

SPECIAL COMMON COUNCIL MEETING
CITY OF FRANKLIN, WISCONSIN
FRANKLIN CITY HALL – COMMON COUNCIL CHAMBERS*
9229 West Loomis Road, Franklin, Wisconsin
WEDNESDAY, NOVEMBER 28, 2018 at 6:30 p.m.

- I. Call to Order and Roll Call.
- II. Citizen Comment Period.
- III. Reports and Recommendations:
 - A. Amend THIEL Brand Design Contract to Reflect Insurance Coverage on THIEL Certificate of Insurance.
 - 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.
- IV. Adjournment.

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE November 28, 2018
REPORTS & RECOMMENDATIONS	Amend THIEL Brand Design Contract	ITEM NUMBER <i>III, A.</i>

Background

The existing THIEL Brand Design certificate of insurance does not match the amounts in the contract as approved at the November 5th Common Council meeting. THIEL Brand Design received a quote from their insurance company, Liberty Mutual Insurance, to adjust their coverage to match the standard language used in the contract and learned that the changes would increase their cost of coverage by \$6,107.

Recommendation

Options would be to 1) amend the contract to include the additional \$6,107 or 2) adjust coverages in the insurance section of the contract to reflect THIEL Brand Design's actual insurance coverage. Staff recommends option 2), which would change the insurance section of the contract as shown below with changes highlighted in gray. Note that the Certificate of Insurance included in this request has been amended to include the City of Franklin and the Tourism Commission as additional insureds on their coverage. Note also that this change does not impact any other area of the already approved contract.

VI. INSURANCE

The CONTRACTOR shall, during the life of the AGREEMENT, maintain insurance coverage with an authorized insurance carrier at least equal to the minimum limits set forth below:

A. Limit of General/Commercial Liability	\$3,000,000	\$1,000,000
B. Automobile Liability: Bodily Injury/Property Damage	\$1,000,000	
C. Excess Umbrella Liability for General Commercial or Automobile Liability	\$2,000,000	\$10,000,000
D. Worker's Compensation and Employers' Liability	\$500,000	
E. Professional Liability	\$2,000,000	\$1,000,000

COUNCIL ACTION REQUESTED

Approve amended contract to reflect THIEL Brand Design actual insurance coverage

<p>APPROVAL</p> <p><i>Slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>November 28, 2018</p>
<p>REPORTS AND RECOMMENDATIONS</p>	<p>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</p>	<p>ITEM NUMBER</p> <p><i>III. B.</i></p>

Attached is the latest redraft development agreement resulting from the review and negotiation by, between and among the developer and consultants and City staff and consultants, such process including a number of redrafted agreements exchanges and meetings over the past week. The attached was provided by developer's attorneys on November 26, 2018.

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.

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

COF working redraft in process 11/21/18

**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 or Developer's affiliate is or will be the owner of that certain real property legally described in **Exhibit A** attached hereto (the "Property"). Certain portions of the Property may be built by others and may be conveyed directly to such users instead of to Developer or Developer's affiliate.
- B. The Property is located within the boundaries of Tax Incremental District No. 6, City of Franklin, Wisconsin (including, as it may be amended or expanded from time to time, 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 or paid directly by the City 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 in the District, 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; a commercial use space lot on approximately 4.75 acres of the Property located north of West Loomis Road; and 79 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 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 City Bonds and MRO Bond 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. 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 from time to time upon written notice to the City and such update shall be subject to the ~~thereasonable~~ approval of the City Common Council. Developer shall use 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 estimates that the costs expended on all phases of the Project (inclusive of personal property) shall be at least \$63.9 million. Developer shall use commercially reasonable efforts to substantially complete construction of each phase of the Project in accordance the Schedule and with final plans and specifications (including landscaping plans) for each phase of the Project approved by the City, and of which this Agreement and its terms and conditions are a condition thereof (the "Plans and Specifications"). Copies of the Plans and Specifications will be retained at the offices of the City Economic Development Department. 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 for such phase, subject to any changes to the Plans and Specifications for such phase that may have been approved by the City.

