

<b>APPROVAL</b>  <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>October 17, 2017</b>
<b>REPORTS AND RECOMMENDATIONS</b>	An Ordinance to Amend §207-23.C.(2)(b) of the Municipal Code to change the Maximum Time for Water Extension Potential Cost Reimbursement to Developer from 15 Years to 10 Years to be Consistent with the Public Service Commission of Wisconsin Water Main Extension Rule and to Amend §207-26.C.(2)(b) of the Municipal Code to change the Maximum Time for Sanitary Sewer Service Extension Potential Cost Reimbursement to Developer from 15 Years to 10 Years to be Consistent with the Water Extension Provision	<b>ITEM NUMBER</b>  <i>G.17.</i>

Attached is a copy of the Public Service Commission of Wisconsin Water Main Extension Rule, as set forth within the rates and rules authorized by the Commission in Franklin water rates application Docket No. 2105-WR-107, as have been placed on file as Amendment 20, the Rule being Schedule No. X-2, provides in part: "[w]hen additional customers are connected to the extended main within 10 years of the date of completion, contributions in aid of construction will be collected equal to the amount which would have been assessed...." Public Service Commission Staff has advised City staff that compliance with same is required, and also that the 10-year term standard is a "tariff" and is required uniformly throughout the State. Current Municipal Code provisions regarding same include a 15-year term, which Code dates back to at least 1988, and the Code pertaining to sanitary sewer service extensions in the Southwest Sanitary Sewer Service Area also provides for a 15-year term. Also attached is a draft of the above-entitled ordinance. Engineering, Finance and Legal Services staff will be present at the meeting to provide further information as requested.

### COUNCIL ACTION REQUESTED

A motion to adopt An Ordinance to Amend §207-23.C.(2)(b) of the Municipal Code to change the Maximum Time for Water Extension Potential Cost Reimbursement to Developer from 15 Years to 10 Years to be Consistent with the Public Service Commission of Wisconsin Water Main Extension Rule and to Amend §207-26.C.(2)(b) of the Municipal Code to change the Maximum Time for Sanitary Sewer Service Extension Potential Cost Reimbursement to Developer from 15 Years to 10 Years to be Consistent with the Water Extension Provision.

**RATE FILE**

Sheet No. 1 of 1

**Public Service Commission of Wisconsin**

Schedule No. X-2

**Franklin Municipal Water Utility**

Amendment No. 20

<b>Water Main Extension Rule</b>
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Water mains will be extended for new customers on the following basis:

- A. Where the cost of the extension is to immediately be collected through assessment by the municipality against the abutting property, the procedure set forth under Wis. Stat. § 66.0703 will apply, and no additional customer contribution to the utility will be required.
- B. Where the municipality is unwilling or unable to make a special assessment, the extension will be made on a customer-financed basis as follows:
  - 1. The applicant(s) will advance as a contribution in aid of construction the total amount equivalent to that which would have been assessed for all property under paragraph A.
  - 2. Part of the contribution required in paragraph B.1. will be refundable. When additional customers are connected to the extended main within 10 years of the date of completion, contributions in aid of construction will be collected equal to the amount which would have been assessed under paragraph A. for the abutting property being served. This amount will be refunded to the original contributor(s). In no case will the contributions received from additional customers exceed the proportionate amount which would have been required under paragraph A., nor will it exceed the total assessable cost of the original extension.
- C. When a customer connects to a transmission main or connecting loop installed at utility expense within 10 years of the date of completion, there will be a contribution required of an amount equivalent to that which would have been assessed under paragraph A.

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EFFECTIVE: June 23, 2016  
PSCW AUTHORIZATION: 2105-WR-107

## ORDINANCE NO. 2017-\_\_\_\_\_

AN ORDINANCE TO AMEND §207-23.C.(2)(b) OF THE MUNICIPAL CODE TO CHANGE THE MAXIMUM TIME FOR WATER EXTENSION POTENTIAL COST REIMBURSEMENT TO DEVELOPER FROM 15 YEARS TO 10 YEARS TO BE CONSISTENT WITH THE PUBLIC SERVICE COMMISSION OF WISCONSIN WATER MAIN EXTENSION RULE AND TO AMEND §207-26.C.(2)(b) OF THE MUNICIPAL CODE TO CHANGE THE MAXIMUM TIME FOR SANITARY SEWER SERVICE EXTENSION POTENTIAL COST REIMBURSEMENT TO DEVELOPER FROM 15 YEARS TO 10 YEARS TO BE CONSISTENT WITH THE WATER EXTENSION PROVISION

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WHEREAS, §207-23.C.(2)(b) and §207-26.C.(2)(b) of the Municipal Code provide for a potential cost reimbursement time period to a developer of a water main extension and a sanitary sewer service extension in the Southwest Sanitary Sewer Service Area, respectively, for a period of no longer than 15 years; and

WHEREAS, the Public Service Commission of Wisconsin Water Main Extension Rule, as set forth within the rates and rules authorized by the Commission in Franklin water rates application Docket No. 2105-WR-107, as have been placed on file as Amendment 20, the Rule being Schedule No. X-2, provides in part: “[w]hen additional customers are connected to the extended main within 10 years of the date of completion, contributions in aid of construction will be collected equal to the amount which would have been assessed...”; and

WHEREAS, such Public Service Commission Rule is intended to be uniform statewide and the City Engineer and Water Utility Manager, and the Director of Finance and Treasurer having recommended amendments to the Municipal Code so that it is consistent with the time frame of the Rule and with regard to the reimbursements of sanitary sewer service and water main extensions costs; and

WHEREAS, the Common Council having considered staff’s recommendations, and having such amendments to be reasonable and necessary and in the public interest.

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

SECTION 1:           §207-23.C.(2)(b) of the Municipal Code of the City of Franklin, Wisconsin, as it pertains to the time limit for cost reimbursement to the developer of a water main extension, is hereby amended as follows: delete “15” and “fifteen-year”; and in place thereof, insert: “10” and “ten-year”, respectively.

SECTION 2:           §207-26.C.(2)(b) of the Municipal Code of the City of Franklin, Wisconsin, as it pertains to the time limit for cost reimbursement to the developer of a sanitary sewer service extension in the Southwest Sanitary Sewer Service Area, is hereby amended as follows: delete "15" and "fifteen-year"; and in place thereof, insert: "10" and "ten-year", respectively.

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

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

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

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

APPROVED:


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

ATTEST:

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

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

<b>APPROVAL</b> <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> 10/17/2017
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Committee of the Whole Recommendations</b>	<b>ITEM NUMBER</b> <i>G,18.</i>
<p>Proposed 2018 Budget.</p> <p>COUNCIL ACTION</p> <p>As directed</p>		

<b>APPROVAL</b> 	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>10/17/2017</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Proposed 2018 Budget</b>	<b>ITEM NUMBER</b>
<p>At the last Committee of the Whole meeting, the Aldermen completed review of the 2018 budget that would be sent to the public hearing on November 14th. At the same time, the Council directed that the item be placed on the agenda for a special Committee of the Whole meeting immediately prior to its regular meeting of October 17th for additional deliberation. Any item within the budget is open for deliberation. At least two items should be discussed.</p> <p>1) In particular, the Common Council requested information as to what amendments could be made that would reduce the total Property Tax Levy collected for municipal purposes by \$200,000. The attached sheet, titled "Potential Adjustments to the Proposed 2018 Budget: Considered for the Purpose of Reducing Property Taxes," provides a prioritized list of such adjustments. More adjustment alternatives were provided than requested so that the Aldermen could put the options into perspective and consider their own priorities. Strategies incorporating revenue enhancements, expenditure reductions, and use of fund balance were all considered. Additionally, some updates and corrections were suggested to help ensure any final actions remain consistent with known outcomes. Specifically, an update to the General Transportation Aids provided by the State after the last meeting provided significant assistance.</p> <p>Adjustments reducing property taxes by \$204,598 were listed which was the net result of \$106,826 in net revenue increases, \$56,592 in net expenditure reductions, and use of \$41,180 of fund balance for one-time expenditures. Additional potential net adjustments of \$154,670 were also identified. <b>Items 1 through 3, which would reduce property taxes by \$96,351, are recommended for approval.</b> The remaining items on the list are recommended only if a smaller property tax increase is of higher priority to the Aldermen than the potential negative service delivery and fund balance impacts of these additional cuts.</p> <p>2) The Finance Director identified a need to provide an additional appropriation within the Debt Service Fund needed as a result of Resolution No 2017-7299 which was approved by the Common Council September 19, 2017. The item relates to a 2018 payment of interest on authorized borrowing. <b>There is no impact on the 2018 levy with this item.</b> Please see the attached memo and documentation.</p> <p><b>Process:</b> The Committee of the Whole has already completed certain actions and motions necessary to send a Proposed 2018 Budget to the public hearing on November 14, 2017. The numbers as prepared for the public hearing cannot be directly altered at this time. <b>The Committee of the Whole, however, may still make additional recommended changes that it can submit to the full Common Council for its consideration following the Council's budget hearing.</b> Any such motions made on the 2018 budget between now and the public hearing would be incorporated by staff into the budget ordinance that is in the packet and on the agenda for the adoption of the budget on November 14, 2017. Additionally, such subsequent motions would be reported on at the public hearing as additional recommended actions.</p>		

## **COUNCIL ACTION REQUESTED**

Relative to budget development, motions on the proposed 2018 Budget may be made at the Committee of the Whole. As such, a proposed motion is recommended for each of the two items above:

- 1) Motion to further amend the proposed 2018 Budget to incorporate items 1, 2, and 3 on the table titled "Potential Adjustments to the Proposed 2018 Budget: Considered for the Purpose of Reducing Property Taxes," along with the corresponding reduction in property taxes of \$96,351. [The item number listing and property tax adjustment total can be changed as determined by the Common Council.]
- 2) Motion to further amend the proposed 2018 Budget to incorporate additional appropriations of \$110,000 for debt service payments into the Debt Service Fund, which action has no 2018 property tax levy impact.

# Potential Adjustments to the Proposed 2018 Budget: Considered for the Purpose of Reducing Property Taxes

		Revenue Adjustment	Expenditure Adjustment	Impact on Property Taxes	Running Total
1.	<b>State Aids: Adjust to reflect updated reporting from state</b>				
a.	General Transportation Aids (less \$2,400 historic reporting adjustment)	147,638		-147,638	-147,638
b.	Shared Revenue	15,934		-15,934	-163,572
c.	Expenditure Restraint Program (Net impact of State Aid Adjustments = \$106,826 in added Revenue)	-56,746		56,746	-106,826
2.	<b>Correct Health Department Sanitarian status</b> It is necessary to reconcile Health Department revenues and expenditures for Sanitarian Services. The Health Director had requested and the Mayor had intended to fund an increase of 1 day per week in Sanitarian Services, from 3 days to 4 days per week. The Mayor had intended to recommend this due to it being fully funded by increased Health Department revenues for the services. The Recommended budget retained the revenues but did not retain the expense for the added day of service.  Further review shows department revenues at the current level adequately cover the full Sanitarian costs; therefore, revenue increases that could be construed as profit cannot be allowed. <b>Either the expense for the added day needs to be reinstated or the additional revenue needs to be removed. Either action equals an adjustment of \$16,500.</b> Since other cuts in this document will impact the ability to achieve the Anticipated Underexpenditures, it becomes necessary to correct this matter prior to these other actions.	tbd	tbd (Recommended)	16,500	-90,326
3.	<b>Eliminate Engineering Tech II to III reclassification</b>		-6,025	-6,025	-96,351
4.	<b>Economic Development studies and consultants</b> Fund the 2018 increase to the 2017 base ongoing-funding (\$25,000) with a portion of the anticipated unspent fund balance commitment from 2017, which was budgeted at \$65,000.	*		-25,000	-121,351
5.	<b>Eliminate COPS funding</b> Difficult to justify expanding operations with the challenges to funding existing operations, particularly given the requirement to increase funding percentages the following two years and fully funding in year four. Could fund from fund balance in year one and then terminate/eliminate if referendum is not approved.		-56,567	-56,567	-177,918
6.	<b>Building Maintenance Plan</b> Fund the second year phase of the 3-year Building Maintenance Plan from fund balance and delay implementation of a fully-funded Building Maintenance Plan.  In lieu of increasing the "Anticipated Underexpenditure" or other line-item-	*		-16,180	-194,098
7.	<b>by-line-item cuts, reduce the following for a total of \$10,500:</b>	*			
a.	Administration: Other Professional Services (#5219)	*	-5,000	-5,000	-199,098
b.	Police: Auto Maintenance (#5241)	*	-1,500	-1,500	-200,598
c.	Police: Uniforms (#5326)	*	-1,500	-1,500	-202,098
d.	Economic Development: Conferences and School (#5425) (which also allows for travel for marketing) The Director of Administration, Police Chief, and Economic Development Director can then manage the impact of the reduction across all of their accounts.	*	-2,500	-2,500	-204,598
8.	<b>Eliminate two Lead Dispatcher reclassifications</b>		-13,100	-13,100	-217,698
9.	<b>Building permit revenue increase</b>	*	7,500	-7,500	-225,198
10.	<b>Discontinue Dive Team initiation effort</b>		-4,000	-4,000	-229,198
11.	<b>Engineering Professional Services: Eliminate the increase</b>	*	-6,000	-6,000	-235,198
12.	<b>Reduce anticipated non-rep 7/1/18 wage adjustment to 1.75% equivalent</b>		-17,500	-17,500	-252,698
13.	<b>Freeze Police Officer vacancy</b>  This repeats the same action that was taken in the past when layoffs and frozen positions were implemented. This was the last position to become refunded, so it would be reasonable to consider it as a position to be re-defunded. Partial defunding, resulting in delayed hiring, could be considered. In other words, any part of the \$96,370 could be included.	up to	-\$96,370	-96,370	-349,068
14.	<b>Reduce Street Improvement Fund levy to .51% instead of 1.4%</b> The Street Improvement Fund is already underfunded from a mid-term perspective.		-6,200	-6,200	-355,268
15.	<b>Eliminate proposed vehicle allowance for the Assistant Fire Chief</b>		-4,000	-4,000	-359,268

\* Yearend expenditures are more variable and are more likely to impact the ability to achieve Anticipated Underexpenditure.

DOA: 10/13/17



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## MEMORANDUM

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**DATE:** Oct 11, 2017  
**TO:** Mark Luberda, Budget Director  
**FROM:** Paul Rotzenberg, Director of Finance & Treasurer *pr*  
**RE:** Debt Service on portion of Anticipation Notes

On Sept 19, 2017 the Common Council agreed to resolution 2017-7299 authorizing the sale of Anticipation Notes not to exceed \$42,750,000.

A \$3,550,000 portion of the offering is intended to finance a water main along W Loomis Road near W Ryan Road (which will be considered at a later date), and was not included in the proposed budget anywhere. It will initially become part of the debt service fund until such time as alternate provisions become available.

Anticipating a maximum interest cost for the Anticipation Notes of 3%, debt service in 2018 will total no more than \$110,000. An additional appropriation in the Debt Service fund for this \$110,000 should be provided. Funding for this cost is available from fund balance in the Debt Service fund.

I respectfully request that the Debt Service fund be adjusted to add \$110,000 of debt service costs for 2018.

