available on a Bond Payment Date toward payments due on the Bond, all of Developer's obligations, liabilities and indemnities under this Agreement shall be suspended in full.

P. ~~N. O.~~ Developer shall provide the City with a budget setting forth all of the costs for each phase of the Project not later than the earlier of: (i) the date that Developer executes a construction contract for the applicable phase of the Project with a general contractor; or (ii) the date the City issues a building permit for the applicable phase of the Project. The City shall review and reasonably approve a budget for each phase of the Project (as approved, the "Approved Budget"). ~~If for any reason the total costs of completing the Project are less than the total costs set forth in the Approved Budget, the principal amount of the Bond shall be reduced by \_\_\_\_\_ percent (\_\_\_\_%) of such difference. A final reconciliation of each phase of the Project costs shall be performed by the City Engineer or designee at such time as an occupancy permit is issued for such 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. If the principal amount of the Bond must be adjusted in accordance with the requirements of this paragraph, Developer shall surrender the Bond to the City and the City shall issue a new Bond in the adjusted amount. All interest shall accrue on the basis of the adjusted principal amount.~~

Q. ~~O.~~ Upon the earlier of (i) ten years after the Completion Date, or (ii) P. On the date that is fifteen (15) years after substantial completion of the last phase of the Project is sold, the City's financial consultant shall perform an internal rate of return ("IRR") calculation for the Project based upon the Project's historical cash flow and the proceeds of an actual (or deemed) sale. An example of how an IRR is determined is attached hereto as **Exhibit E**. If the IRR calculation is based upon a deemed sale, the parties will make assumptions as to (a) sale price, based upon a then prevailing agreed upon capitalization rate as applied to actual net operating income ("NOI"), and (b) brokerage commissions and closing costs, to arrive at deemed net sale proceeds. (For purposes of calculating deemed sale proceeds, the NOI that is capitalized will not include the few remaining payments due under the Bond.) The deemed net sale proceeds will be aggregated with actual Project cash flows since Project completion and applied against invested equity since Project inception to arrive at the deemed IRR. If the IRR exceeds ~~11~~15%, then the outstanding principal amount of the Bond shall be reduced by an amount equal to ~~\_\_\_\_\_~~100% of the Project revenues that cause the IRR to exceed ~~11~~15%. The IRR calculations under this paragraph will take into account any post-completion contributions of equity and/or member (or partner) loans made by Developer or Developer's affiliates to the Project.

~~P. If Developer disputes the conclusions of the City's financial or construction consultant or the City Engineer or designee under paragraphs F. and G. 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.

R. Q.-If and to the extent that Developer, or an affiliate, completes additional phases of the Project beyond those set forth on Exhibit A-1, then the City agrees, as a development incentive to reimburse Developer (or an affiliate) for certain eligible project costs, to provide financial assistance by issuing a revenue bond to Developer, or its assigns, which is payable in annual installments of sixty percent (60%) of the amount of the tax increment revenue generated by such project phases for the remaining life of the TID, with interest at a rate of 200 basis points over the prime rate of interest, but in an amount not to exceed Developer's (or an affiliate) eligible project costs in connection therewith.

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

Throughout the life of the District, Developer will pay (or cause to be paid) all ad valorem property taxes lawfully assessed against any portion of the Property owned by the Developer before or when due under the law and Developer guarantees that such taxes shall not become delinquent. 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 "PILOT Term"), then the Developer or any successor Developer of such exempt portion of the Property shall make (or cause to be made) during the PILOT Term 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) had it not been exempt. Such payment in lieu of taxes 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 Developer or any successor Developer 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 or special charge against the exempt portion of the Property in the amount of the unpaid payments. Any and all notice and hearing requirements which may be required under the law for such special assessment or special charge are hereby waived by Developer. Notwithstanding and in addition to the levying of such special assessment or special charge, the payment obligation under this Article shall be the personal obligation of the person or entity that is the Developer and/or owner, successors and assigns of

the Property at the time that any portion of the Property becomes exempt from ad valorem taxes. The covenant contained in this Article shall be deemed to be a covenant running with the land and shall be binding upon all Developers and/or owners, successors and assigns of any portion of the Property for the duration of the PILOT Term. The City is hereby expressly declared to be a beneficiary of such covenant and entitled to enforce same against all successor Developers and/or owners of 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 portions of the Project on the land owned by such persons or entities. 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: Calli Berg, Director of Economic Development  
                                  Facsimile No.: 414-427-7691