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"), the City hereby contracts with Developer to oversee the completion of the installation of the Public Improvements on

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. Such City standard form development agreement shall include a provision that Developer shall post and deliver to the City a letter of credit in a form and from a financial institution or insurance company reasonably acceptable to the City, in the amount of the Public Improvement(s). 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 dedicated to the City or other public entity, to the extent ~~appropriate~~ such Public Improvements have been completed in accordance with City standards and the terms of this Agreement. A decision upon acceptance of a conveyance dedication of a completed Public Improvement shall be determined upon consideration by the City Common Council; however, the City may only refuse a dedication if the Public Improvements have not been completed in accordance with City standards. 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 and the conveyance dedication thereof has been accepted by the City and the term of the aforesaid one-year warranty has expired, 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 or any portion of the Public Improvements ~~requirements~~ Developer obligations of Developer hereunder have been so met, the City shall execute a recordable release or partial release, as applicable, of Developer from such obligations.

C. Unless consented to in writing by the City, Developer shall not demolish ~~any existing 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.

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 as set forth on **Exhibit A-2** (the "Public Improvements Schedule"), and complete construction of the Extension of North / South Roadway 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.

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 as set forth in the Public Improvements Schedule, and complete construction of the Interior Public Roadway 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.

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 as set forth in the Public Improvements Schedule, and complete construction of the Off-Site Public Water 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.

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 as set forth in the Public Improvements Schedule, and complete construction of the Off-Site Public Water Phase II 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.

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 as set forth in the Public Improvements Schedule, and complete construction of the Off-Site Roadways 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.

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 (i) secured sufficient debt and/or equity financing commitments to enable the Project to proceed, or (ii) sufficient liquid assets in the form of cash, liquid securities or lines of credit, to enable Developer to construct the non-residential portions of the Project to be constructed by Developer. The City acknowledges that Developer shall not be required to provide such financing evidence with respect to the residential phases of the Project or any portions the commercial and industrial phases of the

Project where the vertical improvements will be financed and/or constructed by parties other than Developer.

J. The Developer may elect to consolidate all of the Public Improvement work described in paragraphs D. through H. above into one City standard form development agreement.

**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 general obligation bonds in the maximum principal amount of \$10 million (the "City Bonds") to be used to fund the payment of Public Improvements as set forth below.

B. 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, the City shall pay directly for such costs in an amount estimated to be \$1,900,000. Should the accounting of project costs amount be less than the aforesaid amount, 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. 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, the City shall pay directly for such costs in an amount estimated to be \$4,600,000. Should the accounting of project costs amount be less than the aforesaid amount, 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. 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, the City shall pay directly for such costs in an amount estimated to be \$1,300,000. Should the accounting of project costs amount be less than the aforesaid amount, 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. 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, the City shall pay directly for such costs in an amount estimated to be \$200,000. Should the accounting of project costs amount be less than the aforesaid amount, 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. 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, the City shall pay directly 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, 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.

G. Developer shall post and deliver to the City a letter of credit in a form and from a financial institution or insurance company reasonably acceptable to the City, in the amount of the Public Improvements, prior to issuance of the City Bonds. Prior to issuance of the City Bonds, the Developer shall provide the City with a budget for the Public Improvements. The cost of the Public Improvements as shown in the budget ~~that is in excess of the amount of the City Bonds~~ shall be funded first by ~~the Developer prior to any proceeds of the City Bonds being spent by the City~~ and any costs of the Public Improvements in excess of City Bond Proceeds shall then be paid by Developer. The final budget for the Public Improvements shall have a reasonable construction contingency, which may include contingency costs specific to and only for the subject individual Public Improvement project(s), or the specific project development improvement component(s) 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 Public Improvement(s) or project development improvement component(s) project cost to which it applies. As the Public Improvements are completed, the letter of credit shall be reduced on a dollar for dollar basis as the Developer and/or the City pay for such Public Improvements. At such time as the Public Improvements are completed, the letter of credit shall be returned to Developer.

H. 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.

I. As a condition to the issuance of the City Bonds, Developer hereby guarantees payments to the City based upon an annual real estate tax assessment for any non-residential property, including without limitation the industrial and commercial property within the District, as it may be expanded from time to time, with a minimum assessed value for the tax

year 2021 of \$10,500,000.00 and \$21,000,000.00 for the tax year 2022 and thereafter until the earlier of ~~(i) 2039 or~~, (ii) the date the City Bonds and the MRO Bond are paid in full, or (iii) the date the letter of credit described in Section J. below has been reduced to zero (the "Developer Guaranty"). Provided, however, that in no event shall Developer's aggregate payments under the Developer Guaranty exceed the amount necessary in any particular year necessary to pay the Shortfall (as defined below). Subject to the City's prior written approval, which approval shall not be unreasonably withheld, conditioned or the delayed, the Developer may request that the Developer Guaranty be terminated and replaced with equivalent tax assessment agreements by the industrial and commercial users within the District. Any payments made by Developer under the Developer Guaranty shall be added to the principal amount of the MRO Bond.