RESOLUTION NO. 2017-7299

RESOLUTION PROVIDING FOR THE SALE OF APPROXIMATELY  
\$42,750,000 NOTE ANTICIPATION NOTES

WHEREAS, the City of Franklin, Milwaukee County, Wisconsin (the "City") is presently in need of approximately \$42,750,000 for public purposes, including City capital improvement projects and acquisitions, water main extensions, and project costs of tax incremental districts within the City; and

WHEREAS, it is desirable to borrow said funds through the issuance of note anticipation notes pursuant to Section 67.12(1)(b), Wisconsin Statutes; and

WHEREAS, the note anticipation notes shall be sold in one or more series of taxable note anticipation notes ("Taxable Notes") and tax-exempt note anticipation notes ("Tax-Exempt Notes").

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City that:

Section 1. The Notes. The City shall issue its Taxable Notes and Tax-Exempt Notes in an aggregate principal amount of approximately \$42,750,000 (collectively, the "Notes") for the purposes above specified.

Section 2. Sale of Notes. The Common Council hereby authorizes and directs that the Notes be offered for public sale. At a subsequent meeting, the Common Council shall consider such bids for the Notes as may have been received and take action thereon.

Section 3. Notices of Sale. The City Clerk (in consultation with the City's financial advisor, Ehlers & Associates, Inc. ("Ehlers")) be and hereby is directed to cause notices of the sale of the Notes to be disseminated in such manner and at such times as the City Clerk may determine and to cause copies of complete Notices of Sale and other pertinent data to be forwarded to interested bidders as the City Clerk may determine.

Section 4. Official Statement. The City Clerk shall cause an Official Statement concerning the Notes to be prepared by Ehlers. The appropriate City officials shall determine when the Official Statement is final for purposes of Securities and Exchange Commission Rule 15c2-12 and shall certify said Statement, such certification to constitute full authorization of such Statement under this resolution.

Adopted, approved and recorded September 19, 2017.

  
Stephen R. Olson, Mayor

ATTEST:

  
Sandra L. Wesolowski, City Clerk

AYES 6      NOES 0      ABSENT 0

APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE Sept 19, 2017
REPORTS & RECOMMENDATIONS	Resolution Providing for the Sale of Approximately \$42,750,000 Note Anticipation Notes for TID 3 Developer Incentive, TID 4 Sanitary Sewer infrastructure, TID5 Project Costs and Capital Improvement Fund projects	ITEM NUMBER <i>G.2,</i>

### Background

The 2017 Budget anticipated a debt offering to finance projects in the Capital Improvement Fund. The 2017 Budget also included a debt offering in TID5 for infrastructure projects associated with Ball Park Commons.

### Analysis

Projects in the 2017 Capital Improvement plan have progressed slower than was contemplated by the 2017 Budget. As the 2018 Budget is getting developed, there are projects in TID3 for a developers incentive on a S 27<sup>th</sup> Street project, a sanitary sewer infrastructure project along S 27<sup>th</sup> Street in TID4, the water, sanitary sewer, storm sewer, street, recreational trail and methane mitigation projects in TID5 (Ball Park Commons), and a water main along W Loomis Road near W Ryan Road.

The 2018 Capital Improvement plan has various City projects that will also demand resources from debt obligations.

Attached are the details for two Anticipation Notes, one taxable and one tax exempt to finance the above projects.

If the City chose to sell notes for each project as they mature, the costs of selling the debt would be considerably higher than accumulating the project costs into the two proposed issues noted on the attached. Since the issue would be Anticipation Notes, they can be refinanced in the future with Refunding Notes or repaid if the projects do not precipitate. Should the final 2018 Budget remove one or more of the project, staff will remove those costs from the contemplated sale.

Should one or more of the projects mature prior to the offering, the Anticipation Notes can be converted to General Obligation Notes, saving issuance costs later when the Anticipation Note issue is refunded.

The sale is scheduled post adoption of the 2018 budget but in time to close prior to December 31, 2018. This will preserve options the Common Council has available in adopting the tax levy in the 2018 Budget.

### **Fiscal Note**

While the direction of interest rates can rarely be projected in the short term, the risks to the City on this issue are in two areas:

- 1) The resources are never needed for the contemplated project, and thus issuance costs and interest costs are incurred that would not otherwise have been needed, and
- 2) Interest rates rise in the future, raising the cost of the debt issue by missing the opportunity for locking in current interest rates, which are generally believed to be lower than future longer term rates.

A budget amendment will be required to provide for the appropriations for the issuance costs anticipated here. The issues will be allocated to TID3, 4 & 5, as well as the Capital Improvement Fund as the projects are outlined on the attached.

### **Recommendation**

The Finance Committee reviewed the issuance plan at its August 22, 2017 meeting and recommended an authorizing resolution to the Common Council. The recommendation was for an amount not to exceed \$36 million. Since that meeting, new information on Ball Park Commons has caused the amount to increase to \$42.75 million. Staff recommends adoption of the Resolution(s).

The closing of the sale would be on or before December 31, 2017.

### **COUNCIL ACTION REQUESTED**

Motion to Approve a Resolution providing for the sale of approximately \$42,750,000 Note Anticipation Notes for TID 3 Developer Incentive, TID 4 Sanitary Sewer infrastructure, TID 5 Project Costs and Capital Improvement Fund projects

APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 10/17/17
REPORTS AND RECOMMENDATIONS	Zilber LTD. Mixed Use Development at 7333 South 27 <sup>th</sup> Street and 7273 South 27 <sup>th</sup> Street; Tax Incremental District No. 3 Development Agreement Between the City of Franklin and TI Investors of Franklin Apartments, LLC. The Common Council may enter closed session pursuant to Wis. Stat. § 19.85(1)(e), to consider the terms and negotiation of a development agreement with TI Investors of Franklin Apartments, LLC for the Zilber Mixed Use Development at 7333 South 27 <sup>th</sup> Street and 7273 South 27 <sup>th</sup> Street, for competitive and bargaining reasons, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate	ITEM NUMBER <i>G.19.</i>

### Summary

Consideration of this action relates to prior actions regarding Zilber LTD.'s mixed use development project earlier on the agenda. The project includes construction of 180 apartments, a club house, a commercial development site (planned for a daycare facility) along South 27<sup>th</sup> Street, and other site improvements at 7333 S. 27<sup>th</sup> Street; and removal of buildings, other than the Little Cancun Restaurant, and creation of a minimum 2 acre commercial development site at 7273 S. 27<sup>th</sup> Street.

The developer has request a development incentive grant not to exceed \$5,000,000.00 to support the development (City Grant) and a pay-as-you-go reimbursement not to exceed \$2,000,000.00 towards improvements at 7273 S. 27<sup>th</sup> Street (PAYGO). Both the City Grant and PAYGO would be paid from Tax Increment District (TID) No. 3 which includes both of the project sites and other nearby properties.

On March 21, 2017, the Common Council directed staff to "work with Zilber LTD. regarding a proposed mixed-use development at 7333 S. 27<sup>th</sup> Street and to pursue a Development Agreement that includes financial support from the existing Tax Increment District No. 3, with the understanding that the development agreement will include removal of the hotel, [and with regard to Tax Incremental Financing] "lookback" provisions, and "pay as you go" [incentive balance], as outlined in the Council Action Sheet for this item". The March 21, 2017 action was informed by a financial analysis by Ehlers, Inc. outlined in a March 1, 2017 letter to the City's Director of Economic Development. Materials from the March 21<sup>st</sup> action including the March 1<sup>st</sup> letter are enclosed.

In following the March 21<sup>st</sup> action, the proposed draft development agreement includes requirements to complete improvements at the 7273 S. 27<sup>th</sup> Street site, including the removal of the existing hotel and creation of a minimum 2 acre commercial parcel for the existing restaurant and future development prior to accessing either the City Grant or PAYGO incentives. Following the 7273 Improvements and completion of each six individual, 30 unit, residential buildings the developer will be eligible for a one-sixth (1/6) proportion of the City Grant. The PAYGO will be paid following the conditions outlined in the agreement and as revenue is generated in the district by the project and from other TID sources following the retirement of prior commitments.

Several lookback provisions are included:

- The City shall evaluate estimated (those considered in Ehlers financial analysis of the project) vs.

actual project costs and for the City to recoup any actual savings to proportionally reduce the City Grant and PAYGO.

- The City shall share in the sale of the planned commercial parcel at 7333, if the sale exceeds \$500,000.00 as estimated in the original project budget considered as part of the City's financial analysis conducted by Ehlers. Recouped funds would reduce the outstanding balance first of the City Grant and then the PAYGO.
- The City shall share in the sale of the planned commercial parcel at 7273 to reduce the outstanding balance first of the City Grant and then the PAYGO, if balances remain on either at the time of sale. This contingency is included as no estimated net sale value was included in the financial analysis conducted by Ehlers.
- Additional look back provisions are included to recoup a portion of excessive profits, if excessive profits are found to be had by the City's financial consultant, if the developer sells the planned development at 7333 S. 27<sup>th</sup> Street and outstanding balance remains on either the City's Grant or the PAYGO.

Additional terms and protections are outlined in the draft development agreement. The development agreement remains subject to additional technical and non-material corrections by the City Attorney and Director of Economic Development.

#### **COUNCIL ACTION REQUESTED**

A motion to enter closed session pursuant to Wis. Stat. § 19.85(1)(e), to consider the terms and negotiation of a development agreement with TI Investors of Franklin Apartments, LLC for the Zilber LTD. Mixed Use Development at 7333 South 27<sup>th</sup> Street and 7273 South 27<sup>th</sup> Street, 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

;

or

such other action as the Common Council may deem appropriate.

APPROVAL	REQUEST FOR Council ACTION	<del>MEETING DATE</del> <del>3/21/17</del>
REPORTS AND RECOMMENDATIONS	Direct staff to work with Zilber LTD. regarding a proposed mixed-use development at 7333 S. 27 <sup>th</sup> Street and to pursue a development agreement that includes financial support from tax increment finance district No. 3	<del>ITEM NUMBER</del>

#### INTRODUCTION

On August 2, 2016, Zilber LTD. presented a proposed mixed use development at 7333 S. 27<sup>th</sup> Street to the Common Council for a Concept Review. Among other comments, members of the Council noted their preference for the development to include the adjacent Park Motel property at 7273 S. 27<sup>th</sup> Street. During the Concept Review, Zilber noted the likely need for tax increment finance (TIF) support to make the proposed project viable and to include acquisition of the Motel site. Both properties are within the boundaries of TIF District No. 3, a district scheduled to expire in 2026. Alderwoman Wilhelm and Zilber have hosted a neighborhood meeting with area residents regarding the project.

On October 4, 2016, the Common Council approved two contract associated with the project.

1. An agreement with Ehlers, a financial consultant, to conduct a pro-forma review of the project and assist with developer negotiations related to the use of TIF for a fee up to \$7,500.
2. An agreement with Towne Realty, Inc. (in partnership with Zilber) to reimburse the City for expenses related to the City's contract with Ehlers.

The requested direction to staff will indicate the Council's interest in advancing the project based on the information available at this time. If approved, staff expects the developer to move quickly to complete detailed plan submittals and pursue a development agreement that includes TIF support as outlined below.

This item was tabled on March 7, 2017 for consideration at the March 21, 2017 Council meeting.

#### PROJECT SUMMARY

The proposed project includes 180 market rate apartments with a club house and amenities at 7333 S. 27<sup>th</sup> Street. A lot will be created for commercial development along the frontage of S. 27<sup>th</sup>. The developer is currently in communication with a daycare provider that is interested in acquiring that land for placement of a center that could serve employees at the nearby Northwestern Mutual facility and others in the area. Staff notes that Northwestern Mutual has been open about their desire for more supportive services and amenities for employees near their Franklin campus.

Following the Council's stated interests from the Concept Review, Zilber has the Park Motel under contract and is prepared to execute that agreement upon receiving all approvals for their proposed development. Plans include demolition of the Motel, while retaining the Little Cancun restaurant currently operating in an outlot of the Motel at 7273 S. 27<sup>th</sup> Street. A complete project summary from Zilber is attached.

#### TIF CONSIDERATION

As stated by Zilber at the Concept Review meeting, TIF funds are required to complete the project. Ehlers has confirmed that the project meets the "but for" test as required by Wisconsin State Law. A reasonable rate of return would not be achieved, "but for" the inclusion of an identified TIF contribution. Their full report is attached.

The project was evaluated with several financial options. The preferred option includes a \$5,000,000 TIF grant for the completion of the mixed use project as originally proposed by Zilber, at an estimated value of \$24,000,000. The acquisition and demolition of the Park Motel is not cost-effective for the developer. Therefore an additional \$2,000,000 TIF contribution, structured as a pay-as-you-go (PAYGO) is suggested to cover expenses related to that action. The project would generate an estimated \$570,000 of annual property tax in its first full year of collection.

Making use of the value created by the Zilber development and increment generated elsewhere in the district, the TIF district would have sufficient funds to retire these and other current obligations in the district by 2022, four years prior to the district's scheduled closing in 2026.

As of the 2016 tax year, the two properties under discussion (7333 and 7273 S. 27<sup>th</sup> Street) pay \$43,271.42 in combined property taxes. Therefore, if the Zilber project is completed an estimated net additional \$526,700 in property taxes would be collected. The Park Motel pays an additional \$11,322 in room taxes that would not be collected in the future if the hotel is demolished. It should be noted that under new Wisconsin State Room Tax regulations, a portion of those funds must be used by the City's newly created Tourism Commission for tourism related promotion and development.

While it may be noted that not all of the collected tax revenue is retained by the City, it should also be noted that all taxing authorities contribute to TIF incentives during the life of the district. TIF legislation was designed to ensure the shared participation and benefit of overlapping taxing authorities.

In staff review of other multi-family and mixed-use developments recently approved in other suburban Milwaukee markets similar TIF contributions have been offered for projects of similar quality. Note that higher quality development projects and amenities on site generally increase a projects cost, but also increase the projects assessed value. Increased assessed values are to the City's financial benefit.

When the TID #3 project plan was amended on August 21, 2013, \$10,000,000 was budgeted for development incentives for use between 2015 and 2019. Those funds remain unspent and are available for use on this project. Because the funds are already in the approved project plan, no action would be necessary by the district's Joint Board of Review.

Ehlers recommends, and Zilber is open to, the inclusion of "look back" provisions to account for any cost-savings or operating gains realized by the developer. Analysis provided in the Ehlers report is based on estimates. The look-backs will ensure the City has the opportunity to adjust its participation in the project if costs are significantly lower and/or returns higher than initially projected. The terms of any included look-backs would be outlined in a development agreement that would require Council approval.

#### **NEXT STEPS**

If the Council approves the motion staff will assist the developer in advancing the project. Zilber expects to complete detailed plans and submit applications for plan and special use approvals within the next couple of months. Staff will also work with the developer to draft a development agreement based on the project and TIF considerations described above. All items will still require Council approval, but action on the motion will provide important direction to staff and the developer.

#### **ATTACHMENTS**

- Financial analysis report from Ehlers in the form of a letter dated March 1, 2017 to the Director of Economic Development
- Project Summary report from Zilber

#### **COUNCIL ACTION REQUESTED**

Direct staff to work with Zilber LTD. regarding a proposed mixed-use development at 7333 S. 27<sup>th</sup> Street and to pursue a development agreement that includes financial support from tax increment finance district No. 3



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# Common Council Meeting March 7, 2017

**ZILBER**  
PROPERTY GROUP<sup>SM</sup>

### Project Summary

Zilber Property Group is proposing a high quality mixed use project located at 7333 S. 27<sup>th</sup> Street. The parcel is approximately 18 acres that was previously programmed to be a YMCA facility. The project consists of a 180-unit multi-family community and the development of a commercial day care operation. The project could also include an adjoining parcel currently occupied by a motel and a separate restaurant building at the discretion of the Council. If included, the motel would be razed and marketed as an additional commercial development parcel with the restaurant intended to remain as is.

