



OFFICE OF CORPORATION COUNSEL

Client-Driven. Community-Focused.

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Assistant Corporation Counsel

DATE: February 17, 2023

TO: Milwaukee County Board Audit Committee
Interested Stakeholders

FROM: Margaret C. Daun, Corporation Counsel
Scott F. Brown, Deputy Corporation Counsel
David N. Farwell, Assistant Corporation Counsel

SUBJECT: File No. 22-559 - Contractual Remedies re Developer's Failure to Comply with
TBE Goals under the Rock Sports Complex Development Agreement

Brief Summary

At the September 14, 2022, Audit Committee meeting, File No. 22-559 was referred to the Office of Corporation Counsel ("OCC") to determine what, if any, contractual remedies may be available to Milwaukee County related to the alleged failure of BPC County Land LLC ("Developer") to comply with the Targeted Business Enterprise ("TBE") and workforce participation goals (collectively, the "Community Benefits Requirements") contained in the Development Agreement dated February 19, 2018, by and between the County and the Developer (the "Agreement"), a copy of which is attached to this memorandum as Exhibit A.¹

After analyzing the Agreement and relevant case law, the OCC concludes that the County's remedies for Developer's failure to meet the Community Benefits Requirements are most likely limited to liquidated damages in the amount of \$10,000 and the ability to bar the Developer from future County projects for a period of three years. A court would more likely than not find that other remedies, such as specific performance or actual damages, are not available for a breach of the Community Benefits Requirements, although such remedies likely remain available for other breaches of the Agreement.

¹ The other significant County agreement relating to the operations of the Ballpark Commons development is the lease between Milwaukee County and The Rock Sports Complex LLC relating to the latter's operation of the ski hill portion of the complex. Although obviously a key piece of the overall transaction, the lease is legally a separate agreement with a different legal entity (the Rock operator, not the landholding entity) and is self-contained without any cross-default provisions with other Rock agreements. OCC has not been asked to determine if any defaults occurred under the ski hill lease.

Analysis

Sections 2.6 and 2.7 of the Agreement provides, in pertinent part, that the Developer is required to “utilize good faith efforts to achieve” certain minimum TBE participation goals and performance of a target number of on-site construction hours by “apprentices or members of acceptable job training programs.” These Community Benefits Requirements were to be monitored through the Developer’s submission of relevant information through B2GNow and LCPTracker, two County-provided online portals. Compliance with the Community Benefits Requirements was to be “insure[d]” [sic] by means of a \$10,000 “Compliance Deposit” provided for in Section 2.8. The Compliance Deposit is expressly tied to compliance with “subparagraphs 2.6 and 2.7,” the provisions outlining the Community Benefits Requirements.

Of significant importance is language present in both Sections 2.6 and 2.7 that provides that a failure by Developer to achieve compliance with the Community Benefits Requirements “could result in the Developer forfeiting all or a portion of its Deposit [sic] to the County **as liquidated damages**² and being disqualified from participating on future County projects for a period up to three (3) years” (emphasis added). Although the term “Deposit” is used here instead of “Compliance Deposit,” in the context of the Agreement it appears clear that “Deposit” means the \$10,000. Taken together, the Community Benefits Requirements language in Sections 2.6 and 2.7 were expressly tied together, with “liquidated damages” as the remedy for non-compliance.

With respect to remedies apart from those noted above, Section 3.1 of the Agreement is the general provision relating to defaults by the Developer. Upon an event of default, subject to a notice and cure period, the County is entitled to pursue any and all remedies, including specific performance³ and actual damages. Section 3.3 further provides that the rights and remedies under the Agreement are “cumulative,” meaning that the parties may seek multiple remedies for the same default. Such language on its face would seem to suggest that the County could pursue remedies in addition to the liquidated damages. Although that may be the case with respect to other defaults under the Agreement,⁴ a court would more likely than not find the express language in the Agreement providing identified remedies for breach of the Community Benefits Requirements prohibits the County from seeking damages beyond those “liquidated” damages specified in Sections 2.6-2.8 of the Agreement.

² Liquidated damages provisions are commonly used where it is difficult if not impossible for the parties to determine what the actual damages of a particular breach would be at the time of entering into the contract. Such provisions are generally upheld if they meet certain criteria and are recognized as a reasonable method of determining and apportioning risk between the parties. While courts certainly will strike liquidated damages provisions that do not meet the criteria for such provisions under common law—in which case they typically are determined to be unenforceable penalties—courts generally will not second-guess parties’ determinations as to whether a given amount of liquidated damages is appropriate.