~~1. The Developer and its successor owner(s)/assign(s) agree not to challenge the Assessed Value of the non-residential property located in the TID until after the 10th anniversary of the TID closure.~~

1. During the life of the District or any successor tax increment financing district encumbering the Property, neither Developer nor any successor and/or assign of Developer shall contest or consent to any other party contesting the ad valorem tax assessed value for the Property or any portion thereof using as evidence of its value the sales of properties with abandoned or vacated buildings, and the ad valorem tax assessed value of the Property or any portion thereof shall be determined using the same method used for other like properties and under no circumstances will a vacant building method be used to determine such ad valorem tax assessed value

2. The Developer may transfer the minimum assessed value to purchasers of such property which property will then have a minimum assessed value of not less than \$392,500 per acre. The City may agree to ~~some~~ a lesser value with the Developer's agreement to accept an increased per acre value for ~~the other~~ properties it ~~continues to own in the District~~ such that the total minimum assessed value of all non-residential property is \$21 million for tax years 2022 and thereafter until the ~~earlier of 2039 or the date the City Bonds are paid in full~~ Developer Guaranty terminates as provided for in Sections I. and J.

J. In the event of any actual shortfall in tax increment generated in the District sufficient to pay the regularly scheduled principal and interest payments on the City Bonds, as set forth on **Exhibit H** attached hereto, the City may request that Developer pay any such actual shortfall (the "Shortfall"). The Shortfall 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 lesser of the actual Shortfall or 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, exercise any right or remedy hereunder, or require any guarantee payments under the Developer Guaranty, so long as Developer has paid the Developer Guaranty up to the amount of the Shortfall. As security for the Developer Guaranty, Developer shall post a letter of credit in a form and from a financial institution acceptable to the City, in the amount of \$1.5 million. If Developer elects to post the letter of

credit, such letter of credit may be reduced if the actual increment exceeds \$1,575,000 for two consecutive years. Provided, such \$1,575,000 increment is maintained, then the letter of credit shall be reduced by 25% per year starting in year three until the letter of credit has been reduced to zero in year six. At such time as the earlier of (i) the date the City Bonds are paid in full, or (ii) 2039, or (iii) the date the letter of credit has been reduced to zero as set forth in the preceding sentence, then the Developer Guaranty shall automatically terminate and be of no further force and effect.

K. 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~~ payment by the City directly of the costs of the oversize portions of such facilities ~~to the Developer by the City if funds are available in the~~ out of 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. The City agrees that any such costs of oversizing in excess of eight (8) inches shall be paid directly by the City, ~~if funds are available as aforesaid,~~ without reimbursement from Developer, tax increment or any third party. The Developer budget for the Public Improvements shall not include the oversizing costs in excess of eight (8) inches.

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 City Bonds, and when the City Bonds borrowing has been paid in full, any further such payments available shall be paid and applied to the MRO 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.

The City and Developer shall not seek to recover costs, through assessments or otherwise, for the cost of oversizing the initial public water improvements from the owners or successor owners of the properties listed on **Exhibit I**.

L. In consideration of the performance by Developer of its obligations under this Agreement and to further reimburse Developer for eligible project costs, the City agrees to issue to the Developer one or more municipal revenue bonds (collectively, the "MRO Bond") in a principal amount of not less than \$3,100,000 (as it may be increased or decreased as expressly provided for herein). The City shall issue the MRO Bond to the ~~Developer~~ Developer on the first of the month after the City formally accepts all of the Public Improvements.

M. Interest shall begin to accrue on the MRO Bond on the first day of the month after the City formally accepts all of the Public Improvements. The MRO Bond shall bear interest at the rate of 5.5% per annum.

N. The MRO Bond shall be issued in substantially the form attached here to as **Exhibit C**. The MRO Bond shall have a term that extends until the earlier of its payment in full or March 1, 2038. Installments of principal and interest on the MRO Bond will be due and payable on March 1 of each year (the "Bond Payment Date") commencing on the March 1 following the year the City General Obligation Bonds [and any refundings thereof] have been retired. Any unpaid interest shall be deferred until sufficient 'tax increment' is available to pay interest. No interest on unpaid interest shall accrue. "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 MRO Bond shall first be applied in the priority set forth below. If on any Bond Payment Date there shall be insufficient Tax Increment to pay the principal or interest due on the MRO 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 MRO 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 MRO 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, in the event that the City Bonds cannot be freely prepaid annually without fee, penalty or cost, then all tax increment generated by the Project shall be applied only as follows: (i) first, to regularly scheduled principal and interest payments on the City Bonds as set forth on **Exhibit H**, (ii) second, to the payment of the administrative cost of the City, not to exceed \$25,000 per annum, (iii) third, to payment of outstanding principal and interest on the MRO Bond, and (iv) fourth, toward payment of any reimbursement for a Developer Guaranty payment paid by Developer and any interest thereon at the MRO Bond rate.