After extensive market review this was determined to be the appropriate mix of uses to balance the competing goals of maximizing the tax value of the development, creating additional commercial development along 27<sup>th</sup> Street, and being an appropriate transitional use between the existing adjacent single family houses along Minnesota Street and existing commercial property. All parking requirements will be met on-site. Storm water management will follow City and DNR requirements. The development will include a public street connecting 27<sup>th</sup> to 31<sup>st</sup> street providing easy and adequate access to and from the site. The former YMCA parcel is currently zoned B-4 south 27<sup>th</sup> street mixed use commercial zoning district. The project uses are allowed under the current zoning, although the multi-family component will require a special use permit.

### Developer

This project will be developed by Zilber Ltd., a privately held diverse real estate company headquartered in Wisconsin since being founded by Joseph J. Zilber in 1949. Under Zilber's Homes by Towne and Towne Island Homes brands, Zilber builds single family homes and condos in six states; and under our Zilber Property Group brand, we have approximately 4.5 million square feet of office/light industrial buildings and just over 1,000 apartments.

### Project Consistency with 27<sup>th</sup> Street Plan

Zilber's proposed project uses are allowed under the existing B-4 south 27<sup>th</sup> street mixed use commercial zoning district. The development is consistent with the mixed use land use identified in the Comprehensive Master Plan Future Land Use Map. It is also consistent with the overall goals, primary uses, and land use recommendations of the 27<sup>th</sup> Street Corridor Plan and District 2 within the 27<sup>th</sup> Street Corridor Plan.

### Market rate apartment community

The 180 market rate rental community will be developed in six three-story thirty unit buildings with underground parking included for every unit. The apartments will be a mix between one and two bedroom units, with average rents of approximately \$1,100-\$1,200 for a one bedroom and \$1,400-\$1,500 for a two bedroom. The buildings will have high quality facades, incorporating materials such as masonry and wood.

The buildings will be designed with flat roofs to keep the overall height consistent with pitched roof, two story homes, which will set the building heights well below the maximum allowed per zoning. Three story buildings versus two story buildings reduce the required footprint space and allow the development to be positioned towards the inside of the property. This creates a much larger distance from the lot line to the buildings, and retains a large amount of open green space. Approximately 10 acres, almost 70% of the land area, will remain open or green space. We plan on preserving the existing tree line along both property boundaries and as many trees as possible on-site. Additional enhanced landscaping will be provided along the natural tree buffer adjacent to the residential neighbors.

The community will feature an office and community building, providing the amenity package desired by today's tenants including a pool and sun deck, fitness center, community gathering space with kitchen area, picnic areas with outdoor grilling stations, and pet friendly amenities including a fenced dog park. The units will feature high quality modern finishes, ample storage, and a full appliance package including washers and dryers. All units will also feature outdoor living space on patios and balconies.

### Commercial parcel(s)

A commercial parcel along 27<sup>th</sup> Street for a growing well managed day care operator or other uses, will be consistent the City's desire for commercial activity in this area as outlined in the 27<sup>th</sup> Street Corridor Plan. In discussions with Northwestern Mutual they indicated that they view this use to be of good value for them. Having nearby services available for their employees is high on their priority list. The use will also provide service for the nearby residential neighborhoods along with our rental community.

The motel parcel, if included, would provide additional redevelopment opportunities. The motel parcel is under contract if the Council desires to include it in the project. If included, we will acquire and raze the motel while marketing it to commercial users. The restaurant lease is intended to be assumed with the restaurant continuing to operate per usual.

### Conclusion

The proposed mixed use project will provide significant value for the City. The currently vacant infill parcel achieves its highest and best use through this proposal. It will fill a need in the marketplace for rental units and provide a housing option for employees of nearby business as well as downtown Milwaukee via I-94. The commercial component will provide much needed services to nearby employers and residents. In addition, the new households will also drive demand for additional retail and commercial uses in the surrounding areas.

### Tax Incremental Financing Assistance

The costs to create the development and realize the assessed value discussed above are in excess of what can be supported by market rents. In order to allow the project to be viable and economically sustainable, city TIF assistance will be required for aspects of the development such as the underground parking, site improvement work, creation of the commercial sites, and the roadway connecting 27<sup>th</sup> street to 31<sup>st</sup> street. Our goal is to create a development that will be an important asset to the community for the long term.

The site is located within the boundaries of TIF district #3. Per the cash flow model report dated December 31, 2015, the district has a final year of allowable project expenditures of 2020 with the final year of the district being 2026. There is currently \$10 million of unallocated project costs within the district.

Over the last few months we have worked with the City and Ehlers to review, analyze, and conclude on our proposed project and financial projections. The final Ehlers report concludes that the project would not be economically feasible but for the existence of City financing, and that the proforma project costs, revenues, and expenses would provide an acceptable but not excessive return. The assistance package being requested for this project is inline with what other developers have required on current projects of this type. It is important to differentiate this product type with elevators, 100% of units with enclosed parking, and modern high quality facades from more garden walk-up style projects with different economic models.

Ehler's conclusions are included in the packages being submitted to you for consideration today. The former YMCA parcel would include a \$5M City funded TIF grant. If added on, the motel component would include a \$2M developer funded paygo arrangement. If included, the two packages would be repaid with interest on a pro-rata basis. Ehlers concluded that both options can be conservatively expected to be paid off with a few additional years cushion in the life of the TIF district.

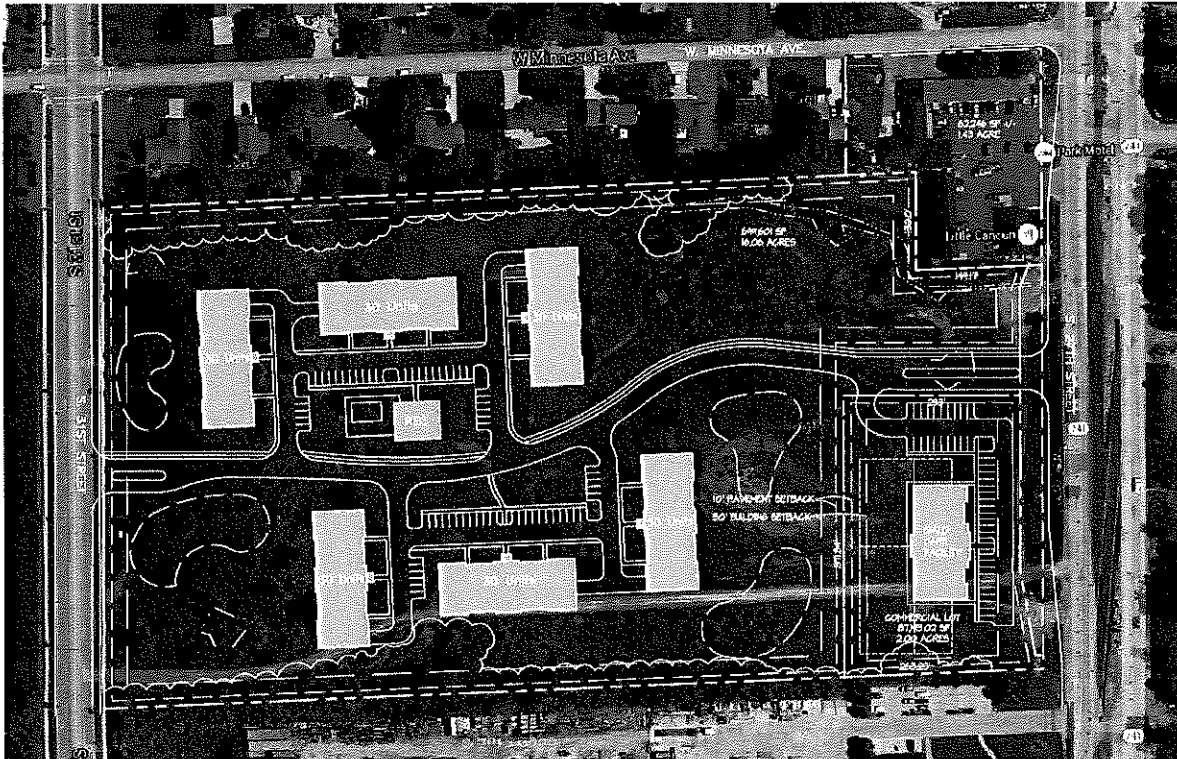
If the City approves use of the existing TIF district we will work closely with staff and outside experts and all of our proformas, costs, and expenditures will be open book. We will agree to look back provisions that would allow any project development cost savings to be passed on to the City, creating an effective public/private partnership on the project. We expect that the assistance required will be approximately 20%-25% of total project values. This is in-line with what we have seen on other current mixed-use projects and there is a large enough funding gap that the project will not be economically viable without it.

### **Enclosures:**

Site plan

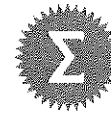
Site map

## Site Plan



## Site Map



**EHLERS**

LEADERS IN PUBLIC FINANCE

1 March 2017

Aaron Hertzberg  
Director of Economic Development  
City of Franklin  
9229 W Loomis Rd  
Franklin WI 53132

**RE: 27<sup>th</sup> & Minnesota – Zilber Development**

Dear Aaron,

Please find our analysis for the above referenced project.

In examining the financial need (the “but for” test required by law) for TIF participation, we were provided summarized information by Mike King of Zilber Property Group pertaining to the construction of a 180-unit residential apartment development on a currently vacant parcel, which is under contract. The project would consist of six residential buildings, a community/rec center, and to the southeast, additional land for possible development.

As part of the overall proposal, there is also the potential to acquire the Park Motel property at 7273 S. 27<sup>th</sup> Street. Upon acquisition, the Park Motel would be demolished, with the Little Cancun restaurant remaining in operation pursuant to the existing lease. The motel portion of the property would be positioned for sale separate from the restaurant, or along with the restaurant, remain a complete parcel for future sale or redevelopment. A daycare facility is being considered to acquire the portion fronting S. 27<sup>th</sup> Street at 7333 S. 27<sup>th</sup> Street, at the Southeast corner of the overall site. Zilber indicates that the apartment development will be held for a long term rental investment by the company. An evaluation of the restaurant use and potential daycare center is not part of this analysis.

The information provided consisted of a sources and uses project budget, a unit mix/rent schedule, and cashflow projection, and subsequent communications firmed up those project details. The net operating income that was capitalized to approximate a valuation based on the 10<sup>th</sup> year of operations. The schedule also contained preliminary financing assumptions for construction financing. We have incorporated the Developer’s information and assumptions in our own mathematical models to verify the Net Operating Income and the Net Cash Flow after financing, and then developed a 10-year income and expense projection for use in our analysis. The Developer also provided their calculation of assessed value for increment generation. TID #3 expires in 2026, so the TIF participation evaluation is considered within that context as well.



### **DEVELOPER BASE CASE**

Ehlers initially input the Developer's information into our financial model to replicate the income and expenses, deriving a Net Operating Income over a 10 year period and resultant sales estimate. From there, we assumed several different scenarios of development support. The outcomes are summarized below and the following data and assumptions were used:

- Developer provided rent incomes and operating expenses; and increased revenues by 2% per year, and expenses at 3%, in their projections (Ehlers TID cashflows assume no appreciation)
- Debt Service payments for the holding period were calculated based upon anticipated bank terms provided by Developer
- Franklin's current equalized tax rate of \$23.76 was used for real estate tax assumptions and TIF increment cash flow projections
- Construction assumed to commence in 2017, and first year of TIF income on the project would be 2019

The developer's initial base case request for the 180-unit project was for a \$10mm TIF Grant on a \$32.2mm (gross cost) project, or 31% of total cost. A construction loan for 55% of total cost was assumed for \$17.75mm at 4.75%, based on developer's experience in the market. Current negotiations for the motel acquisition suggest a \$2mm purchase price, and \$1.9mm for the remainder of the project's land requirement. Subsequent land sales of \$500,000 for the motel parcel, and \$750,000 for the commercial pad, were deducted from the total cost. Rents were conservatively estimated at \$1.30/sf, which Ehlers believes is slightly below market (further discussed below). Underground parking spaces, though more costly to build, were provided as part of the base rent, which is the custom for this market. More than \$1.1mm is expected to be incurred for DOT roadwork and site utilities.

The capitalization rate utilized on the net operating income was 8.0%, and selling costs were 6.0%, both in the upper end of market range. This produced an Internal Rate of Return (IRR) of 13.93% under Ehlers' calculations; the developer projections suggest a 14.58% return, however, this calculation did not take a deduction for project reserves of \$250/unit, which would lower NOI and returns accordingly, and assumed debt payoff is one month earlier than in Ehlers' model.

### **ALTERNATE SCENARIOS**

Considering the economics of other projects in the Milwaukee south suburbs, and pursuant to a market study conducted for another project within the City of Franklin, the rents and cap rate were discussed with the City and developer. It was agreed amongst the parties that though it would still be a somewhat conservative approach, the market rents should be applied at \$1.35/sf, and a cap rate of 7.5% would be more appropriate. Also, the developer suggested that loans could be arranged for 70-80% of cost; the more conservative 70% was used in our evaluations.



In addition, the developer subsequently produced a scaled-down concept of 120 apartment units, which also deleted the hotel aspect. Significant assumptions in this version also decreased the anticipated land sales for the motel parcel (NEC) from \$500,000 to \$300,000, and commercial parcel (SEC) from \$750,000 to \$500,000. These reduced release prices were utilized in all the alternate scenarios that follow, and accordingly, negatively affect project returns.

It was further acknowledged that the \$10mm TIF grant was not palatable. Ehlers was asked to evaluate several other scenarios at an approximately \$5mm support level for the apartment portion; the motel parcel was then carved out to be evaluated as a separate option, at an additional requirement of approximately \$1.85mm. This net amount was derived by adding the \$2mm land price and \$150,000 demolition costs, and reducing that by the projected \$300,000 sale of said parcel. These alternate scenarios were provided to allow the City to evaluate the scope of the project, existing and potential uses for the property, along with the desired density in the community.

Scenario 1: 180 APARTMENTS, MOTEL INCLUDED (12.45% IRR)

Assuming a \$5mm grant for the multifamily portion, including acquisition of the motel land and subsequent sale, and a \$1.85mm net funding in a Pay-As-You-Go (PAYGO) structure (ie, present value of PAYGO receipts) allocating 60% of the increment to the developer, the IRR was projected to be 12.45%. However, the first year of the project's operations would incur negative cashflow, as the monetized Municipal Revenue Obligation would begin payments in the years after the project is constructed and the assessment goes on the books before any share of increment is available. The PAYGO portion was incorporated to reflect the "a la carte" option of including the motel parcel in the overall context. At a 60% participation in the increment, the MRO payments would cover the developer's associated debt payments within the TID timeframe; in fact, it may be possible to close the TID early. A 70% loan-to-cost (LTC) loan of \$23.08mm was projected, and equity of \$3.04mm (9.2%) completes the \$32.97mm capital stack.