³ “Specific performance” is a contract remedy by which a party is required by the court to conduct the actual activity described in the contract as opposed to paying monetary damages to the non-breaching party.

⁴ OCC is not aware of any default by the Developer under the Agreement apart from the failure to meet Community Benefits Requirements for the project. If other defaults are identified and remain uncured beyond applicable cure periods, OCC can assist in analyzing related legal remedies at that time.

In addition, because of the provision for liquidated damages, actual damages are not going to be available, and regardless, the calculation for such damages would be debatable. This explains why, presumably, the County and Developer specified liquidated damages for breach of the Community Benefits Requirements.

With respect to specific performance, Wisconsin courts have taken a very narrow view of that contract remedy, particularly where the parties have negotiated express remedies for certain defaults. *See Key v. William Ryan Homes, Inc.*, 2016 WI App 34, 369 Wis. 2d 72, 879 N.W.2d 809. Here, a court would more likely than not find that such an express remedy for default of the Community Benefits Requirements exists by virtue of three-year ban on future development opportunities and the Compliance Deposit being labeled as “liquidated damages” for that breach.

###

Exhibit A

Development Agreement

See Attached

DEVELOPMENT AGREEMENT

Ballpark Commons

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made as of the 19 day of February, 2018, by and among Milwaukee County, a Wisconsin municipal corporation (the “County”), and BPC County Land LLC, a Wisconsin limited liability company (the “Developer”).

RECITALS

On or about the date herewith, the Developer is acquiring certain property located in the City of Franklin, Milwaukee County as more fully described on **Exhibit A** attached hereto (the “Property”) from the County pursuant to a certain Option to Purchase Agreement between the County and Developer dated December 20, 2017 and attached hereto as **Exhibit B** (the “Option Agreement”). The parties now desire to enter into this Agreement to set forth the terms and conditions by which the Property will be developed and to establish certain additional covenants and restrictions pertaining thereto.

AGREEMENT

In consideration of the mutual covenants and agreements contained herein and in the Option Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms used herein shall have the following meanings:
 - (a) “Buildings” means any buildings or other improvements now located on the Property as well as any planned future buildings or other improvements constructed on the Property by Developer.
 - (b) “Community Benefits” means collectively, those goals relating to Targeted Business Enterprise participation and residential hiring for those Project construction costs governed by a Community Benefits Compliance Plan (the “Project Construction Costs”).
 - (c) “Community Benefits Reporting” means the records from the Developer demonstrating its compliance and good faith efforts undertaken with respect to Section 2 of this Agreement and in accordance with the Developer’s Community Benefits Compliance Plan.
 - (d) “Project” means those portions of the Ballpark Commons mixed-use development, including all Buildings, driveways, parking areas, signs, walkways, loading areas, fences and walls, sewer, electrical, gas, water and other utility distribution systems, landscaping, drainage and other

improvements located on the Property by or for the Developer in conformity with the approved City of Franklin PDD, as amended.

2. Development of the Project.

2.1. Construction by the Developer. The Developer shall be responsible, at its own cost and expense, for the construction of the Project on the Property in a good and workmanlike manner and in compliance with all then applicable building codes and ordinances, including applicable zoning ordinances and the approved City of Franklin PDD for the Ballpark Commons Development, as amended from time to time.

2.2. Condition of Property; Construction of Infrastructure. Except as otherwise provided herein, or in the Option Agreement or the Contribution and Participation Agreement, County shall convey the Property in its "AS IS" physical condition with all faults and defects, known or unknown, including but not limited to environmental defects, and without representation or warranty, express or implied. Such provisions shall bar all tort, warranty, and misrepresentation claims, including any action based on non-disclosure, excepted as otherwise provided herein or in the Option Agreement or Contribution and Participation Agreement.

2.3. General Requirements. The Developer agrees that during construction it shall use reasonable efforts to (a) cause its contractors working on the Project to remove all construction debris from the Property and the infrastructure areas related to their work in a manner and time consistent with industry standards, and if any such construction debris is left on site, it shall be responsible for removing the same, and (b) use reasonable efforts to keep the Property and areas of access thereto in a neat and presentable state.