With a Copy to:       City of Franklin  
                                  9229 West Loomis Road  
                                  Franklin, WI 53132

Attention: Sandra L. Wesolowski, City Clerk  
Facsimile No.: 414-425-6428

If to the Developer: Loomis and Ryan, Inc.  
4011 80th Street  
Kenosha, Wisconsin 53142  
Attention: Stephen R. Mills  
Facsimile No.:

With a Copy to:

Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin  
Attention: Matthew K. Impola  
Facsimile No.: 414-297-4900

## **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 thereafter~~ 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's failure to complete or obtain the completion of at least 25% of the public sanitary sewer and public water supply improvements required for the Project on or before that date which is 24 months from the date this Agreement is entered into; or
5. ~~Developer's failure to comply with Subsection I. of Article I, requiring Developer in part to secure sufficient debt and equity financing commitments to enable the~~

~~Project to proceed, on or before that date which is 6 months from the date this Agreement is entered into; or~~

65. 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.

B. 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).

C. Upon the occurrence of any Default by either party, upon ten (10) days' written 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 under this Agreement 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 City payments, the City shall promptly distribute to Developer any payments so suspended and promptly resume payments of amounts due with respect to the City payments due under this Agreement and continue such payments so that, subject to available Tax Increment, the cumulative amount paid upon full amortization is equal to that amount contemplated under this Agreement.

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 City payments unless Developer, its mortgage lender or their designees have not commenced commercially reasonable efforts to cure any such Default within 60 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.

D. 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, to the extent reasonably prudent or customary for similarly situated business operations, any non-governmental entity in connection with the development, construction, management and operation of the Project.

B. Developer shall maintain the following insurance policies issued by insurers licensed in the State of Wisconsin, with Best's A ratings and in the financial size category as insurers of similar projects, with such policies (the "Insurance Policies") 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 Developers of similar projects, in amounts equal to 100% replacement cost of all buildings, improvements, fixtures, equipment and other real and personal property constituting the completed portions of the Project with an extended replacement cost endorsement; and

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

(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 Developers of similar projects, and insuring against bodily injury, including personal injury, death and property damage; and

- (iv) Such other insurance as may be reasonably requested by the City.

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/loss payee on all policies of insurance except worker's compensation insurance.

~~C. Subject to one or more Force Majeure Events as set forth in paragraph F. of this Article, if the Developer does not substantially complete construction of the Project by the Completion Date, then the City may, in its sole discretion, terminate this Agreement upon written notice to the Developer, provided, however, that if Developer substantially completes construction of the Project within thirty (30) days following receipt of such written election to terminate (a "Developer Savings Action"), this Agreement shall not terminate but shall continue in full force and effect. Upon an election to terminate that is not followed by any Developer Savings Action, the City shall thereafter have no further obligations under this Agreement and in addition thereto, the City may, in its sole discretion, terminate Tax Incremental District No. 6, City of Franklin, Wisconsin.~~

C. Intentionally Omitted.

D. The prevailing party shall be entitled to collect all costs and expenses associated with the enforcement of the its rights against the other under this Agreement, including without limitation the enforcement of such rights in any bankruptcy, reorganization or insolvency proceeding involving Developer. Any and all such fees, costs and expenses incurred by the prevailing party which are to be paid by the other, shall be paid by on demand.