We also tested a structure of an additional \$2.0mm grant for the motel on top of the \$5mm apartment portion, with grants totaling \$7.0mm, or over 21% of cost. Equity of \$2.89mm represents 8.7% of cost. Returns under this scenario were 14.22%, which would be considered somewhat excessive in requesting public assistance.

Scenario 2: 180 APARTMENTS, NO MOTEL (11.5% IRR)

Under these assumptions, acquisition costs for the motel at the northeast corner of the site were stripped out of the budget, as were demolition and certain sitework costs related to that parcel. The \$300,000 sale to the daycare center was then shifted to the parcel at the southeast corner, and accordingly, the projected land sale of \$500,000 for a to-be-determined commercial use was deleted. The total gross project costs are then estimated at approximately \$31,041,000. The capital structure as proposed consists of a construction loan of \$21.73mm (70% LTC), developer equity of \$4.31mm (13.9% of total), and the aforementioned \$5mm grant (16.1%). All other items being the same (\$1.35/sf rent, 7.5% cap), this scenario yields a project value of approximately \$25mm in Year 10, and an IRR of about 11.5%.

### Scenario 3: 120 APARTMENTS, NO MOTEL

As noted above, the developer subsequently submitted an alternate plan with less density containing 120 apartment units, which totaled \$23mm in costs, again without the motel component. However, this version included a \$6mm TIF ask, rather than the City's maximum of \$5mm. Ehlers revised the sources of capital to reflect the proper amount of the TIF grant, and the resultant 70% LTC loan of \$16.2mm and equity of \$1.96mm (8.45% of total costs) for a \$23.2mm total cost. Without the motel parcel, the sale to the daycare center was relocated to the southeast parcel, and the projected commercial land sale was consequently deleted from the budget. The same "agreed-upon" market rent of \$1.35/sf and 7.5% cap rate were used in the income projections. While the total costs were reduced because of a lower number of apartments, the other costs, including sitework and DOT requirements, were spread out over fewer income-producing units. Returns on this basis were 9.96%. The project could still be increased to the full 180 units at a later date, however it is unclear if any further funding assistance would be provided by the City.

### **AFFECT ON TID VALUE AND TIMING**

Under the above alternate scenarios and related assumptions, the 180-unit project would produce a value of approximately \$25mm upon sale after a 10-year investment period and a conservative 7.5% capitalization rate. The value at initial buildout, measured at a current market cap rate of 6.75%, would be approximately \$24mm, generating an estimated \$570,000 of annual property tax in the first full year of collections. TID #3, under its statutory life, has a final revenue year collection year of 2026, therefore the tax revenue collections from this project during the remaining years of this district will not be sufficient to support the assistance requested for this project, and the tax revenue stream from the existing development value within the district will be drawn upon to support a portion of the assistance to this project. We have assumed the City would issue a taxable general obligation note to finance the \$5 million upfront assistance, and also enter into a \$1.85 million (net) non-interest bearing municipal revenue obligation if the motel parcel is included. Utilizing the tax increment from this development and the existing revenue stream of the TID, the district would have sufficient funds available to retire these obligations as well as all other current obligations of the TID by 2022, and would then be in a position to close the district earlier than its statutory life.

For the reduced scope 120-unit project, the projected sale value after a 10-year hold would be about \$16.7mm, utilizing the same conservative 7.5% cap rate; at initial completion, and at a current 6.75% cap, the project value of \$16mm and would produce first full year taxes of approximately \$380,000 per year. As stated above, due to the limited number of years remaining on the district's life, the taxes collected would not be sufficient to cover the assistance to the development and the City would need to rely on the tax revenue collection on the existing development within the district the support a \$6 million upfront contributions financed with a taxable general obligation note issue. The projected cashflow from this development and the existing TID revenue stream would be sufficient to recover the cost to finance this support and all other current obligations of the district allowing it to close in 2021. It was noted that the TID statutorily closes in 2025 with the last year of revenue available for project costs in 2026.

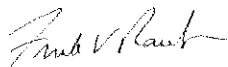
## SUMMARY

Generally, we would expect investor returns to be in the 12-15% range (IRR) depending on the product type and market location. The scenarios outlined above indicated a range between nearly 10% to 12.5% depending on the size/density of the project, which we feel are reasonable assuming a \$5mm grant for the primary (apartment) portion of the project, and a PAYGO component if the motel piece is included. In the latter analysis, it was assumed that the City would provide 60% of the increment to the developer. It has been noted that the revenue projections and other assumptions have been conservatively estimated for this process. In this instance, the developer's numbers indicated that rents of \$1.65/sf would be needed to make the project viable without City assistance but are not achievable in the market; we are using \$1.35 per foot in this analysis, and at that level, the project would not be undertaken but for the City's participation by way of a grant and/or PAYGO assistance.

Since the costs and revenues that have been provided by the developer are conservative estimates, we believe that it would be prudent for the City to include cost-saving provisions in any agreement to provide assistance to this project. Upon completion of construction, a cost review should be performed to ensure the requested funds were incorporated into the project, thus satisfying part of the "but for" test of the need for project support. Secondly, an operating "look-back" provision should also be included, which would be performed at the earlier of a project sale, or, after a 10 year operating period, a "mock sale" to be calculated at prevailing market rates at that time. Doing so would allow the City to re-calculate the return based upon actual costs and developer returns, and would allow for the City to adjust its participation if the costs are significantly lower and/or the returns higher than projected up front.

Please let us know if there is any further analysis you would like us to perform.

Kind Regards,



Frank Roman  
Municipal Advisor

cc: Mike Harrigan, Ehlers  
Dawn Gunderson, Ehlers

*Draft 10/13/17*

*[Below is a 'clean' copy of Developer's/City staff's proposed changes to the City pro forma development agreement terms and added project specific terms and provisions; same remains under review and negotiation.]*

**TAX INCREMENTAL DISTRICT NO. 3  
DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF FRANKLIN AND  
TI INVESTORS OF FRANKLIN APARTMENTS LLC**

**Mixed Use Development at  
7333 South 27th Street and 7273 South 27<sup>th</sup> Street**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is entered into as of October 17, 2017 by and between TI Investors of Franklin Apartments LLC, a Wisconsin limited liability company, its successors and/or assigns ("Developer"), Zilber Ltd., ("Guarantor"), and the City of Franklin ("City"), a municipal corporation of the State of Wisconsin, located in Milwaukee County.

**RECITALS**

City, Developer and Guarantor acknowledge the following:

A. Developer has the contractual right to purchase the real property located at 7333 South 27th Street and 7273 South 27th Street, legally described in **EXHIBIT A** attached hereto (the "Property"), which property is located within the District (as defined below).

B. The Property is located within the boundaries of Tax Incremental District No. 3, City of Franklin, Wisconsin (the "District"). Pursuant to Wis. Stat. §66.1105 (the "Tax Increment Law"), the City adopted a plan for redevelopment within the District (the "Project Plan"), in which certain costs incurred by the Developer for development of the Property may be reimbursed from the property tax increment as provided by the Tax Increment Law, the details of which are set forth herein.

C. The Developer desires to develop the Property by constructing the Project (as hereinafter defined), which shall include without limitation the construction of one hundred and eighty (180) apartment units, a two (2) acre commercial development parcel, and a public road; the demolition of an existing motel and single-family house; and the future creation of a minimum two (2) acre commercial parcel, in addition to honoring the current valid lease of the existing restaurant, all to meet the City's B-4 zoning classification.

D. To promote such development, the City created the District to assist in the financing of the cost of certain improvements, cash grants/developer incentives, and other costs associated with the development of properties, including the Property, located in the District.

E. The Project contemplated by this Agreement is necessary and desirable to serve the interests of the City and its residents by expanding the tax base of the City and

providing additional development and employment opportunities, all consistent with the purpose of the Tax Increment Law.

F. The Developer would not undertake the construction of the Project without tax incremental financing to fund a portion of the costs thereof.

G. The City desires to encourage economic development, expand its tax base and create new jobs within the City, the District and upon the Property. The City finds 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.

H. The City is authorized to enter into contracts necessary and convenient to implement the purpose of a tax incremental district, including the ability to provide cash grants/developer incentives to owners, lessees, and developers of land located within the District.

I. The City, pursuant to Common Council action dated October 17, 2017, has approved this Agreement and authorized its execution by the proper City officials on the City's behalf.

J. 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 in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **DEFINITIONS**

A. Actual Cost. The "Actual Cost" is the amount paid by Developer for Project Costs. Actual Costs may be verified by the City as set forth in Subsection B. (4) of Article II and Subsection A. (5) of Article III.

B. Architect. The "Architect" for the Project is Epstein Uhen Architects, a Wisconsin corporation, or other licensed firm contracted by Developer for the Project.

C. Building Contractor. The "Building Contractor" is the general contractor contracted by the Developer to construct the site work and vertical construction components of the Project.

D. Building Construction Contract. The "Building Construction Contract" is the contract between Developer and the Building Contractor responsible for the vertical construction whereby the Building Contractor agrees to construct the one hundred and eighty (180) apartment units and associated amenities.

E. City Grant. The "City Grant" is a financial grant and incentive in an amount not to exceed Five Million Dollars (\$5,000,000.00) made available to Developer by the City pursuant to this Agreement to be used solely toward Project Costs, with the exception of costs related to the 7273 Improvements.

F. Construction Loan Disbursement Agreement. The "Construction Loan Disbursement Agreement" means that certain Construction Loan Disbursement Agreement to be entered into by and among Developer, Lender, City, Title Company, Contractor, and Architect, governing the disbursement of equity funds, grant funds, and loan funds for the development of the Project. The Construction Loan Disbursement Agreement shall be in the form attached hereto as **EXHIBIT H**.

G. Developer PAYGO. The "Developer PAYGO" is an incentive in an amount not to exceed Two Million Dollars (\$2,000,000.00) paid by Developer towards the 7273 Improvements, that shall be reimbursed to Developer out of District increment with repayment of the City Grant as more particularly set forth below.

H. Developer's Improvements. "Developer's Improvements" are the improvements constructed upon the Property by Developer which are comprised of the 7333 Improvements and the 7273 Improvements as more particularly set forth in **EXHIBIT B** attached hereto and incorporated herein.

I. Disbursement Agreement. The "Disbursement Agreement" is the agreement to be entered into by and between Developer, City, Lender, and the Title Company, providing for the disbursement of the Equity Contribution, City Grant, Developer PAYGO, and proceeds of the Loan, all in form acceptable to the City. The Disbursement Agreement shall be in the form attached hereto as **EXHIBIT H**.

J. District Tax Increment. The term "District Tax Increment" has the same meaning as defined in the Tax Increment Law, as applied to the Tax Increment revenues actually received and retained by the City which are generated by all property located in the District other than the Property.

K. Engineer. The "Engineer" for the Project is Trio Engineering or other licensed firm contracted by Developer for the Project.

L. Equity Contribution. The "Equity Contribution" is the funds invested by Developer in furtherance of the construction of the Project, as required by the Lender for the Loan. The Equity Contribution shall be not less than Five Million Dollars (\$5,000,000.00).

M. Guarantor. The "Guarantor" is Zilber Ltd.

N. Landscape Architect. The "Landscape Architect" for the Project is Kapur Engineering or other licensed firm contracted by Developer for the Project. Kapur Engineering also completed the site lighting design.

O. Lender. The "Lender" is the institution providing construction financing to the Developer for the Project.

P. Loan. The "Loan" is that certain construction financing obtained by the Developer for the Project.

Q. Project. The "Project" is, collectively, the Property and Developer's Improvements.

R. Project Costs. The "Project Costs" are the total costs to develop the Project. The initial estimated Project Costs are set forth on **EXHIBIT C PROJECT BUDGET** and subject to verification by the City. Project Costs shall clearly define costs associated with 7333 Improvements and 7273 Improvements.

S. Project Tax Increment. The term "Project Tax Increment" has the same meaning as defined in the Tax Increment Law, as applied to the Tax Increment revenues actually received and retained by the City which are generated solely by the Property.

T. Public Improvements. The "Public Improvements" shall mean the construction of a public road connecting South 27th Street and South 31st Street, sanitary sewer main and appurtenances, storm sewers and appurtenances, and water main and appurtenances, including but not limited to hydrants, and such other improvements as may be specified in a separate agreed upon City standard form development agreement.

U. 7333 Improvements. The "7333 Improvements" are the Developer's Improvements located on the 7333 South 27th Street portion of the Property, which include, but are not limited to, the following: one hundred eighty (180) apartment units consisting of approximately 293,910 rentable square feet, approximately 200 gross indoor parking stalls, approximately 84 outdoor parking stalls, recreation building and associated apartment amenities; a two (2) acre pad-ready commercial parcel; construction of the public road with associated sanitary sewer, storm sewer and water, and other ancillary improvements necessary to complete the Developer's Improvements on this portion of the Property.

V. 7273 Improvements. The "7273 Improvements" are the Developer's Improvements located on the 7273 South 27th Street portion of the Property which include, but are not limited to, the following: the cost of acquisition of 7273 South 27th Street; demolition of the existing motel and single family property; creation of a future commercial parcel of a minimum of two (2) acres for redevelopment of the site of the existing motel, restaurant and single family home; and assumption of the current valid lease of the existing restaurant building and other ancillary improvements necessary to complete the Developer's Improvements on this portion of the Property.

W. Site Construction Contract. The "Site Construction Contract" is the contract between Developer and the Site Contractor whereby Site Contractor agrees to construct the necessary site improvements to serve the Project.

X. Site Contractor. The "Site Contractor" is the general contractor contracted by the Developer to construct the necessary site improvements to serve the Project.

Y. Substantial Completion. The term "Substantial Completion", as it relates to the 7333 Improvements, shall mean that the issuance of certificates of occupancy for each of

the 7333 Improvements residential units has occurred and creation of a parcel along S. 27<sup>th</sup> Street for future commercial development. "Substantial Completion", as it relates to the 7273 Improvements, shall mean all buildings, except for the existing restaurant building, have been removed, the site is brought to a reasonable grade as it relates to the adjacent roadway, and proper drainage and ample parking have been provided for the restaurant, all pursuant to and in compliance with all applicable governmental laws, statutes, rules, codes, orders and ordinances.

Z. Tax Increment. "Tax Increment" shall mean all tax increments (as defined by the Tax Increment Law) collected and retained by the City as set forth in Subsection B.(3) of Article II and Subsection A. (3) of Article III.

AA. Title Company. The "Title Company" is Wisconsin Title Service Company, Inc. The contact person is Mark Ciborowski.

## **ARTICLE I DEVELOPER ACTIVITIES AND OBLIGATIONS**

A. Developer shall construct the Project in accordance with all applicable City zoning and building codes, ordinances and regulations. Developer warrants and represents to the City that the Project will be comprised of approximately 300,000 square feet of developed building space and that total development costs expended on the Project (inclusive of personal property) shall be not less than Twenty-Two Million Five Hundred Thousand Dollars (\$22,500,000.00). Developer or an affiliate shall substantially complete construction of the Project on or before May 1, 2020 ("Completion Date"), all in accordance with final plans and specifications (including landscaping and lighting plans) approved by the City (the "Plans and Specifications"). Copies of the Plans and Specifications will be retained at the offices of the City Economic Development Department. Each portion of the Project shall be deemed to be substantially complete on the date that the City Building Inspector issues each certificate of occupancy for each portion 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 a certificate of occupancy if the Project does not conform to the Plans and Specifications, subject to any changes to the Plans and Specifications that may have been approved by the City.