2.4. Community Benefits Compliance Plan. The Developer shall be required to execute a Community Benefits Compliance Plan ("Compliance Plan") with the Department of Administrative Services – Economic Development Division and the Community Business Development Partners (CBDP) department of Milwaukee County prior to or simultaneously with Closing for purposes of Community Benefits Reporting. The Compliance Plan shall include goals and minimum good faith efforts for Targeted Business Enterprise (TBE) hiring and workforce development (apprenticeship/job training). The specific community benefits goals are set forth below in Sections 2.6 and 2.7. A Compliance Plan is attached hereto as **Exhibit D**. The goals and Compliance Plan shall only be applicable during the construction of the Project and shall only apply to those portions of the Project located on the Property.

2.5. Nondiscrimination and Affirmative Action. In construction of the Project and performance of its duties and obligations hereunder, the Developer shall not discriminate against any employee or applicant for employment race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking which shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships. The Developer will post in conspicuous places, accessible to employees, notices setting forth the provisions of the foregoing nondiscriminatory clause. During construction of the Project, the Developer will strive to

implement the principles of equal employment opportunities through an effective affirmative action program, which program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups in the Developer's construction employment at the Project. The Developer will include this requirement in any and all construction contracts and subcontracts entered into under this Agreement

2.6. TBE Participation Goals. The Developer shall commit to ensuring that Targeted Business Enterprises ("TBEs") have an equal opportunity to receive and participate in construction of the Project and shall require that its contractors and subcontractors do the same, as required by Chapter 42 of the Milwaukee County Code of General Ordinances. The Developer shall utilize good faith efforts to achieve its goal of a minimum of 25% TBE participation for Project costs relating to the hard construction costs and a minimum of 17% TBE participation for Project costs relating to professional services. The Developer's Compliance Plan, which will require the approval of the County's Economic Development Division and the Office of Community Business Development Partners, will restate these goals, outline the minimum good faith efforts necessary to achieve the goals and specify the reporting requirements of the Developer. Participation will be monitored through B2GNow, an online reporting system, or other software designated by the County prior to the execution of this Agreement. Failure to use good faith efforts to abide by the TBE portion of its Compliance Plan could result in the Developer forfeiting all or a portion of its Deposit to the County as liquidated damages and being disqualified from participating on future County projects for a period up to three (3) years. The Developer shall contractually obligate its construction contractors and subcontractors and any assignee to comply with the reporting requirements of this section with respect to construction of the Project.

2.7. Workforce Goals – Apprenticeship and Training Opportunities. The Developer shall commit to utilizing good faith efforts to achieve its goal of at least 10% of on-site construction hours for the Project performed by apprentices or members of acceptable job training programs.. The Developer's Compliance Plan will restate this goal, outline the minimum good faith efforts necessary to achieve the goal and specify the reporting requirements of the Developer. . Participation will be monitored through certified monthly payroll reports from all contractors and subcontractors, submitted by Developer through LCPTracker, an online reporting system. Failure to use good faith efforts to reach this goal could result in the Developer forfeiting all or a portion of its Deposit to the County as liquidated damages and being disqualified from participating in future County projects for a period up to three (3) years. Any dispute relating to the forfeiture of all or a portion of Developer's Deposit shall be referred to, and fully and finally resolved by, an arbitrator, mutually agreed upon by Developer and County with the arbitration to take place in Milwaukee County. Developer and County shall be jointly responsible for the arbitrator's fees.

2.8. Compliance Deposit Developer shall submit a Compliance Deposit prior to the commencement of construction in the amount of Ten Thousand Dollars (\$10,000.00) ("Deposit") to insure compliance with subparagraphs 2.6 and 2.7 above. The Deposit shall not be applied against the Purchase Price, but shall be held by County to insure such compliance. The Deposit shall be repaid to Developer, without interest, upon substantial completion of the Project, provided there has been full compliance as required by this subparagraph. The Deposit, or so much as determined by the Economic Development Director, may be retained if Developer

fails to fully comply with the requirements of this subparagraph. Any dispute relating to the forfeiture of all or a portion of Developer's Deposit shall be referred to, and fully and finally resolved by, an arbitrator, mutually agreed upon by Developer and County with the arbitration to take place in Milwaukee County. Developer and County shall be jointly responsible for the arbitrator's fees.