E. 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 in any way in connection with the portions of the Project owned by Developer, including without limitation: (a) the failure of Developer or its contractors, subcontractors, agents, employees, or invitees (while under control of Developer) to comply with any environmental law, rule, regulation or ordinance, or any order of any regulatory or administrative authority with respect thereto; (b) any release by Developer or its contractors, subcontractors, agents, employees, or invitees (while under control of Developer) of petroleum products or hazardous materials or hazardous substances on, upon or into the Project; (c) any and all damage to natural resources or real property or harm or injury to persons resulting from any failure by the Developer and/or its contractors, subcontractors and/or agents to comply with any law, rule, regulation or ordinance or any release of petroleum products or hazardous materials or hazardous substances as described in clauses (a) and (b) above; (d) any violation by Developer at the Project of any environmental law, rule, regulation or ordinance; (e) claims arising under the Americans With Disabilities Act or similar laws, rules, regulations or ordinances; (f) the failure by Developer to comply with any term or condition of this Agreement; (g) injury to or death of any person at the portions of the Project owned by Developer; injury to any property caused by or at any portions of the Project owned by

Developer; and (h) the failure of Developer to maintain, repair or replace, as needed, any portion of the Project owned by Developer; except, in each of the foregoing instances described in (a) through (h) above, to the extent negligently or willfully and wrongfully caused by the City or its agents, employees, contractors or representatives.

The terms "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.

Except as caused, in whole or in part, by negligence or wrongful act or omission of the City, if the persons or property of others sustain loss, damage or injury resulting directly or indirectly from the negligence or wrongful act or omission of Developer or its contractors, subcontractors or materialmen in their performance of this Agreement or from Developer's failure to comply with any of the provisions of this Agreement or of law, Developer shall indemnify and hold the City harmless from any and all claims and judgments for damages, and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason thereof, provided; however, that the City shall provide to Developer promptly, in writing, notice of the alleged loss, damage or injury.

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 Developer Improvements 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 Developer ~~Improvements~~ owned Property 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 Developer Construction Period~~;

(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.

F. Time is of the essence of each and every obligation or covenant contained in this Agreement; provided, however, that 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, riot, strikes, labor disputes, governmental restrictions, judicial order, public emergency, or other causes beyond the control of the Developer ("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.

G. Nothing contained in this Agreement is intended to or has the effect of releasing Developer, its successors and/or assigns and/or owners of the Property, from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

H. 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. 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. 6, 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.

I. Prior to substantial completion of the first phase of the Project, this Agreement may not be assigned by the Developer without the City's consent, which may be granted or withheld in the City's sole discretion, provided, however, Developer may assign this Agreement to an entity that controls, is controlled by, or is under common control with, Developer without the consent of the City. Notwithstanding the foregoing, the Developer may collaterally assign this Agreement ~~{and the Bond}~~ to the Developer's lender for the Project without the consent of the City. In the event that any such lender forecloses on its collateral and succeeds to Developership of the Property, the City shall fulfill its obligations hereunder provided that such lender, or the party purchasing the Property at a foreclosure sale, assumes in writing all of the obligations of the Developer hereunder.

J. ~~Developer shall timely construct and complete the Project as its primary obligation under this Agreement.~~ In the event of fire, damage or any other casualty to any part of the Project, Developer (or the then owner of such portion of the Project) agrees, at its cost and expenses subject to the availability of insurance proceeds and the rights of mortgage lenders, to rebuild, repair and replace such portion of the Project to substantially the condition or better than existed immediately prior to the casualty. The fair market value of such portion of the Project following reconstruction and/or repair by Developer and or the then-owner must be

substantially similar to the fair market value of that portion of the Project immediately prior to the casualty. During Developer's period of ownership of each portion of the Project, Developer shall not be relieved of any of its obligations under the terms of this Agreement as a result of any fire, damage or any other casualty or during the period of repair or rebuilding or replacement of such portion of the Project. This obligation to repair, rebuild or replace shall remain in effect for a period expiring upon the later of: (i) the date of the expiration and closure of Tax Incremental District No. 6, City of Franklin, Wisconsin; or (ii) the date which is twenty (20) years after the date this Agreement is executed. Notwithstanding the foregoing, any and all repair, rebuilding or replacement obligations shall automatically transfer from Developer to the new owner upon any sale of all or any portions of the Project and Developer shall be released from such obligations with respect to such portions of the Project upon such sale.