Notwithstanding anything to the contrary contained herein, in the event that the City Bonds can be freely prepaid annually without fee, penalty or cost, then all tax increment generated by the

Project shall be applied only as follows: (i) first, to regularly scheduled principal and interest payments on the City Bonds as set forth on **Exhibit H**, (ii) second, to the payment of the administrative cost of the City, not to exceed \$25,000 per annum, (iii) third, payments to prepay principal on the City Bonds, (iv) fourth, to payment of outstanding principal and interest on the MRO Bond, and (v) fifth, toward payment of any reimbursement for a Developer Guaranty payment paid by Developer and any interest thereon at the MRO Bond rate.

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 MRO Bond, is or shall be a source of payment of the City's obligations thereunder. The MRO 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 MRO BOND. THE CITY'S OBLIGATION TO MAKE PAYMENTS ON THE MRO BOND IS LIMITED TO THE AVAILABILITY OF TAX INCREMENT AND IS FURTHER SUBJECT TO ANNUAL APPROPRIATION BY THE COMMON COUNCIL. THE FAILURE TO APPROPRIATE SHALL NOT EXTINGUISH THE MRO BOND, WHICH SHALL REMAIN A PROJECT COST OF THE DISTRICT UNTIL PAID IN FULL.

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, all funds in the special fund of the District which constitute Tax Increment will be used first to make the payments due under the MRO 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 MRO BOND, THEN ALL INTEREST ACCRUED BUT UNPAID AND THE REMAINING BALANCE OF PRINCIPAL OF THE MRO 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 MRO BOND SHALL TERMINATE. THE CITY SHALL HAVE NO OBLIGATION OF ANY KIND WHATSOEVER TO PAY ANY AMOUNT OF PRINCIPAL OR INTEREST ON THE MRO BOND WHICH REMAINS UNPAID AFTER THE FINAL BOND PAYMENT DATE, AND THE DEVELOPER OF THE MRO BOND SHALL HAVE NO RIGHT TO RECEIVE PAYMENT OF SUCH AMOUNTS.

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

O. The City agrees that if all of the following are true and correct: (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 MRO 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 in accordance with the terms of this Agreement, 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 MRO Bond (for example, assume that in a given year, the City appropriates only 25% of the available Tax Increment for payment on the MRO 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 of all Tax Increment available on a Bond Payment Date toward payments due on the MRO Bond, the City shall not issue any new tax increment revenue bonds similar to the MRO Bond to other parties or as related to other properties within the District or 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 MRO Bond, all of Developer's obligations, liabilities and indemnities under this Agreement shall be suspended in full.

For the avoidance of doubt, the restrictions in paragraphs 1. through 3 above shall not restrict the City payment of Other Bonds in the ordinary course unless and until the City elects not to appropriate on the MRO Bond as and when amounts are due thereunder in accordance with this Agreement.

P. 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"). 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.

Q. On the date that is fifteen (15) years after substantial completion of the last phase of the Project, 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 MRO 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 15%, then the outstanding principal amount of the MRO Bond shall be reduced by an amount equal to 100% of the Project revenues that cause the IRR to exceed 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.

R. 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 ("Expansion MRO"), 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.

1. Payments on the Expansion MRO are payable only after the City GO Bonds have been retired and in proportion to the amount of MRO Bonds outstanding. For example, if at the time of available increment, \$3 mil of MRO bonds are outstanding and \$2 million of Expansion MRO Bonds are outstanding then 3/5th of the available increment would be paid on the MRO and 2/5th of the available increment will be paid on the Expansion MRO.

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 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 the requirements of 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 the date which is one hundred eighty (180) days from the date this Agreement is entered into; or

6. 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 (its successor[s] and assign[s] for non-residential property) 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. 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.

D. 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 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;

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

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

E. 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.

F. 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.

G. All financial reports and information required to be provided by Developer to the City under this Agreement shall be provided to the City's outside financial consultant for review on behalf of the City. 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.