B. The Project shall include the construction of the Public Improvements. Developer will complete the installation of the Public Improvements in accordance with City specifications, including the execution of a separate agreed upon City standard form development agreement where applicable terms thereof are not specifically set forth in this Agreement, and Developer will dedicate Public Improvements to the City in accordance with City inspection and acceptance procedures. If required by applicable law, Developer agrees to comply with public bidding requirements under the Wisconsin Statutes for all work involving improvements to public rights of way or public property or that constitutes public improvements under applicable law. 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 Public Improvements unless Public Improvements have been constructed in a good and workmanlike manner, in accordance with the City-approved plans for Public Improvements, and otherwise are in a condition reasonably acceptable to



the City. Following approval by the City of each completed Public Improvements as described, Public Improvements shall be conveyed to the City. 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 Public Improvements, a one-year warranty against defects in construction, materials, and workmanship, in a form reasonably acceptable to the City.

C. The Developer shall arrange for funding for all costs of the Project in excess of the funds provided by its Lender and the City. Developer will provide evidence to the reasonable satisfaction of the City that Developer has secured sufficient debt and equity financing commitments to enable the Project to proceed. Upon written request, Developer shall deliver to the City a copy of any mortgage recorded or to be recorded against title to the Property or any portion thereof.

D. The Developer shall commence construction of Developer's Improvements as soon as is reasonably possible after closing on the acquisition of the Property and the Loan, but in any event on or before June 1, 2018. After commencement of construction, Developer shall diligently proceed to and obtain the Substantial Completion of all of Developer's Improvements on or before the May 1, 2020 Completion Date. Upon Substantial Completion, Developer shall submit to the City an obtained and executed Certificate of Completion in the form attached hereto as **EXHIBIT E**.

E. Time is of the essence regarding Developer's obligation to commence and complete the Project. The Developer acknowledges that the timely performance of Developer's work, Site Contractor's work and the Building Contractor's work under this Agreement is critical to the collection of the Tax Increment upon which the City is relying as a primary component of the consideration for entering into this Agreement.

F. The Developer hereby grants to City, its agents, employees, officials, representatives, and contractors the right to enter upon the Property, at all reasonable times, for the purposes of facilitating the City's inspection of the construction of the Project.

G. Developer shall deliver to the City, as soon as available but in no event later than sixty (60) days after Substantial Completion, an accounting of all Project Costs, in a form substantially similar to the Project Budget attached hereto, detailing the actual cost of the Project.

H. The Project shall be in compliance with all applicable governmental laws, statutes, rules, codes, orders and ordinances, including, but not limited to with all applicable zoning ordinances and land use guidelines of the City, as approved by the City Plan Commission where applicable and as recommended by the City Plan Commission and approved by the City Council, including but not limited by the payment of any applicable permit and impact fees. Nothing in this Agreement or the Project shall obligate the City to grant variances, exceptions, or conditional use grants related to the Project, except as may have already been granted through the City's approval process.

I. The Developer, Site Contractor, Building Contractor, and all subcontractors selected by the Site Contractor, the Building Contractor and the Developer for the Project shall be licensed to do business in the State of Wisconsin, shall have experience in providing

the type of work and materials required of the Project, and to the knowledge of the Site Contractor, Building Contractor and Developer, have a good reputation for diligent performance of their obligations under their respective contracts.

J. All work to be performed and obtained by the Developer related to the Project shall be performed in a good and workmanlike manner and consistent with the prevailing industry standards for such work in the area. Developer, the Site Contractor and the Building Contractor shall perform all work in compliance with all applicable laws, regulations, ordinances, and building codes and shall obtain and maintain all necessary permits and licenses for such work.

K. Guarantor shall enter into a guarantee agreement with the City specifying that Guarantor shall guarantee completion of the Project by the Completion Date as referenced in Article I D. above. The guarantee agreement shall be in the form attached hereto as **EXHIBIT I.**

## **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, applications and dedications in accordance with applicable City ordinances.

B. The City shall make a financial contribution to the Project Costs, excluding the cost of the 7273 Improvements, (the "City Grant Project Costs") in the amount of Five Million and 00/100 Dollars (\$5,000,000.00) (the "City Grant"), subject to the terms set forth below. Notwithstanding any other language in this Agreement, City's obligations in this Article shall only become effective upon the satisfaction of the conditions precedent, as set forth below.

(1) **Payment of Eligible Costs; City Grant.** The City agrees to provide the City Grant for the City Grant Project Costs in the amount of Five Million and 00/100 Dollars (\$5,000,000.00) subject to adjustment as provided in Sections 4, 5 and 6 hereof. The City intends to issue municipal bonds or promissory notes to finance the City Grant. The funds from the City Grant shall be used solely to pay for the City Grant Project Costs. City shall deposit the City Grant with the Title Company to hold for disbursement. All payments made to the Developer for such work from the City Grant shall be processed and disbursed in accordance with this Agreement and pursuant to the Disbursement Agreement executed by Developer, City and all other parties thereto on or before closing on the Loan. The Disbursement Agreement shall provide that disbursements of the City Grant shall be in accordance with the following funding sources and sequences: (1) first, the Equity Contribution shall be entirely disbursed to pay for City Grant Project Costs, and then (2) the City Grant and the Loan proceeds shall be disbursed on a *pari passu* basis to pay for such City Grant Project Costs. The foregoing stated funding sources and sequences are only for the purpose of allocating City Grant Project Costs among the funding sources. The City Grant shall be disbursed in six (6) equal increments of Eight Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars

(\$833,333.00), and the Disbursement Agreement shall provide that the City Grant shall only be disbursed, following Substantial Completion of the 7273 Improvements and upon the delivery by the City of a Certificate of Completion to the Title Company for each of the six (6) thirty (30)-unit apartment buildings being constructed.

(2) **Payment Applications.** Developer shall provide the City with a copy of all applications for payment for the City Grant Project Costs relating to the 7333 Improvements submitted to the Title Company, as and when submitted to the Title Company.

(3) **Application of Increment.** City shall use ninety percent (90%) of the existing District Tax Increment, up to ten percent (10%) being retained by the City for administrative costs and expenses as it determines necessary, excluding any Tax Increment generated from the Property and Improvements to pay off all existing District bonds and debts until paid in full. Thereafter, City shall use ninety percent (90%) of the existing District Tax Increment, up to ten percent (10%) being retained by the City for administrative costs and expenses as it determines necessary, to pay back the City Grant and the Developer PAYGO on a pro rata basis (i.e., 5/7 to the City Grant and 2/7 to the Developer PAYGO) until each is paid in full, even if the District has entered into additional agreements obligating the District to issue bonds or debts subsequent to this Agreement. Ninety percent (90%) of the Project Tax Increment, up to ten percent (10%) being retained by the City for administrative costs and expenses as it determines necessary, will be used to pay back the City Grant and the Developer PAYGO on a pro rata basis as set forth herein until paid in full, regardless of any subsequent agreements entered into by the City within the District.

(4) **Cost Savings, Reconciliation.**

(a) **Cost Savings.** If, upon the Final Completion of the Project (as defined below), the actual amount of Project Costs incurred by Developer to design and construct the Project, but excluding operating expenses (the "Actual Cost"), is less than the projected Project Costs provided in **EXHIBIT C** attached hereto, as amended by the Updated Budget, (the "Cost Savings") then Developer shall pay to City, in addition to any other obligations provided under this Agreement, the same prorata amount of the Cost Savings as is set forth above for the application of the Tax Increment generated (5/7 to City; 2/7 to Developer PAYGO reduction) provided, however, that such payment to the City shall not exceed the amount of the City Grant. As soon as practicable, but in any case within ninety (90) days after Substantial Completion, Developer shall provide to City a written statement, attested to by Developer and in a form and containing a level of detail reasonably acceptable to the City, that compares the Actual Cost to the Projected Cost and identifies any Cost Savings (the "Cost Savings Statement"). If any Cost Savings are identified, then Developer shall pay to City such amount commensurately with the presentation of the Cost Savings Statement. As used herein, the term "Final Completion of the Project" shall occur when (a) the Project is Substantially Complete, and (b) all final construction items of a punch list nature for the Project have been completed; provided, however, that in no case shall the date of Final Completion of the Project be later than ninety (90) days after the date of Substantial Completion.

(b) **Reconciliation.** City, in conjunction with its review of the Cost Savings Statement, may request access to Developer's books and records relating to the Actual

Cost, and, if such request is made by the City, such books and records shall be promptly made available to the City. If City provides to Developer a written rejection of the Cost Savings Statement, the City and Developer shall work together to resolve any discrepancies in the Cost Savings Statement. If the discrepancies in the Cost Savings Statement cannot be resolved within ninety (90) days after the date of the City's rejection of the Cost Savings Statement, then the matter shall be referred to an accounting firm mutually acceptable to City and Developer for a conclusive determination relating to Cost Savings that shall be binding on City and Developer (the costs of such independent review shall be split evenly by City and Developer).

(c) **Cost Overruns.** In the event the Actual Cost is equal to or greater than the Project Costs provided for in Exhibit C, Developer shall be entitled to receive the full City Grant and upon receiving the full City Grant shall be obligated to cover the remaining City Grant Project Costs either through Equity Contribution or the Loan.

(5) **Sharing of Profits with City.** In consideration of the benefits provided to the Developer under this Agreement including without limitation the City Grant, the Developer agrees to share with City certain profits derived from the Project pursuant to the following terms and conditions:

(a) **Profit Sharing.** If that portion of the Project consisting of the one hundred eighty (180) apartment units is sold, and as of the date of sale any portion of the City Grant or Developer PAYGO remains outstanding, and the financial returns from the Project are such that Developer's internal rate of return, or IRR (as defined below) for the Project, exceeds fifteen percent (15.0%) per annum, as determined upon the occurrence of the Project sale date, then Developer shall share with the City the returns in excess of fifteen percent (15.0%) IRR (the "Shared Profits"), if any, as follows: (1) fifty percent (50%) of the Shared Profits shall be retained by Developer, and (2) fifty percent (50%) of the Shared Profits shall be paid to the City. The City's portion of the Shared Profits shall be limited to the balance of the City Grant and Developer PAYGO outstanding as of the date of sale. Upon the full repayment of the City Grant and Developer PAYGO, this Section shall no longer be applicable.

(b) **Internal Rate of Return.** Developer's internal rate of return, or "IRR," for the Project shall mean or refer to the discount rate that makes the cumulative net present value of Developer's equity investment in the Project and Developer's actual and, if applicable, deemed receipts of revenue and other distributions arising out of or relating to the Project equal to zero; provided that, in determining IRR, Developer and City shall take into account the amount and timing of Developer's equity investment in the Project and the amount and timing of Developer's actual receipts of revenue and other distributions arising out of or to the Project; and provided further that the determination of IRR at any time shall be made in accordance with the methodology set forth in **EXHIBIT F** attached hereto (the "IRR Methodology"). The IRR shall be determined based upon the net sale proceeds actually received by the Developer, net of costs, taxes, fees and commissions. The IRR calculations under this Subsection (b) 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.

(c) **IRR Statements.** In the event any portion of the City Grant and Developer PAYGO remains outstanding at the time of sale of the portion of the Project consisting of the one hundred eighty (180) apartment units, as soon as practicable, but in any case within sixty (60) days after the date that the portion of the Project consisting of the one hundred eighty (180) apartment units is sold, Developer shall provide to the City a written statement, attested to by Developer and in a form and containing a level of detail reasonably acceptable to the City, that identifies the IRR through such sale (the "**IRR Statement**"). City, in conjunction with its review of the IRR Statement, may request access to Developer's books and records relating to the calculation of the IRR, and, if such request is made by the City, such books and records shall be promptly made available to the City. If City provides to Developer a written objection to the IRR Statement, the City and Developer shall work together to resolve any discrepancies in the IRR Statement. If the discrepancies in the IRR Statement cannot be resolved within ninety (90) days after the date City objects to the IRR Statement, then the matter shall be referred to an accounting firm mutually acceptable to City and Developer for a conclusive determination regarding IRR and Shared Profits, if any, that shall be binding on City and Developer (the costs of such independent review shall be split evenly by City and Developer).

(d) **Payment of Shared Profits.** If the IRR Statement indicates there are Shared Profits, then Developer shall pay to City the City's portion of the Shared Profits commensurately with the presentation of the IRR Statement up to the then outstanding balance of the City Grant and Developer PAYGO. If City objects to any IRR Statement and it is later determined that there are Shared Profits (or that there are more Shared Profits than originally stated in the IRR Statement), then such Shared Profits shall be paid to City within ten (10) days of such final determination, along with interest from the date the Shared Profits should have been paid at an interest rate equal to the Prime Rate (as determined by the *Wall Street Journal*) plus two percent (2%) per annum up to the outstanding balance of the City Grant and Developer PAYGO as of the date the Shared Profit should have been paid.

(6) **Proceeds from Sale of Commercial Parcel.** The Project Budget includes estimated net sales proceeds from the sale of the commercial parcel to be created at 7333 S. 27th Street of Five Hundred Thousand and 00/100 Dollars (\$500,000.00). If, upon the sale of the commercial parcel, the actual amount of net sales proceeds exceeds Five Hundred Thousand and 00/100 Dollars (\$500,000.00), then Developer shall pay in addition to any other obligations provided under this Agreement, 5/7 of the amount of the additional net sales proceeds to the City to be applied first to the City Grant and then the Developer PAYGO to reduce the outstanding balances of the City Grant and the Developer PAYGO. The additional 2/7 of the amount of the net sales proceeds may be retained by the Developer. Payments to the City shall not exceed the amount of the City Grant and the Developer PAYGO. As soon as practicable, but in any case within sixty (60) days after the closing date, Developer shall provide to City a written statement, attested to by Developer and in a form and containing a level of detail reasonably acceptable to the City, calculating the net sales proceeds of the sale. Once the City Grant and the Developer PAYGO have been reimbursed to the City in full, all additional net sales proceeds shall be retained by the Developer.

(7) **Conditions Precedent to City Grant.** Prior to the City's execution of the Disbursing Agreement and as Conditions Precedent to providing the City Grant,

Developer shall, at Developer's expense, satisfy the following conditions and shall deliver to City for review and approval, at least twenty (20) days before the initial funding of the City Grant unless otherwise expressly stated below, the items listed below, it being understood that if any of these conditions are not timely satisfied or if any of the documents are not timely delivered, or if any of the information contained in the documents is not reasonably acceptable to City, City shall have no obligation to close and fund the City Grant:

(a) **Conveyance of Property.** Developer shall have provided City with evidence reasonably satisfactory to the City that Developer owns fee simple title to the Property (the "Closing").

(b) **Execution of Documents.** Each of this Agreement, the Disbursement Agreement, and the Guaranty shall have been executed and delivered by City, Developer, Guarantors, Title Company (as the case may be) and any other parties to such agreements.

(c) **Sources and Uses Statement.** Developer shall have provided to City a written statement, in a form reasonably acceptable to City, detailing all sources of financing for the Project and Developer's expected uses of such Project financing.

(d) **Insurance.** Developer shall provide City with evidence of builder's risk and full replacement cost insurance fully insuring the Project, not including the dedicated Public Improvements. All insurers shall be subject to City's reasonable approval. Each insurance policy shall provide that coverage under the policy may not be terminated without at least thirty (30) days' prior written notice to City. Upon request by City, Developer shall provide evidence of timely payment of all insurance premiums. City shall be named as an additional insured under any liability or property/casualty insurance policies obtained by Developer or its agents or contractors relating to the Project.