K. 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.

L. 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.

M. 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 (it being the intent that the successor owner of any portion of the Project only be bound by the covenants and agreements contained herein with respect to such portion of the Project) and their successors and assigns in a form in substantial conformance with the attached **Exhibit G**. The Memorandum of Agreement shall specifically identify any provisions of this Agreement that are personal to the Developer and that are not the obligation of successor owners of all or any portion of the Property.

N. Upon the written request of Developer or any successor owner, purchaser or lender of the Project, or a portion thereof, within ten (10) business days of such written request, the City agrees to execute and deliver to the requesting party a written statement indicating that no default exists in connection with this Agreement, except as shall be stated, and containing such other information as the requesting party shall reasonably request with respect to this Agreement and/or the Project.

**NN**. 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.

[Signature page(s) follow.]

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

**Loomis and Ryan, Inc.:**

By: \_\_\_\_\_  
(Name and Title)

Date: \_\_\_\_\_

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 Loomis and Ryan, Inc. and by its authority.

\_\_\_\_\_  
Notary Public State of Wisconsin

My commission expires: \_\_\_\_\_

**City of Franklin, Wisconsin**

By: \_\_\_\_\_  
Stephen R. Olson, Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Paul Rotzenberger, 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**

*[Link-to-previous setting changed from on in original to off in modified.]*

**EXHIBIT A-1**

**PROJECT/PHASE ESTIMATED SCHEDULE**

## EXHIBIT A-2

### PUBLIC IMPROVEMENTS SCHEDULE

A. “Interior Public Roadway” Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than June 1, 2019 and complete construction of the Interior Public Roadway no later than June 1, 2023. Satisfactory completion of the “Interior Public Roadways” to accommodate and serve the industrial parcel shall be completed by August 31, 2019.

B. “Extension of North / South Roadway” Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than June 1, 2019 and complete construction of the Extension of North / South Roadway no later than June 1, 2023. Notwithstanding the foregoing deadline, the portion of the North/South Roadway necessary to access and service the Industrial portion of the Property, as identified on the attached **Exhibit F**, shall be fully constructed by Developer on or before August 31, 2019. Such roadway improvements shall include access to the Industrial portion of the Property through a public road providing access between said industrial portion of the Property and Loomis Road and shall be located at an access point to Loomis Road as approved by the Wisconsin Department of Transportation. Such roadway shall also provide access for construction during the construction of the industrial improvements). Further, Developer shall construct and install and provide to the lot line of the industrial parcel the following utilities: sewer, water, gas, electric, telephone and cable (all in sufficient capacities for the industrial user’s proposed use, including a reasonable expansion thereof), all of which shall be installed no later August 31, 2019.

C. “Off-Site Public Water” Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than June 1, 2019 and complete construction of the Off-Site Public Water no later than August 31, 2019.

D. “Off-Site Public Water Phase II” Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than June 1, 2019 and complete construction of the Off-Site Public Water Phase II no later than June 1, 2023.

E. “Off-Site Roadways” Public Improvement as described in **Exhibit F** attached hereto. Developer shall commence construction thereof no later than June 1, 2019 and complete construction of the Off-Site Roadways no later than June 1, 2023.

**EXHIBIT B**

**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 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 Project has been issued, a copy of which is attached hereto.

\_\_\_\_\_

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

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

## EXHIBIT C

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 \_\_\_\_\_, 2017.