2.9. Noise and Light. The Property and the portions of the Project located thereon shall be subject to the requirements of the Noise and Light Addendum attached hereto as **Exhibit C**.

3. Defaults and Remedies.

3.1. Events of Default by the Developer. Any one or more of the following events are hereby defined as, declared to be, and constitute an "Event of Default" by the Developer for purposes of this Agreement: (a) the Developer fails to complete construction of the Project to the extent such completion is required by the TIF Development Agreement by and between the City of Franklin and Developer (or its affiliate) or (b) the failure of the Developer to perform any other term, condition or covenant to be performed or observed by the Developer, subject to extension for Force Majeure Delays. In the event an Event of Default by the Developer shall occur, the County shall send written notice to the Developer (the "Default Notice") specifying the nature of the Event of Default in detail, and the Developer shall have 30 days after receipt of the Default Notice to cure such Event of Default. Subject to Section 4.18, in the event that the Developer does not cure such Event of Default within such 30-day period (or such other reasonable time as necessary if such Event of Default cannot be cured within 30 days and the Developer, upon receipt of Default Notice, promptly commences the process of curing such Event of Default and diligently and continuously pursues such cure to completion), the County may pursue any available remedy against the Developer, either at law or in equity, including, without limitation, the right to pursue specific performance and collect actual damages (but not consequential damages) for the Developer's failure to perform.

The Developer agrees that damages will not be an adequate remedy at law and that the County shall have the right to an injunction or other judgment of specific performance to enforce any provision in this Agreement, the Community Benefits Compliance Plan, the applicable zoning ordinances, the County ordinances or any other State or Federal law. Venue for such action shall be Wisconsin State Court with venue in Milwaukee County. The County shall be entitled to its reasonable attorneys' fees in any action, in which it prevails, to enforce such provisions, including the actual costs of Milwaukee County Corporation Counsel's office if it is the attorney for the County or reasonable attorney fees for other attorneys that may be hired by the County.

3.2. Events of Default by the County. If the County shall fail to perform any term, condition or covenant to be performed or observed by the County (which shall constitute an "Event of Default" by the County for purposes of this Agreement) for more than 30 days after receipt by the County of written notice from the Developer specifying in detail the nature of such failure (or such other reasonable time as is necessary if such Event of Default cannot be cured within 30 days and the County, upon receipt of such notice, promptly commences the process of curing such Event of Default and diligently and continuously pursues such cure to completion),

the Developer may pursue any available remedy against the County at law or in equity, including, without limitation, the right to pursue specific performance or injunctive relief and collect actual damages for the County's breach or failure to perform, including reasonable attorneys' fees.

3.3. Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times of any other rights or remedies for the same default or any other default by the other party.

4. General Provisions.

4.1. Liens. The Developer shall take all commercially reasonable steps to prohibit any construction liens to be filed against the Property or the Project, and if such a lien is filed, the Developer shall take commercially reasonable steps to contest and/or cause such lien to be removed or bonded over in a timely manner.

4.2. Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, neither the Developer nor the County shall be considered in breach or default of its obligations with respect to the construction of the Project or the construction of any items of the infrastructure, as the case may be, in the event that a delay in the performance of such obligations is due to causes which were beyond its reasonable control, such as adverse weather conditions, strikes, acts of God, acts of a public enemy, acts of any governmental authorities (including the County in the case of the Developer), fire, flood, epidemics, embargoes or shortages of material from all reasonable sources, which shall not in any event include any economic hardship or delay due to the condition of the economy or real estate market ("Force Majeure Delay"). In the event of a Force Majeure Delay, the time for performance of the affected obligation shall be extended for the period of the Force Majeure Delay; provided, however, the delayed party shall, within 15 business days after the occurrence of the event causing the Force Majeure Delay, deliver written notice to the other party of the cause thereof. Failure to deliver written notice of such delay, with back-up documentation if appropriate, shall constitute a waiver of the delayed party's right to claim an extension of its time period because of the Force Majeure Delay.

4.3. Notices. All notices and demands by either party to the other shall be given in writing and personally delivered or sent by United States certified mail, return receipt requested, postage prepaid, and addressed:

To the County: Economic Development Director
Milw. County Dept. of Admin. Services
633 W. Wisconsin Avenue, Suite 903
Milwaukee, WI 53203

with a copy to: Milwaukee County Corporation Counsel
901 North 9th Street, Room 303
Milwaukee, WI 53233

To the Developer: BPC County Land, LLC
c/o Michael Zimmerman
510 West Kilbourn Avenue, 2nd Floor
Milwaukee, WI 53202

With a copy to: Bruce A. Keyes
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306

Either party may, upon prior notice to the other, specify a different address for the giving of notice. Notices shall be deemed given upon receipt or refusal to accept delivery.