(e) **Approvals.** Developer shall provide City with copies of permits, licenses and other documents as reasonably requested by City to confirm that Developer has complied with all necessary federal and state laws, regulations and, ordinances necessary to obtain the governmental approvals required for the intended construction of the Project.

(f) **Plans and Specifications.** Developer shall have provided City with a copy of all plans and complete specifications for construction of the Project, which plans and specifications must be reasonably acceptable to City. The plans and specifications must be signed by Developer, Architect, Engineer, Landscape Architect, the Site General Contractor and the Building General Contractor, as the case may be.

(g) **Organizational Documents.** Developer shall have provided City with copies of the following organizational documents: (a) Articles of Organization, and (b) a consent resolution authorizing the development of the Property and the execution and delivery of this Agreement, the Disbursement Agreement and the Loan documents.

(h) **Loan.** Developer shall have closed on the Loan, pursuant to which the Lender is committed to fund toward the Project Costs all loan funds called for under the Updated Budget, subject only to typical construction funding conditions and requirements reasonably satisfactory to the City and Developer.

(i) **Contingency Waiver Notice.** Developer shall have provided to City the Notice of Intent to proceed.

(j) **Approval.** Developer has obtained approval from the City Engineer with respect to plans and specifications relative to the Public Improvements.

### **ARTICLE III DEVELOPER PAYGO TERMS AND CONDITIONS**

A. The Developer shall make a financial contribution to the 7273 Improvements (including the cost of acquisition) in an amount not to exceed \$2,000,000 (the "Developer PAYGO") to be reimbursed out of Project Tax Increment and District Tax Increment. Notwithstanding any other language in this Agreement, City's obligations in this Article shall only become effective upon the satisfaction of the Conditions Precedent, as set forth below.

(1) **Payment of Eligible Costs; Developer PAYGO.** The Developer agrees to provide the Developer PAYGO for the 7273 Improvements, in an amount not to exceed \$2,000,000, subject to adjustment as provided in Sections 5 and 6 below. The City intends to reimburse the Developer PAYGO from Project Tax Increment and District Tax Increment. The funds from the Developer PAYGO shall be used solely to pay for the 7273 Improvements. All payments made by the Developer for such work shall be processed and disbursed in accordance with this Agreement and pursuant to the Disbursement Agreement executed by Developer, City and all other parties thereto on or before closing on the Loan. The Disbursement Agreement shall provide that disbursements of the Developer PAYGO shall be in accordance with the following funding sources and sequences: (1) first, the Developer PAYGO shall be used for Project Costs and acquisition costs associated with the 7273 Improvements, then (2) the Developer shall pay any additional amounts necessary to complete the 7273 Improvements.

(2) **Payment Applications.** Developer shall provide the City with a copy of all applications for payment for the 7273 Improvements submitted to the Title Company, as and when submitted to the Title Company.

(3) **Application of Increment.** City shall use ninety percent (90%) of the existing District Tax Increment, up to ten percent (10%) being retained by the City for administrative costs and expenses as it determines necessary, excluding any Project Tax Increment to pay off all existing District bonds and debts until paid in full. Thereafter, City shall use ninety percent (90%) of the existing District Tax Increment, up to ten percent (10%) being retained by the City for administrative costs and expenses as it determines necessary, to pay back the City Grant and Developer PAYGO on a pro rata basis (i.e., 5/7 to the City Grant and 2/7 to the Developer PAYGO) until each is paid in full, even if the District has

entered into additional agreements obligating the District to issue bonds or debts subsequent to this Agreement. Ninety percent (90%) of the Project Tax Increment, up to ten percent (10%) being retained by the City for administrative costs and expenses as it determines necessary, will be used to pay back the City Grant and Developer PAYGO on a pro rata basis as set forth herein until each is paid in full, regardless of any subsequent agreements entered into by the City within the District. The City obligation to pay back the Developer PAYGO shall commence upon Substantial Completion of the 7273 Improvements.

(4) **Interest.** The Developer PAYGO shall be reimbursed as described above. The outstanding amount of the Developer PAYGO shall bear interest at four and one-half percent (4.5%). The accrued interest shall be reimbursed out of Project Tax Increment and District Tax Increment in addition to the principal amount contributed by the Developer towards the Developer PAYGO.

(5) **Cost Savings, Reconciliation.**

(a) **Cost Savings.** If, upon the Substantial Completion of the 7273 Improvements, (a) the actual amount of Project Costs incurred by Developer to design, acquire and construct the 7273 Improvements (the "7273 Actual Cost") is less than the projected Project Costs associated with 7273 Improvements provided in **EXHIBIT C** attached hereto, as amended by the Updated Budget (the "Cost Savings"), then the Developer PAYGO shall be reduced by the amount of the Cost Savings.

(b) **Reconciliation.** City, in conjunction with its review of the 7273 Actual Cost, may request access to Developer's books and records relating to the 7273 Actual Cost, and, if such request is made by the City, such books and records shall be promptly made available to the City. If City provides to Developer a written rejection of the 7273 Actual Cost, the City and Developer shall work together to resolve any discrepancies. If the discrepancies cannot be resolved within ninety (90) days after the date of the City's rejection of the 7273 Actual Costs, then the matter shall be referred to an accounting firm mutually acceptable to City and Developer for a conclusive determination relating to the 7273 Actual Cost that shall be binding on City and Developer, with the costs of such independent review split evenly by City and Developer.

(6) **Sale Proceeds.** The Project Budget includes no estimated net sales proceeds from the sale of the commercial parcel to be created at 7273 S. 27th Street. Upon the sale of such commercial parcel, 5/7 of the amount of the net sales proceeds shall be applied first to the City Grant and then the Developer PAYGO on a pro rata basis to reduce the then outstanding balance of the City Grant and the Developer PAYGO. 2/7 of the amount of the net sale proceeds may be retained by the developer. Once the City Grant and the Developer PAYGO have been reimbursed to the City in full, all remaining proceeds shall be retained by the Developer.

(7) **Conditions Precedent to Developer PAYGO.** Prior to the City's execution of the Disbursing Agreement and as Conditions Precedent to the City agreeing to reimburse the Developer PAYGO from District Tax Increment, Developer shall, at Developer's expense, satisfy the conditions set forth in Article II.B.(7)(a) through (j) above



and shall deliver to City for review and approval, the items listed in such sections, it being understood that if any of these conditions are not timely satisfied or if any of the documents are not timely delivered, or if any of the information contained in the documents is not reasonably acceptable to City, City shall have no obligation to reimburse the Developer PAYGO.

(8) In consideration of the performance by Developer of its obligations under this Agreement, the City agrees to issue to the Developer a tax increment revenue bond (the "Bond") in a principal amount not to exceed \$2 million, subject to downward adjustment as set forth in Sections (12) and (13) of this Article III. The City shall issue the Bond to the Developer not later than fifteen (15) days following the date Developer submits to the City a written certification of Substantial Completion of the 7273 Improvements in the form attached hereto as **EXHIBIT E**.

(9) Interest shall begin to accrue on the Bond on the date that the 7273 Improvements are Substantially Complete. The Bond shall bear interest at the rate of four and one-half percent (4.5%) per annum; provided, however that if the interest rate on the funds borrowed by Developer that are being repaid by proceeds of the Bond is less than four and one-half percent (4.5%) per annum (the "Matching Funds Interest Rate"), then the interest rate on the Bond shall be reduced by the difference between four and one-half percent (4.5%) and the Matching Funds Interest Rate. (For example, if the Matching Funds Interest Rate is four percent (4%), then the interest rate on the Bond shall be four percent (4%)). Developer shall inform and provide verifiable documentation thereof to the City of the Matching Funds Interest Rate at such time as Developer procures and executes a loan commitment for such funds.

(10) The Bond shall be issued in substantially the form attached here to as **EXHIBIT G**. The Bond shall have a term that extends for 6 years following the year in which the 7273 improvements have been fully assessed as a completed project (e.g., assuming the Project is substantially completed on May 1, 2018 and fully assessed as of January 1, 2019, then the Bond would mature on June 30, 2025). Installments of principal and interest on the Bond will be due and payable on March 1 of each year commencing on the March 1 following the issuance of the Bond (the "Bond Payment Date"). The amount of the annual payment of principal and interest due on each Bond Payment Date shall be calculated and applied in accordance with Article II.B(3) and Article III.A(3) of this Agreement. "Tax Increment" shall mean all tax increments (as defined by the Tax Increment Law) collected and retained by the City as set forth in Subsection A.(3) of this Article III. Tax Increment appropriated to make payments on the Bond shall first be applied to accrued interest on the Bond, with any remaining amount being applied toward principal. If on any Bond Payment Date there shall be insufficient Tax Increment to pay the principal or interest due on the Bond, the amount due but not paid shall accumulate and be payable on the next Bond Payment Date until the final Bond Payment Date, provided, however, that interest shall not compound on any unpaid amounts. The Bond shall be subject to prepayment in whole or in part at any time at the sole option of the City. The amounts and maturities of the installments of principal of the Bond which are to be prepaid shall be selected by the City, in its sole discretions, without penalty.

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

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

In each year the staff of the City shall include the appropriation of Tax Increment in the City budget as submitted to the Common Council for consideration for the next succeeding fiscal year. If the Common Council determines not to appropriate any portion of such Tax Increment, written notice thereof shall be provided to the Developer within 14 days. The City agrees that, following the retirement of existing obligations in the District, and for Project Tax Increment, subject to annual appropriation of said funds on an annual basis for the years after the receipt by the City of the first, 100% of all funds, exclusive of up to 10% for administrative costs and expenses, in the special fund of the District which constitute Tax Increment will be used first to make the payments due under the Bond proportionally with the City Grant, as previously outlined, and only after such payments have been paid in full for any particular year shall such funds in said special fund be used to pay any other project costs of the District

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

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

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

(a) The City shall not be entitled to subsequently retain any portion of the Tax Increment.

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

(c) Until such time as the City subsequently makes an annual appropriation for the years after the receipt by the City of 100% of all Tax Increment available, exclusive of up to 10% for administrative costs and expenses, on a Bond Payment Date toward payments due on the Bond, the City shall not issue any new tax increment revenue bonds similar to the Bond to other parties or as related to other properties within the District.

#### **ARTICLE IV 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. The Developer guarantees a minimum assessed value for the first assessment year after Substantial Completion of the Project of Twenty-Two Million Five Hundred Thousand Dollars (\$22,500,000) to ensure sufficient increment is generated to repay the City Grant and Developer PAYGO contributions from the District. Such guarantee shall continue for a maximum period of twelve (12) years from Substantial Completion, except the guarantee shall not apply if the assessed value drops below Twenty-Two Million Five Hundred Thousand Dollars (\$22,500,000) due to a force majeure event as set forth in Article IX Section E.

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 to the 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 City's share of 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. Upon any uncured Developer default, Developer's obligations under this **Article IV** 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 associated portion of 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 to the 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. 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 successors to the Developer and/or owner of the Property during the life of the Pilot Term.

#### **ARTICLE V NO PARTNERSHIP OR VENTURE**

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

#### **ARTICLE VI 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 process of the Project and the Agreement from the point of time when a potential conflict of interest arose and thereafter.

#### **ARTICLE VII 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 (iii) two business days following deposit with a nationally recognized overnight commercial carrier that will certify as to the date and time of delivery, or (iv) upon transmission if by facsimile or email, 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: Aaron Hertzberg, Director of Economic Development  
Facsimile No.: 414-427-7691  
Email address: [AHertzberg@franklinwi.gov](mailto:AHertzberg@franklinwi.gov)

AND a copy to: City of Franklin  
9229 West Loomis Road  
Franklin, WI 53132  
Attention: Sandra L. Wesolowski, City Clerk  
Facsimile No.: 414-425-6428  
Email address: [SWesolowski@franklinwi.gov](mailto:SWesolowski@franklinwi.gov)

If to the Developer: TI Investors of Franklin Apartments LLC  
710 N. Plankinton Avenue Suite 1100  
Milwaukee, WI 53203  
Attention: Michael King  
Phone: 414-274-2537  
Email address: [mking@zilber.com](mailto:mking@zilber.com)

AND a copy to: Sandi DeLisle, Esquire  
Corporate Counsel, Zilber, Ltd.  
710 N. Plankinton Avenue Suite 1200  
Milwaukee, WI 53203  
Email address: [Sandi.DeLisle@Zilber.com](mailto:Sandi.DeLisle@Zilber.com)  
Phone: 414-274-2438

## ARTICLE VIII 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 make timely payment of Real Estate taxes related any aspect of the Project

(2) Developer fails to pay any amounts when due under this Agreement and further fails to pay such amounts on or before ten (10) days following written notice of such failure; or

(3) 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

(4) 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

(5) Developer:

(a) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its 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 assets or properties, with or without consent, and such receiver shall not be discharged within ninety (90) days after his appointment; or

(e) adopts a plan of complete liquidation of its 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 obligation to

Developer 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 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 sixty (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 attorney's 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 IX MISCELLANEOUS**

A. Developer shall have in effect at all times, all permits, approvals and licenses as may be required by any governmental authority or, to the extent reasonably prudent or customary for similarly situated business operations, any non-governmental entity in connection with the development, construction, management and operation of the Project.

B. Developer shall maintain the following insurance policies issued by insurers authorized to do business in the State of Wisconsin, with A.M. Best 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:

(1) Following completion of construction of the Project, "all risks" property insurance insuring against such risks as are insured against by developers of similar projects, in amounts equal to one hundred percent (100%) replacement cost of all buildings, improvements, fixtures, equipment and other real and personal property constituting the Project (except the Public Improvements dedicated and accepted by the City) with a replacement cost endorsement and

(2) During the construction of the Project, builder's risk insurance on a replacement cost basis in commercially reasonable form and amounts no less than the value of the constructed improvements in place and "Soft Costs"; as defined as including but not limited to additional advertising, sales and marketing expenses, accounting fees, commission expenses, construction loan fees for rearranging financing, interest, leasing expenses legal fees, letter of credit fees, licensing or permit fees, loan closing costs, real estate and property taxes, founder's fees refunds, refinancing charges, and lease renegotiation; and

(3) During the term of this Agreement, general liability insurance covered under a commercial general liability policy including contractual liability in commercially reasonable form including coverages in amounts maintained by developers of similar projects, and insuring against bodily injury, including personal injury, death and property damage; and

(4) 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 Developer and the City of any material change, non-renewal or cancellation of such policy. The City shall be named as an additional insured on the Developer's commercial general liability policy.

C. (1) 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 Project, including without limitation: (1) 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; (2) 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; (3) 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 (1) and (2) above; (4) any violation by Developer at the Project of any environmental law, rule, regulation or ordinance; (5) claims arising under the Americans With Disabilities Act or similar laws, rules, regulations or ordinances; (6) the failure by Developer to comply with any term or condition of this Agreement; (7) injury to or death of any person at the Project; injury to any person caused by or at the Project; and (8) the failure of Developer to maintain, repair or replace, as needed, any portion of the Project; except, in each of the foregoing instances described in (1) through (8) above, to the extent negligently or willfully and wrongfully caused by the City or its agents, employees, contractors or representatives, subject to limitations provided to the City under Wis Statute 893.80.

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.



(2) Except as caused, in whole or in part, by negligence or wrongful act or omission of the City during the term of this Agreement. 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, 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; or

(iii) 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 related to the terms of this Agreement.