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 Chapters 66 and 67, 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 Development Agreement dated as of \_\_\_\_\_, 2017 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 Real Estate 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 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 Tax Increments to make principal 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 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 D. 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

(CITY SEAL)

\_\_\_\_\_  
Stephen R. Olson, Mayor

\_\_\_\_\_  
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:

[illegible]

### 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 D**

### **Description of Increment Property**

[Parcels Tax Key Number

Addresses]

## **EXHIBIT E**

### **IRR Example**

## **EXHIBIT F**

(Added)



1. Access to the industrial user portions of the Property will be through a public road providing access between the Property and Loomis Road, with the deadline for Seller to complete the construction of the road to occur on or before August 31, 2019 at an access point as approved by the Wisconsin DOT.
2. Seller shall complete all sewer, water, gas, electric, telephone and cable (in sufficient capacities for the industrial users use, including expansion) on or before August 31, 2019.
3. Seller shall be responsible for all payment and performance bonds, as required by the City of Franklin, ensuring timely completion of the Development Agreement work and Public Improvements.

## EXHIBIT G

### Memorandum of Development Agreement

#### MEMORANDUM OF DEVELOPMENT AGREEMENT

Document Number

Document Title

**THIS MEMORANDUM OF DEVELOPMENT AGREEMENT** ("Memorandum") is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Loomis and Ryan, Inc., a Wisconsin domestic business corporation, successors and assigns ("**Developer**"), and the **CITY OF FRANKLIN**, a municipal corporation of Milwaukee County, Wisconsin ("**City**").

#### 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

Recording Area

Name and Return Address

PIN:

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:**

LOOMIS AND RYAN, INC.

**CITY:**

CITY OF FRANKLIN

By: \_\_\_\_\_  
Name:  
Title:

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 person who executed the foregoing agreement on behalf of Loomis and Ryan, Inc. 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:

## LEGAL DESCRIPTION

[Certified Survey Map No. \_\_\_\_\_

Tax Key Nos. \_\_\_\_\_]

**EXHIBIT H**

**Projected Annual Increment and Debt Service**

*Attach Ehlers' Projections.*

<b><u>Summary report:</u></b>	
<b><u>Litera® Change-Pro for Word 10.4.0.0 Document comparison done on</u></b>	
<b><u>11/16/2018 8:03:48 AM</u></b>	
<b><u>Style name: Default Style</u></b>	
<b><u>Intelligent Table Comparison: Active</u></b>	
<b><u>Original filename: T6 Bear Development Agreement - Foley Redraft -</u></b>	
<b><u>COUNCIL.doc</u></b>	
<b><u>Modified filename: T6 Bear Development Agreement - Foley Redraft -</u></b>	
<b><u>COUNCIL - 11-16.doc</u></b>	
<b><u>Changes:</u></b>	
<u>Add</u>	<u>36</u>
<u>Delete</u>	<u>21</u>
<u>Move From</u>	<u>0</u>
<u>Move To</u>	<u>0</u>
<u>Table Insert</u>	<u>0</u>
<u>Table Delete</u>	<u>0</u>
<u>Table moves to</u>	<u>0</u>
<u>Table moves from</u>	<u>0</u>
<u>Embedded Graphics (Visio, ChemDraw, Images etc.)</u>	<u>0</u>
<u>Embedded Excel</u>	<u>0</u>
<u>Format changes</u>	<u>0</u>
<b><u>Total Changes:</u></b>	<b><u>57</u></b>

<b>Summary report:</b> <b>Litera® Change-Pro for Word 10.4.0.0 Document comparison done on</b> <b>11/16/2018 10:44:08 AM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> T6 Bear Development Agreement rough draft 11-9-18.doc	
<b>Modified filename:</b> 11 -16 BEAR - FRANKLIN REDLINE.docx	
<b>Changes:</b>	
<u>Add</u>	207
Delete	112
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	1
<u>Table Delete</u>	0
<u>Table moves to</u>	0
<u>Table moves from</u>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	1
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	321