4.4. Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

- (a) Words importing the singular number shall include the plural number and vice versa.
- (b) The captions and headings herein are solely for convenience of reference only and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.
- (c) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and masculine genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.
- (d) The laws of the State of Wisconsin shall govern this Agreement.
- (e) Since both parties to this Agreement have had adequate opportunity to review and negotiate its terms, in no event shall this Agreement be construed against the drafter.

4.5. Waivers. Waiver by the County or the Developer of any breach of any term, covenant or condition herein shall not be deemed to be a waiver of any future breach of the same or any other term, covenant or condition of this Agreement.

4.6. Severability. Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

4.7. Entire Agreement and Amendments. This Agreement, including exhibits, and all documents referenced herein, contains all the covenants and agreements between the County and the Developer relating in any manner to development of the Project and other matters set forth in this Agreement. No prior oral agreements or understandings pertaining thereto shall be valid or of any force or effect, and the covenants and agreements of this

Agreement shall not be altered, modified or amended except in writing signed by the County and the Developer and recorded in the office of the Register of Deeds for Milwaukee County. The County and the Developer reserve the right to modify and amend this Agreement without the joinder or approval of any other party.

4.8. Duration of Covenants. The County and the Developer agree that, upon the Developer's request, within thirty (30) days after satisfaction of the applicable Developer's obligations under Article 2 herein, the County shall either concur with such request as evidenced by a recordable Certificate of Completion (in which case such unapplied portion of the Deposit shall be returned to Developer), indicating that all such applicable obligations have been satisfied hereunder and that those provisions of this Agreement have been satisfied, or reject such request and state which applicable obligations have not yet been completed. The covenants and agreements contained in Section 2.9 and **Exhibit C** shall remain in full force and effect so long as the Project is located on the Property.

4.9. Authority. The Developer hereby acknowledges and agrees that it is a validly formed and existing limited liability company formed in the State of Wisconsin. The undersigned signatory has the requisite power and authority, statutory and otherwise, to enter into and perform this Agreement pursuant to its terms and conditions without any further notice or consent from any person or entity. Promptly following request by the County, Developer shall deliver copies of its limited liability company resolution or other authorizing documentation demonstrating that it has the power and authority to enter into this Agreement. The County hereby acknowledges and agrees that the undersigned signatories have the requisite power and authority, statutory or otherwise, to enter into and perform this Agreement, pursuant to its terms and conditions without any further notice or consent from any person or entity. Promptly following request by the Developer, the County shall deliver copies of its authorizing documentation demonstrating that it has the power and authority to enter into this Agreement.

4.10. Successors. Except as otherwise expressly provided herein, all of the covenants, agreements, terms and conditions of this Agreement shall run with the Property and inure to the benefit of and be binding upon the County and the Developer and their respective successors and assigns and any party obtaining any legal or equitable ownership interest in the Property after the date hereof, including, without limitation, any condominium unit owner of the Property. Notwithstanding anything to the contrary contained herein, the right of enforcement of the terms, conditions or covenants of this Agreement to be performed or observed by the Developer is solely vested in the County or any successor entity to the County.

4.11. Independent Contractor. Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between the County or its successors and assigns and the Developer or its successors and assigns. In entering into this Agreement, and in acting in compliance herewith, the Developer is at all times acting and performing as an independent contractor duly authorized to perform acts required of it hereunder. This Agreement does not create the relationship of principal, an agent or of partnership or joint venture or any other association between the County and the Developer, the sole relationship between the County and the Developer being that of a seller and purchaser of land, with certain obligations, covenants and responsibilities described herein.

4.12. Records and Audits. The Developer shall allow the County, the Milwaukee County Audit Services Division, or any other party the County may name, when and as they demand, to audit, examine, access and make copies of, excerpts or transcripts from any records, books, files, premises or other information in the Developer's possession. The Developer shall maintain and make available to the County the above described information for no less than three years after conclusion of the obligations and responsibilities of the Developer described herein and required by this Agreement. The Developer understands and will abide by all provisions of Chapter 34 of the Code of Ordinances. These requirements shall apply to any and all contractors and subcontractors to the Developer under this Agreement.