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 the Project by reason of fire, earthquake, war, flood, riot, strikes, labor disputes, governmental restrictions, judicial order, public emergency, or other causes or force majeure event beyond the control of the Developer, 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. 3, 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 Project, this Agreement may not be assigned by the Developer without the City's consent, which may be granted or withheld in the City's sole discretion, provided, however, Developer may assign or partially 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 to the Developer's lender(s) for the Project without the consent of the City. In the event that any such lender forecloses on its collateral and succeeds to Developer 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.

I. Developer shall timely construct and complete the Project as its primary obligation under this Agreement. In the event of fire, damage or any other casualty to any part of the Project, Developer agrees, at its cost and expense, to rebuild, repair and replace the Project to substantially the condition or better than existed immediately prior to the casualty. The fair market value of the Project following reconstruction and/or repair by Developer must be substantially similar to the fair market value of the Project immediately prior to the casualty. 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 the Project. This obligation to repair, rebuild or replace shall remain in effect for a period expiring upon the date of the expiration and closure of the District.

J. 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 or proportionally equivalent to the positions set forth herein.

K. 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 other terms and provisions shall remain in full force and effect.

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

M. 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.

N. This Agreement and all rights and obligations hereunder shall terminate upon the earlier to occur of (i) full performance by Developer and the City of all of their respective obligations under this Agreement and (ii) five (5) years after the statutory life of the District. Upon such termination, the parties shall execute and record a termination of all Memoranda of Agreement recorded against the Property pursuant to Section L above.

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

DEVELOPER:

TI Investors of Franklin Apartments LLC  
By: Towne Realty, Inc., manager

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

STATE OF WISCONSIN  
COUNTY ) SS.

Personally appeared before me this \_\_\_\_ day of \_\_\_\_\_ 2017, the above-named \_\_\_\_\_, the \_\_\_\_\_ of Towne Realty, Inc., manager of TI Investors of Franklin Apartments LLC, 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: \_\_\_\_\_

**City of Franklin, Wisconsin**

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

By: \_\_\_\_\_  
Paul Rotzenberger, Director of Finance  
and Treasurer

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

Date:

STATE OF WISCONSIN

) SS.

MILWAUKEE COUNTY

Personally appeared before me this \_\_\_\_ day of \_\_\_\_\_ 2017, the above-named Stephen R. Olson, Paul Rotzenberg and Sandra L. Wesolowski, Mayor, Director of Finance and Treasurer, and City Clerk, respectively, of the City of Franklin, Wisconsin, to me known to be the persons who executed the foregoing agreement on behalf of the City and by its authority.

\_\_\_\_\_  
Notary Public State of Wisconsin  
My commission expires: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Jesse A. Wesolowski, City Attorney  
Date: \_\_\_\_\_

sjd2311 Franklin S 27th Street TI Investors Development Agreement BKLN 10.11.17.doc

This instrument was drafted by:

## **EXHIBIT A**

### **PROPERTY LEGAL DESCRIPTION**

#### **Legal Description of 7333 South 27<sup>th</sup> Street**

Lot 2 of Certified Survey Map No. 7905, recorded April 11, 2007 in Reel 6578, as Document No. 9415687, being a part of the Southwest 1/4 and the Southeast 1/4 of the Northeast 1/4 of Section 12, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin.

EXCEPTING therefrom those lands conveyed in Warranty Deed recorded as Document No. 10269348.

Tax Key No: 761-9992-004  
Address: 7333 S. 27th Street

#### **Legal Description of 7273 South 27<sup>th</sup> Street**

All that part of the North One-half (1/2) of the South One-half (1/2) of the Northeast One-quarter (1/4) of Section Twelve (12), in Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, County of Milwaukee, State of Wisconsin, described as follows: Commencing at a point in the West line of South 27th Street (now U.S. Highway 41), said point being 80.08 feet West of and 1161.28 feet South 02°30'30" West of the Northeast corner of the Northeast corner of said 1/4 Section, thence South 297.10 feet on a line parallel with the West line of South 27th Street (now U.S. Highway 41) to a point, thence West 167.5 feet on a line parallel to the North line of the North 1/2 of the South 1/2 of said 1/4 Section to a point, thence North 130 feet on a line parallel with the West line of South 27th Street to a point, said point being on the 1/8th line, thence North 89°52'30" West along said 1/8th line 92.50 feet to a point, thence North 02°30'30" East, and parallel to the East line of the 1/4 Section, 166.96 feet to a point, thence South 89°54'15" East 260 feet to the place of commencement, excepting therefrom those lands conveyed for public street purposes in a Quit Claim Deed recorded on August 24, 1970 in Reel 546, Image 317, as

Document No. 4543825. Also excepting therefrom, a conveyance to the Wisconsin Department of Transportation for highway purposes in an Award of Damages, recorded in Milwaukee County, Wisconsin on September 20, 2013, as Document No. 10296077.

Tax Key No. 761-9990-002  
Address: 7273 South 27th Street

## **EXHIBIT B**

### **DEVELOPER'S IMPROVEMENTS**

The developer's improvements consists of the following improvements to be completed on the land parcels located at 7333 South 27<sup>th</sup> Street and 7273 South 27<sup>th</sup> Street as more particularly described in Exhibit A.

#### **7333 South 27<sup>th</sup> Street Improvements**

Developer shall construct a public road connecting 27<sup>th</sup> Street to 31<sup>st</sup> Street with associated sanitary sewer, storm sewer, and water improvements along with related improvements to the South 27<sup>th</sup> Street right of way.

Developer shall create a minimum two acre pad-ready commercial parcel along 27<sup>th</sup> Street.

Developer shall construct one hundred eighty market rate apartment units consisting of approximately 294,000 rentable square feet, approximately 200 indoor parking stalls, approximately 84 outdoor parking stalls, along with a recreation and leasing office building and on-site amenity package.

#### **7273 South 27<sup>th</sup> Street Improvements**

Developer shall acquire the land and improvements located at 7273 South 27<sup>th</sup> Street.

Developer shall demolish the existing motel and single family home and grade the site.

Developer shall assume the existing lease for the restaurant and landlord duties for that portion of the property.

**EXHIBIT C**  
**PROJECT BUDGET**

**27th Street Land in Franklin**  
**Project Development Budget**  
**10/13/17**

	<u>Apartment Parcel</u>		<u>Motel Parcel</u>	<u>Total</u>
	<u>Total</u>	<u>Per Unit</u>		
<b>Purchase Costs</b>				
Land Acquisition	1,700,000	9,444	1,900,000	3,600,000
Commercial Land Sale	(500,000)	(2,778)	-	(500,000)
Due Dilligence/Closing Costs	100,000	556	-	100,000
<b>Construction Costs</b>				
Building Vertical Improvements-Apts	20,630,206	114,612	-	20,630,206
Underground Parking	3,132,000	17,400	-	3,132,000
Site work	1,325,365	7,363	-	1,325,365
Clubhouse	435,000	2,417	-	435,000
Amenity Package	180,000	1,000	-	180,000
Architecture and Engineering	350,000	1,944	-	350,000
Demolition	-	-	150,000	150,000
<b>Other</b>				
Creation of commercial parcel	112,410	625	63,250	175,660
City Roadway	859,948	4,777	-	859,948
DOT Roadway	260,828	1,449	-	260,828
Entitlement Fees (2018 fees)	1,164,240	6,468	-	1,164,240
Corporate Acquisition Fee	15,000	83	-	15,000
Local office costs	200,000	1,111	-	200,000
Soft Costs and setup/marketing	500,000	2,778	-	500,000
Soft Cost Contingency	250,000	1,389	-	250,000
Financing Costs	65,000	361	-	65,000
Subtotal	30,779,997	171,000	2,113,250	32,893,247
Construction Interest	923,377	5,130	-	923,377
Total Proj Development Budget	31,703,374	176,130	2,113,250	33,816,624

**EXHIBIT D**  
**MEMORANDUM OF DEVELOPMENT AGREEMENT**

Document Number	Document Title
<p style="text-align: center;"><b>MEMORANDUM OF DEVELOPMENT AGREEMENT</b></p> <p><b>THIS MEMORANDUM OF DEVELOPMENT AGREEMENT ("Memorandum")</b> is made effective as of the ____ day of _____, 2017, by and between _____ a Wisconsin _____, and assigns] ("<b>Developer</b>"), and the <b>CITY OF FRANKLIN</b>, a municipal corporation of Milwaukee County, Wisconsin ("<b>City</b>").</p>	
<p style="text-align: right;">Recording Area</p> <hr/> <p style="text-align: right;">Name and Return Address</p>	

**WITNESSETH:**

PIN: \_\_\_\_\_

**WHEREAS,** Developer and the City entered into that certain Development Agreement dated \_\_\_\_\_, 2017 ("**Development Agreement**"), The full Development Agreement is available for inspection and copies can be obtained at the City of Franklin City Hall; and

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

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



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

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

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

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

DEVELOPER:  
TI Investors of Franklin Apartments LLC  
By: Towne Realty, Inc., manager

CITY:  
CITY OF FRANKLIN

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

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

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

STATE OF WISCONSIN  
COUNTY ) SS.

Personally appeared before me this \_\_\_\_ day of \_\_\_\_\_ 2017, the above-named \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, to me known to be the persons who executed the foregoing agreement on behalf of the City and by its authority.

\_\_\_\_\_  
Notary Public State of Wisconsin  
My commission expires: \_\_\_\_\_

STATE OF WISCONSIN  
MILWAUKEE COUNTY ) SS.

Personally appeared before me this \_\_\_\_ day of \_\_\_\_\_ 2017, 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**

#### **Legal Description of 7333 South 27<sup>th</sup> Street**

Lot 2 of Certified Survey Map No. 7905, recorded April 11, 2007 in Reel 6578, as Document No. 9415687, being a part of the Southwest 1/4 and the Southeast 1/4 of the Northeast 1/4 of Section 12, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin.

EXCEPTING therefrom those lands conveyed in Warranty Deed recorded as Document No. 10269348.

Tax Key No: 761-9992-004  
Address: 7333 S. 27th Street

#### **Legal Description of 7273 South 27<sup>th</sup> Street**

All that part of the North One-half (1/2) of the South One-half (1/2) of the Northeast One-quarter (1/4) of Section Twelve (12), in Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, County of Milwaukee, State of Wisconsin, described as follows: Commencing at a point in the West line of South 27th Street (now U.S. Highway 41), said point being 80.08 feet West of and 1161.28 feet South 02°30'30" West of the Northeast corner of the Northeast corner of said 1/4 Section, thence South 297.10 feet on a line parallel with the West line of South 27th Street (now U.S. Highway 41) to a point, thence West 167.5 feet on a line parallel to the North line of the North 1/2 of the South 1/2 of said 1/4 Section to a point, thence North 130 feet on a line parallel with the West line of South 27th Street to a point, said point being on the 1/8th line, thence North 89°52'30" West along said 1/8th line 92.50 feet to a point, thence North 02°30'30" East, and parallel to the East line of the 1/4 Section, 166.96 feet to a point, thence South 89°54'15" East 260 feet to the place of commencement, excepting therefrom those lands conveyed for public street purposes in a Quit Claim Deed recorded on August 24, 1970 in Reel 546, Image 317, as

Document No. 4543825. Also excepting therefrom, a conveyance to the Wisconsin Department of Transportation for highway purposes in an Award of Damages, recorded in Milwaukee County, Wisconsin on September 20, 2013, as Document No. 10296077.

Tax Key No. 761-9990-002  
Address: 7273 South 27th Street

**EXHIBIT E**

**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 \_\_\_\_\_, 20\_\_ 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: \_\_\_\_\_



## City of Franklin

27th & MN \$5mm Grant, \$1.85mm Motel PAYGO, 70% LTC \$1.35, 7.5%  
 150 Market Rate Apartments, Lower Land Sales, incl. Motel

## Sales Analysis

YEAR	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
SALE ANALYSIS END OF YEAR	6	7	8	9	10	11	12	13	14	15
Net Operating Income End of Year	1,786,455	1,810,186	1,834,031	1,857,982	1,882,031	1,906,167	1,930,381	1,954,662	1,978,998	2,003,379
Divided By Cap Rate	7.50%	7.50%	7.50%	7.50%	7.50%	7.50%	7.50%	7.50%	7.50%	7.50%
Gross Sale Price	0	24,135,808	24,453,745	24,773,097	25,093,745	25,415,581	25,738,412	26,062,156	26,386,644	26,711,719
Minus Series A Debt	20,666,116	20,192,805	19,696,516	19,176,133	18,630,496	18,058,350	17,458,438	16,829,401	16,168,825	15,478,229
Minus Series B Debt	292,784	0	0	0	0	0	0	0	0	0
Minus Series C Debt	0	0	0	0	0	0	0	0	0	0
Net Sale Amount	(20,958,900)	3,943,003	4,757,229	5,596,964	6,463,258	7,357,211	8,279,974	9,232,755	10,216,818	11,233,490
Sales Expense	(0)	(1,448,148)	(1,467,225)	(1,486,386)	(1,505,625)	(1,524,934)	(1,544,305)	(1,563,729)	(1,583,199)	(1,602,703)
Final Amount	(20,958,900)	2,494,854	3,290,004	4,110,578	4,957,633	5,832,277	6,735,669	7,669,026	8,633,620	9,630,787

YEAR	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
IRR ANALYSIS END OF YEAR	6	7	8	9	10	11	12	13	14	15
Initial Investment	(3,041,297)	(3,041,297)	(3,041,297)	(3,041,297)	(3,041,297)	(3,041,297)	(3,041,297)	(3,041,297)	(3,041,297)	(3,041,297)
2018	(73,313)	(73,313)	(73,313)	(73,313)	(73,313)	(73,313)	(73,313)	(73,313)	(73,313)	(73,313)
2019	275,419	275,419	275,419	275,419	275,419	275,419	275,419	275,419	275,419	275,419
2020	308,386	308,386	308,386	308,386	308,386	308,386	308,386	308,386	308,386	308,386
2021	341,790	341,790	341,790	341,790	341,790	341,790	341,790	341,790	341,790	341,790
2022	375,633	375,633	375,633	375,633	375,633	375,633	375,633	375,633	375,633	375,633
2023	(20,548,983)	409,917	409,917	409,917	409,917	409,917	409,917	409,917	409,917	409,917
2024	0	187,974	187,974	187,974	187,974	187,974	187,974	187,974	187,974	187,974
2025	0	3,679,300	3,679,300	3,679,300	3,679,300	3,679,300	3,679,300	3,679,300	3,679,300	3,679,300
2026	0	0	0	4,523,825	4,523,825	4,523,825	4,523,825	4,523,825	4,523,825	4,523,825
2027	0	0	0	0	0	0	0	0	0	0
2028	0	0	0	0	0	0	0	0	0	0
2029	0	0	0	0	0	0	0	0	0	0
2030	0	0	0	0	0	0	0	0	0	0
2031	0	0	0	0	0	0	0	0	0	0
2032	0	0	0	0	0	0	0	0	0	0
Total	(22,362,365)	1,279,364	2,463,809	3,697,630	4,981,981	6,318,056	7,707,094	9,150,377	10,649,234	12,205,045
INTERNAL RATE OF RETURN	#NUM!	6.11%	9.22%	11.18%	12.45%	13.29%	13.85%	14.21%	14.45%	14.59%

Exhibit shows mechanics of IRR calculation. All numbers are created for the purposes of this example and may not be an accurate representation of project returns.