<b>APPROVAL</b>  <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>November 19, 2018</b>
<b>REPORTS AND RECOMMENDATIONS</b>	<p>Wholesale Public Water Supply to Franklin 2024. The Common Council may enter closed session pursuant to Wis. Stat § 19.85(1)(e) to deliberate upon information, terms and provisions of the potential provision of public water supply to the City of Franklin as related to the City, the Franklin Municipal Water Utility and its customers in 2024 and beyond; and the potential negotiation of terms in relation thereto, including, but not limited to potential amendments to the Agreement for Oak Creek to Provide Water at Wholesale to Franklin, potential agreement terms with alternate public water supply sources, and the investing of public funds and governmental actions 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</p>	<b>ITEM NUMBER</b>  <i>III. F.</i>

### COUNCIL ACTION REQUESTED

A motion to enter closed session pursuant to Wis. Stat § 19.85(1)(e) to deliberate upon information, terms and provisions of the potential provision of public water supply to the City of Franklin as related to the City, the Franklin Municipal Water Utility and its customers in 2024 and beyond; and the potential negotiation of terms in relation thereto, including, but not limited to potential amendments to the Agreement for Oak Creek to Provide Water at Wholesale to Franklin, potential agreement terms with alternate public water supply sources, and the investing of public funds and governmental actions 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.

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<b>APPROVAL</b>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE 11/19/18</b>
<b>LICENSES AND PERMITS</b>	<b>MISCELLANEOUS LICENSES</b>	<b>ITEM NUMBER <i>IV.</i></b>
<p>See attached listing from meeting of November 19, 2018.</p> <p><b>COUNCIL ACTION REQUESTED</b></p>		

**License Committee  
 Agenda\*  
 Aldermen's Room  
 November 19, 2018 – 5:20 pm**

<b>1.</b>	<b>Call to Order &amp; Roll Call</b>	<b>Time:</b>		
<b>2.</b>	<b>Applicant Interviews &amp; Decisions</b>			
<b>License Applications Reviewed</b>		<b>Recommendations</b>		
<b>Type/ Time</b>	<b>Applicant Information</b>	<b>Approve</b>	<b>Hold</b>	<b>Deny</b>
<b>Extraordinary Entertainment &amp; Special Event 5:20 p.m.</b>	<b>The Rock Snow Park Glow Snow Tubing</b> Person in Charge: Scot Johnson Location: The Rock Snow Park, 7900 W Crystal Ridge Dr Dates of Events: 12/07, 12/08, 12/14, 12/15, 12/21, 12/22, 12/28, 12/29, 01/04, 01/05, 01/11, 01/12, 01/18, 01/19, 01/25, 01/26, 02/01, 02/02, 02/08, 02/09, 02/15, 02/16, 02/22, 02/23, 03/01 & 03/02; 9:00 PM – 11:00 PM			
<b>3.</b>	<b>Adjournment</b>			
		<b>Time</b>		

\*Notice is given that a majority of the Common Council may attend this meeting to gather information about an agenda item over which they have decision-making responsibility. This may constitute a meeting of the Common Council per State ex rel. Badke v. Greendale Village Board, even though the Common Council will not take formal action at this meeting.

<b>APPROVAL</b> <i>slw BR</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>11/19/18</b>
<b>Bills</b>	<b>Vouchers and Payroll Approval</b>	<b>ITEM NUMBER</b> <i>V</i>

Attached are vouchers dated November 9, 2018 through November 15, 2018 Nos. 170996 through Nos. 171068 in the amount of \$ 324,606.39. Included in this listing are EFT's Nos. 3895 through Nos. 3896 and Water Utility vouchers totaling \$ 5,376.33. Voided checks in the amount of \$ (957.00) are separately listed.

Early release disbursements dated November 9, 2018 through November 14, 2018 in the amount of \$ 275,431.70 is provided on a separate listing and is also included in the complete disbursement listing. These payments have been released as authorized under Resolution 2013-6920.

There were no Property Tax refunds.

**COUNCIL ACTION REQUESTED**

Motion approving the following:

- City vouchers with an ending date of November 15, 2018 in the amount of \$ 324,606.39.

**ROLL CALL VOTE NEEDED**