4.13. Intentionally Omitted.

4.14. Memorandum of Development Agreement. After execution of this Agreement, a memorandum of this Agreement ("Memorandum of Agreement") shall be recorded with the Register of Deeds and the Property title encumbered until successful completion of the Project and submittal of required Community Benefits Reporting demonstrating compliance with the TE and Residential Hiring requirements, as certified by the Economic Development Director on behalf of County at which time the parties shall execute and record a termination of the Agreement.

4.15. Guaranty. [None].

4.16. Estoppel Certificates. The County agrees to provide within ten (10) days following written request for same estoppel certificates for the benefit of the Developer's lender(s), prospective tenants and/or prospective purchasers of the Project confirming the status of the Developer's compliance or non-compliance with the terms and conditions of this Agreement, and if the Developer is in non-compliance, the specific areas of non-compliance.

4.17. Notice of Default and Opportunity to Cure. The County shall simultaneously provide a copy of each Default Notice to any secured lender of record (provided that the Developer has provided the contact information for such lender to the County) of any notice of default under this Agreement sent to the Developer. The County shall further grant any secured lender an additional thirty (30) day time period to cure the applicable Event of Default beyond the cure period afforded to Developer under this Agreement. Any secured lender shall not be responsible for Developer's performance under this Agreement, incur any obligations under this Agreement by acquiring a security interest in the Project nor be obligated to assume Developer's responsibilities under this Agreement upon an Event of Default by the Developer. Notwithstanding the foregoing, if secured lender assumes the Developer's responsibilities under this Agreement, such secured lender's liability shall not exceed its interest in the Property.

4.18. Further Assurances. The parties agree to amend this Agreement or to enter into such supplements or side agreements as may be appropriate and to the extent necessary to enable the Developer to procure financing and/or obtain any approvals in furtherance of the goals of this Agreement. Any such amendment, supplements or side agreement must be consistent with the terms and conditions of this Agreement and may not modify the existing substance of the Agreements between the Parties without the written consent of each of the Parties and any lender with a mortgage lien in the Property.

4.19. Consent. The parties agree that whenever the consent or approval of a party is required hereunder, such consent or approval shall not be unreasonably withheld, conditioned, delayed or encumbered. With respect to consents or approvals by or from the Developer, Michael Zimmerman (or such other individual as the Developer may subsequently designate in writing) shall be the authorized person to grant such consents or approvals on behalf of the Developer. With respect to consents or approvals by or from the County, James Tarantino, or his successor, as Economic Development Director, shall be the authorized person to grant such consents or approvals on behalf of the County.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

[Execution Pages Follow]

Approved with regards to County Ordinance Chapter 42:

DocuSigned by:
Rick Norris
By: _____ Date: 2/14/2018
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Community Business Development Partners

Reviewed by:

DocuSigned by:
Paul Schwegel
By: _____ Date: 2/15/2018
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Risk Management

Approved for execution:

DocuSigned by:
Paul D. Kuglitsch
By: _____ Date: 2/14/2018
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Corporation Counsel

Approved as to funds available per Wisconsin Statutes Sec. 59.255(2)(e):

DocuSigned by:
Scott Manske - Comptroller
By: _____ Date: 2/20/2018
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Comptroller

Approved:

DocuSigned by:
Chris Abele
By: _____ Date: 2/20/2018
834C9742336E428...
County Executive

Approved as compliant under sec. 59.42(2)(b)5, Stats.:

DocuSigned by:
Paul D. Kuglitsch
By: _____ Date: 2/20/2018
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Corporation Counsel

Certificate Of Completion

Envelope Id: 52106C06757748EBA93846A2302E4AB1

Status: Completed

Subject: Please DocuSign: 1684 - Development Agreement.pdf, BPC - County Development Agreement.pdf

Source Envelope:

Document Pages: 55

Signatures: 6

Envelope Originator:

Certificate Pages: 2

Initials: 0

Corporation Counsel

AutoNav: Enabled

633 W. Wisconsin Ave.

Envelope Stamping: Enabled

Suite 901

Time Zone: (UTC-06:00) Central Time (US & Canada)

Milwaukee, WI 53203

CorpCounselSignature@milwaukeecountywi.gov

IP Address: 204.194.251.5

Record Tracking

Status: Original

Holder: Corporation Counsel

Location: DocuSign

2/14/2018

CorpCounselSignature@milwaukeecountywi.gov

Signer Events

Paul D. Kuglitsch

corpcounsilsignature@milwaukeecountywi.gov

Corporation Counsel

Milwaukee County

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Signature

DocuSigned by:
Paul D. Kuglitsch
57104007A18A423...