## EXHIBIT F

## IRR Example

## EXHIBIT G

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

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

Number	Date of Original Issuance	Amount
1	_____, 20__	_____

FOR VALUE RECEIVED, the City of Franklin, Milwaukee County, Wisconsin (the "**City**"), promises to pay to \_\_\_\_\_ (the "**Developer**"), or registered assigns, but only in the manner, at the times, from the source of revenue and to the extent hereinafter provided, the principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), with interest payable at the rate of \_\_\_\_\_% per annum, said interest rate and this Bond subject to the terms and provisions of the Development Agreement between the City and \_\_\_\_\_, dated \_\_\_\_\_, 2017.

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

This Bond has been issued to finance a project within the City's Tax Incremental District No. \_\_, pursuant to Article XI, Section 3 of the Wisconsin Constitution and Chapters 66 and 67, as applicable, of the Wisconsin Statutes and acts supplementary thereto, and is payable only from the income and revenues herein described, which income and revenues have been set aside as a special fund for that purpose and identified as the "Special Redemption Fund" provided for under the Resolution adopted on \_\_\_\_\_, 20\_\_, by the Common Council of the City (the "**Resolution**"). This Bond is issued pursuant to the Resolution and pursuant to the terms and conditions of the Tax Incremental District Development Agreement dated as of \_\_\_\_\_, 2017 between the City and the Developer ("**Development Agreement**"). This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation or provision. This Bond shall be payable solely from Available Tax Increments generated by the Real Estate and appropriated by the Common Council to the payment of this Bond (the "**Revenues**"). Reference is hereby made to the Resolution and the Development Agreement for a more complete statement of the revenues from which and conditions and limitations under which this Bond is payable and the general covenants and provisions pursuant to which this Bond has been issued. The Resolution and Development Agreement are incorporated herein by this reference. All capitalized terms that are not otherwise defined in this Bond shall take on the meaning given to such terms in the Development Agreement.

If on any Payment Date there shall be insufficient Revenues appropriated to pay the principal due on this Bond, the amount due but not paid shall be deferred. If on any Bond Payment Date there shall be insufficient Revenues appropriated to pay the interest due on this

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

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

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

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

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

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

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

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

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

City of Franklin

(CITY SEAL)

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

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



## **EXHIBIT H**

### **Disbursement Agreement**

[to be completed subject to the terms and conditions outlined in the Development Agreement]

**EXHIBIT I**

**Guarantor Agreement**

[to be completed]

### Schedule 1 of Bond Payment Schedule

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

[illegible]

## REGISTRATION PROVISIONS

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

Date of Registration

Name of Registered Owner

Signature of City Clerk

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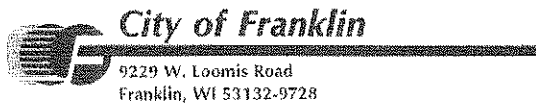
<b>APPROVAL</b>  <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>October 17, 2017</b>
<b>REPORTS AND RECOMMENDATIONS</b>	<p>Development Agreements Public Improvements Return on Developer Investment Provisions, Public Utilities Infrastructure Contributions in Aid of Construction Refund Timelines Provisions, Public Improvement Dedication Requirements and Cost Recoupment Provisions. The Common Council May Enter Closed Session Pursuant to Wis. Stat. § 19.85(1)(e), to Deliberate Upon Development Agreements Public Improvements Return on Developer Investment Provisions, Public Utilities Infrastructure Contributions in Aid of Construction Refund Timelines Provisions, Public Improvement Dedication Requirements and Cost Recoupment Provisions, for Competitive and Bargaining Reasons, and also Pursuant to Wis. Stat. § 19.85(1)(g), to Confer With Legal Counsel for the Common Council Who is Rendering Oral or Written Advice Concerning Strategy to be Adopted by the Body with Respect to in Alternative Situations Potential Litigation in which It is Likely to Become Involved, and to Reenter Open Session at the Same Place Thereafter to Act on Such Matters Discussed Therein as It Deems Appropriate</p>	<b>ITEM NUMBER</b>  <i>6.20.</i>

### COUNCIL ACTION REQUESTED

A motion to enter closed session pursuant to Wis. Stat. § 19.85(1)(e), to deliberate upon development agreements public improvements return on developer investment provisions, public utilities infrastructure contributions in aid of construction refund timelines provisions, public improvement dedication requirements and cost recoupment provisions, for competitive and bargaining reasons, and also pursuant to Wis. Stat. § 19.85(1)(g), to confer with legal counsel for the Common Council who is rendering oral or written advice concerning strategy to be adopted by the body with respect to in alternative situations potential litigation in which it is likely to become involved, and to reenter open session at the same place thereafter to act on such matters discussed therein as it deems appropriate.

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<b>APPROVAL</b> <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>10/17/17</b>
<b>LICENSES AND PERMITS</b>	<b>MISCELLANEOUS LICENSES</b>	<b>ITEM NUMBER</b> <b>H.1.</b>
<p>See attached list from meeting of October 17, 2017.</p> <p><b>COUNCIL ACTION REQUESTED</b></p>		



414-425-7500

**License Committee  
Agenda\*  
Aldermen's Room  
October 17, 2017 – 5:25 pm**

<b>1.</b>	<b>Call to Order &amp; Roll Call</b>	<b>Time:</b>		
<b>2.</b>	<b>Applicant Interviews &amp; Decisions</b>			
<b>License Applications Reviewed</b>		<b>Recommendations</b>		
<b>Type/ Time</b>	<b>Applicant Information</b>	<b>Approve</b>	<b>Hold</b>	<b>Deny</b>
<b>Class B Combination, Entertainment &amp; Amusement 2017-18</b>	<b>Rock Snow Park LLC</b> DBA Rock Snow Park 7900B W Crystal Ridge Rd (Ski chalet & ski hill) David R Schmitz, Agent			
<b>Operator</b>	<b>Nikki C Deja</b> 9106 W Waterford Sq S Greenfield, WI 53228 Walgreen – S 27 <sup>th</sup> St			
<b>Operator</b>	<b>Louis G Guzzo</b> 4 W Clarendon Dr Round Lake Beach, IL 60073 Sendik's Food Store			
<b>Operator</b>	<b>Sierra L Kisting</b> S63W18485 Martin Dr Muskego, WI 53150 Hideaway Pub & Eatery			
<b>Operator</b>	<b>Stephanie K Sauer</b> 10234 W Deerwood Ln Franklin, WI 53132 Rock Sports Complex			
<b>3.</b>	<b>Adjournment</b>			
		<b>Time</b>		

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



<b>APPROVAL</b> <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>July 18, 2017</b>
<b>REPORTS AND RECOMMENDATIONS</b>	<i>In the Matter of the Complaint Against: Kimberly D. Leannais, holder of an operator's alcohol beverage license as a bartender for the 2017-2018 licensing year; License Committee Recommendation upon Hearing pursuant to Wis. Stat. § 125.12(2) and §158-1 of the Franklin Municipal Code of the City of Franklin, WI.</i>	<b>ITEM NUMBER</b> <i>4.2.</i>

A hearing upon the complaint in the above matter was scheduled before the License Committee on October 5, 2017. Kimberly D. Leannais appeared and informed the Committee that she admitted the allegations in the complaint.

The License Committee adopted a Report under Wis. Stat § 12.12(2)(b)3. upon the complaint and the decision of Kimberly D. Leannais to admit the allegations contained therein. A copy is attached.

### **COUNCIL ACTION REQUESTED**

A motion to enter closed session pursuant to Wis. Stat. § 19.85(1)(a) to consider and deliberate upon the October 5, 2017 License Committee recommendation, to discuss the Common Council's determination thereon, and to reenter open session at the same place thereafter to act on such matters as discussed therein as it deems appropriate.

Or

A motion to adopt the License Committee Report, Findings of Fact, Conclusions of Law and Recommendation as to Action and award a 2017-2018 operator's license to Kimberly D. Leannais and subsequently suspend the same for ten (10) days, commencing on October 18, 2017.

Legal Services Dept.: cs

In the Matter of the Bartender License Renewal Application for:

Kimberly D. Leannais,

Respondent.

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LICENSE COMMITTEE REPORT  
TO THE COMMON COUNCIL  
PURSUANT TO §125.12(2)(b)3., STATS.

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To the Mayor and Common Council:

A hearing in the above matter was held before the License Committee to the Common Council in the Common Council Chambers at the City of Franklin City Hall on October 5, 2017, upon a Summons and Complaint dated September 26, 2017. A quorum of the members of the License Committee were in attendance and the Committee received a verbal statement from Ms. Leannais.

Ms. Leannais did not deny the allegations contained in the complaint.

The following Findings of Fact, Conclusions of Law and Recommendation as to Action, represent the Report of the License Committee to the Common Council pursuant to §125.12(2)(b)3., Stats., incorporated into the Municipal Code of the City of Franklin §158-1 and adopted by the License Committee following the hearing and its deliberations on October 5, 2017.

**FINDINGS OF FACT**

1. A renewal bartender license application was filed with the City of Franklin by Kimberly D. Leannais, currently residing at 6317 Riverside Road Waterford, WI 53185, on April 14, 2017.
2. On December 16, 2016, Ms. Leannais was arrested for Operating a Motor Vehicle While Intoxicated-3<sup>rd</sup> Offense, in Racine County Circuit Court. She pled guilty and was convicted of this offense on June 6, 2017 and sentenced to 120 days imprisonment with work release.
3. Ms. Leannais was convicted of her first two OWI charges in 1999 and 2009, respectively.
5. Based on the above conduct that led to the referenced charges and convictions, Kimberly D. Leannais is a habitual law offender, pursuant to Wis. Stat. §§125.04(5)(b), 125.12(2)(ag)(4), and 125.12(3).

6. The underlying behaviors which led to the above charges substantially relate to the licensed activity. The OWI conviction shows poor judgment pertaining to consumption of alcohol. The illegal drug possession cases are an indicator of drug abuse issues that can influence decision making when performing essential functions of the licensed activity.

8. Ms. Leannais was issued a prior warning letter in conjunction with her operator's license. The most recent was sent on February 6, 2013 (for the 2012-2013 licensing period) warning her that "any law, code or ordinance violation will not be tolerated and may form the basis for an enforcement action, including the suspension or revocation of the license."

9. The Committee recognizes that Ms. Leannais has a good employment history, has a need and desire to continue to work, is in a treatment program, has taken responsibility for her actions and has held her current position for three years.

10. On September 26, 2017, the License Committee filed a Summons and Complaint with the City Clerk, which was personally served on Kimberly D. Leannais September 28, 2017. Kimberly Leannais appeared in person before the License Committee on October 5, 2017. Ms. Leannais did not deny the facts alleged in the Complaint, and admitted to the underlying facts regarding the pending charges. Ms. Leannais made a verbal statement to the committee.

### CONCLUSIONS OF LAW

1. The above proceedings were commenced with the issuance of a Summons and Complaint dated September 26, 2017, issued *sua sponte* by the License Committee upon its receipt and review of the conviction and arrest records of the license applicant, the Summons and Complaint being personally served upon Kimberly D. Leannais on September 28, 2017.

2. §125.12(2)(ag)1., Stats., incorporated into the City of Franklin Municipal Code at §158-1, provides that a violation of Chapter 125 of the Wisconsin Statutes or a municipal regulation adopted under its authority, may constitute grounds for the nonrenewal or suspension of an operator's license.

3. §125.04(5), Stats., pertains to the qualifications for licenses related to alcohol beverages of natural persons and specifies at §125.04(5)(a)1., Stats., that such natural persons "[d]o not have an arrest or conviction record, subject to ss. 111.321, 111.322, 111.335, and 125.12(1)(b)"; §125.04(5)(b), Stats., provides in part that "[n]o license or permit related to alcohol beverages may, subject to ss. 111.321, 111.322, and 111.335, be issued under this chapter to any person who has habitually been a law offender..."

4. "[T]here is no right to an alcoholic beverage license and...the ultimate question of whether to issue such a license to a particular applicant is a matter of local concern." *State ex rel. Smith v. City of Oak Creek*, 139 Wis.2d 788, 801, 407 N.W.2d 901 (1987).

5. Guideline 5(d) of City of Franklin Resolution No. 2010-6636 pertaining to establishing alcoholic beverage licenses enforcement guidelines provides that a person's alcohol beverage license may be denied, non-renewed, suspended or revoked of the person "[w]as issued a license

in conjunction with a warning letter as to any future law violations. . . and has committed a law violation subsequent to the issuance of the warning letter.”

### RECOMMENDATION AS TO ACTION

The License Committee considers a violation of alcohol beverage laws such as operating a motor vehicle while intoxicated, to be substantially related to licensed activities. The charges demonstrate either an inability of an individual to comply with laws or an intentional disregard by an individual of such laws, contrary to the duties of a bartender licensee to obey such laws while serving alcohol beverages and also to obtain such compliance by others working under the licensee’s supervision and by establishment patrons. The License Committee recommends that the renewal alcohol beverage license application dated April 14, 2017, for the license year commencing July 1, 2017, be approved and suspended for a period of ten (10) days from the date of Council action, both upon the above Findings of Fact and Conclusions of Law.

Dated at Franklin, Wisconsin, this 6<sup>th</sup> day of October, 2017.

AYES 2 NOES 0 ABSENT 1  
ALD. TAYLOR

CITY OF FRANKLIN  
LICENSE COMMITTEE

BY ITS CHAIRPERSON:

  
Alderswoman Kristen Wilhelm

<b>APPROVAL</b> <i>slw gel</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>10/17/17</b>
<b>Bills</b>	<b>Vouchers and Payroll Approval</b>	<b>ITEM NUMBER</b> <b>I. 1</b>

Attached are vouchers dated October 3, 2017 through October 12, 2017 Nos. 166460 through Nos. 166610 in the amount of \$ 983,381.08. Included in this listing are EFT's Nos. 3600 through Nos. 3607 and Library vouchers totaling \$ 9,104.25 Voided checks in the amount of \$ (30.00) are separately listed.

Early release disbursements dated October 3, 2017 through October 11, 2017 in the amount of \$ 462,323.49 are provided on a separate listing and are also included in the complete disbursement listing. These payments have been released as authorized under Resolution 2013-6920.

The net payroll dated October 13, 2017 is \$ 380,628.27, previously estimated at \$ 370,000.00. Payroll deductions dated October 13, 2017 are \$ 229,822.83 previously estimated at \$ 218,000.00.

The estimated payroll for October 27, 2017 is \$ 370,000.00 with estimated deductions and matching payments of \$ 485,000.00.

Attached is a list of property tax refunds dated October 3, 2017 through October 12, 2017 Nos. 17207 through Nos. 17209 in the amount of \$ 2,718.81. These payments have been released as authorized under Resolution 2013-6920. Voided checks in the amount of \$ (2,718.81) are separately listed.

### ***COUNCIL ACTION REQUESTED***

Motion approving the following:

- City vouchers with an ending date of October 12, 2017 in the amount of \$ 983,381.08 and
- Payroll dated October 13, 2017 in the amount of \$ 380,628.27 and payments of the various payroll deductions in the amount of \$ 229,822.83 plus City matching payments and
- Estimated payroll dated October 27, 2017 in the amount of \$ 370,000.00 and payments of the various payroll deductions in the amount of \$ 485,000.00, plus City matching payments and
- Property tax refunds with an ending date of October 12, 2017 in the amount of \$ 2,718.81.

**ROLL CALL VOTE NEEDED**