H. Prior to substantial completion of the Public Improvements, 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 MRO 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. 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, excluding the residential portions) agrees, at its cost and expense, but subject to receipt of insurance proceeds and the rights of any first mortgage lender, 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. In the event that Developer or any new owner fails to repair, rebuild or replace its portion of the Project, then Developer or such new owner, as applicable, shall enter into a minimum assessment guaranty equal to the assessed value of the damaged portion of the Project immediately preceding such fire or other casualty, which guaranty shall terminate upon the earlier 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.

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 current owner or successor owner of any portion of the Project shall only be bound by the covenants, agreements and obligations contained herein with respect to such portion of the Project owned by that entity or individual, including without limitation, any insurance or indemnity obligations) 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. Developer may terminate this Agreement at any time prior to the issuance of the City Bonds upon written notice to the City and the delivery of a \$50,000 cancellation fee to the City concurrent with the date of the written notice to the City.

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.

O. 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: _____

Jesse A. Wesolowski, City Attorney

Date: _____

This instrument was drafted by:

EXHIBIT A

Property Legal Description

EXHIBIT A-1

PROJECT/PHASE ESTIMATED SCHEDULE

EXHIBIT A-1

	2020	2021	2022	2023	2024	2025	2026	2027
Single Family								
Lots Created	79	5,360,000	4,080,000	2,640,000	1,680,000	720,000		
Homes Completed		12	28	46	58	70	79	79
	6,320,000	5,100,000	11,900,000	19,550,000	24,650,000	29,750,000	33,575,000	33,575,000
		10,460,000	15,980,000	22,190,000	26,330,000	30,470,000	33,575,000	33,575,000
*average home value approximately \$425,000								
** average vacant lot value approximately \$80,000								
30 acre Industrial User		5,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000
Light Industrial & Commercial		2,000,000	2,000,000	2,000,000	3,398,609	5,437,774	7,476,939	13,594,434
Total Estimated Assessed Valuation	6,320,000	17,460,000	27,980,000	34,190,000	39,728,609	45,907,774	51,051,939	57,169,434

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. The Interior Public Roadway shall consist of the Commercial parcels south of W Loomis Road and the Residential parcels on the east side of the Project. 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. "Off-Site Public Water" shall consist of approximately 2,125 feet extending Northeast along W Loomis Road. 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. "Off-Site Public Water Phase II" is that portion of the project consisting of approximately 1,000 ft of water main serving the Commercial and Residential parcels south of W Loomis Road. 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. "Off-Site Roadways" consists of the Public Infrastructure improvements to W Loomis Road including traffic signalization and lane modifications to be donated to the WI Dept of Transportation. 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**")

**[NOTE: THIS FORM OF BOND IS SUBJECT TO CONFORMANCE WITH ARTICLE
II, SECTION O. OF THE DEVELOPMENT AGREEMENT.]**

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 5.5% 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. 6, 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 _____, 2018 between the City and the Developer ("**Development Agreement**"). This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation or provision. This Bond shall be payable solely from Available Tax Increments generated by the 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 March 1, 2038.

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

Stephen R. Olson, Mayor

(CITY SEAL)

Sandra L. Wesolowski, City Clerk

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

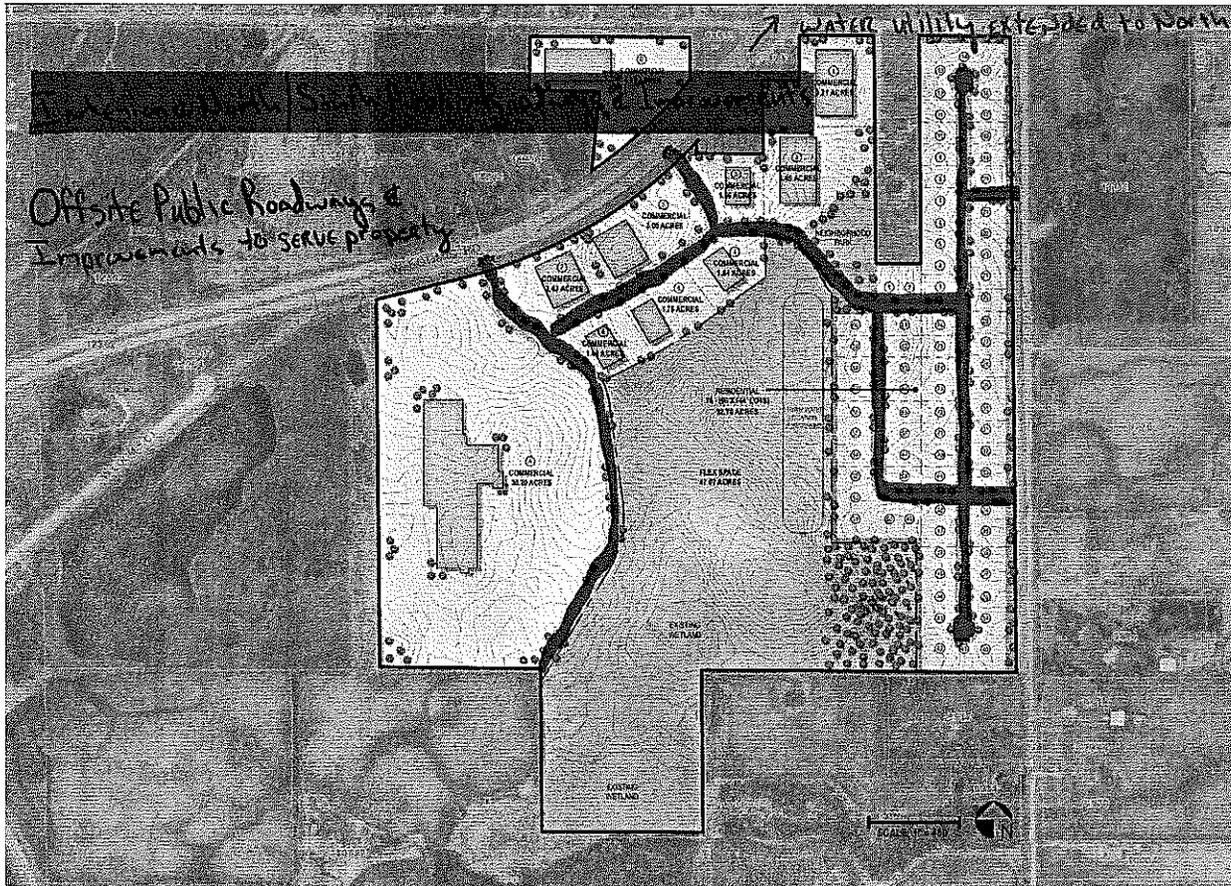
[Parcels Tax Key Number

Addresses]

EXHIBIT E

IRR Example

EXHIBIT F
Public Improvements



Notes regarding certain Public Improvements:

1. Access to the industrial portions of the Property will be through a public road providing access between the Property and Loomis Road, with the deadline for Developer 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. Developer 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. Developer 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").

Recording Area

Name and Return Address

PIN:

WITNESSETH:

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

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

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

- 1. PROPERTY. The "Property" is land located in the City of Franklin, Milwaukee County, State of Wisconsin, legally described on Exhibit A attached hereto.
2. TERM. The Development Agreement shall run with the land pursuant to its terms unless terminated pursuant to its terms.
3. SUCCESSOR OWNERS. The Developer Guaranty obligations are not binding on successor owners and do not run with any portion of the Property no longer owned by Developer, unless such owner has entered into a separate written agreement with the City.

4. **NO MODIFICATION; DEVELOPMENT AGREEMENT CONTROLLING.** This Memorandum is only a summary of some of the terms and conditions contained in the Development Agreement and this Memorandum is not intended in any way to amend, alter, modify, abrogate, substitute or otherwise affect any of the terms or conditions contained in the Development Agreement, all of which are hereby incorporated herein in full by this reference. It is hereby understood and agreed that, notwithstanding this Memorandum, the terms and conditions contained in the Development Agreement shall in all events control the relationship between Developer and the City with respect to the subject matter therein contained. This Memorandum is solely for recording and notice purposes.

5. **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:

CITY:

LOOMIS AND RYAN, INC.

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:

EXHIBIT A

LEGAL DESCRIPTION

[Certified Survey Map No. _____

Tax Key Nos. _____]

EXHIBIT H

PROJECTED ANNUAL INCREMENT AND DEBT SERVICE

Attach Ehlers' Projections.

EXHIBIT I

LIST OF CERTAIN PROPERTIES

See attached.

Summary report:	
Litera® Change-Pro for Word 10.4.0.0 Document comparison done on 11/26/2018 11:04:01 AM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: Bear - Franklin - DA - JW Redraft.doc	
Modified filename: Bear - Franklin - DA - JW Redraft v.2.doc	
Changes:	
<u>Add</u>	41
Delete	26
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<u>Table Delete</u>	0
<u>Table moves to</u>	0
<u>Table moves from</u>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	67