Using IP Address: 204.194.251.5

Timestamp

Sent: 2/14/2018

Viewed: 2/14/2018

Signed: 2/14/2018

Paul Schwgel

paul.schwegel@milwaukeecountywi.gov

Safety Manager

Milwaukee County

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

DocuSigned by:
Paul Schwgel
480D50B2E68949A...

Using IP Address: 107.77.210.34

Signed using mobile

Sent: 2/14/2018

Viewed: 2/15/2018

Signed: 2/15/2018

Rick Norris

rick.norris@milwaukeecountywi.gov

CBDP Director

Milwaukee County

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

DocuSigned by:
Rick Norris
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Using IP Address: 204.194.251.5

Sent: 2/14/2018

Viewed: 2/14/2018

Signed: 2/14/2018

Scott Manske - Comptroller

comptrollersignature@milwaukeecountywi.gov

Comptroller

Milwaukee County

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

DocuSigned by:
Scott Manske - Comptroller
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Using IP Address: 204.194.251.5

Sent: 2/15/2018

Viewed: 2/20/2018

Signed: 2/20/2018

Signer Events

Chris Abele
 cexsignature@milwaukeecountywi.gov
 County Executive
 Milwaukee County
 Security Level: Email, Account Authentication
 (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Paul D. Kuglitsch
 corpcounselsignature@milwaukeecountywi.gov
 Corporation Counsel
 Milwaukee County
 Security Level: Email, Account Authentication
 (None)

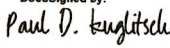
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Signature

DocuSigned by:

 831C9742336E428...

Using IP Address: 204.194.251.5

DocuSigned by:

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Timestamp

Sent: 2/20/2018
 Viewed: 2/20/2018
 Signed: 2/20/2018

Sent: 2/20/2018
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 Signed: 2/20/2018

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent	Hashed/Encrypted	2/20/2018
Certified Delivered	Security Checked	2/20/2018
Signing Complete	Security Checked	2/20/2018
Completed	Security Checked	2/20/2018

Payment Events**Status****Timestamps**

Exhibit A

Legal Description of the Property

See attached.

EXHIBIT A

Parcel 1:

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

For Informational Purposes Only:

Tax Key No. 745-8998-000

Parcel 2:

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

For Informational Purposes Only:

Tax Key No. 745-0029-000

Parcel 3:

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

For Informational Purposes Only:

Tax Key No. 745-8999-004

Parcel 4:

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

For Informational Purposes Only:

Property Address: 8230 W. Rawson Avenue

Tax Key No. 744-8985-002

Parcel 5:

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

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

Parcel 6A:

That part of the Southeast $\frac{1}{4}$ of Section 4, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Northeast corner of said $\frac{1}{4}$ Section; thence South $89^{\circ} 51' 33''$ West along the North line of said $\frac{1}{4}$ Section, 1324.72 feet to the North and South $\frac{1}{8}$ line of said $\frac{1}{4}$ Section; thence South $0^{\circ} 54' 45''$ West along said $\frac{1}{8}$ line, 905.13 feet to the place of beginning of land to be described; continuing thence South $0^{\circ} 54' 45''$ West along the said $\frac{1}{8}$ line, 1010.0 feet to a point; thence South $7^{\circ} 08'$ West 174.78 feet to a point; thence South $0^{\circ} 37'$ West 244.20 feet to a point in the center line of West Loomis Road, thence South $41^{\circ} 14'$ West along the center line of West Loomis Road, 406.47 feet to the point of intersection with the South line of said $\frac{1}{4}$ Section; thence West along the South line of said $\frac{1}{4}$ Section, 382.40 feet to a point; thence North $0^{\circ} 56'$ East along the East line of the West $\frac{1}{2}$ of the West $\frac{1}{2}$ of said $\frac{1}{4}$ Section, 1731.87 feet to a point; thence North $89^{\circ} 51' 33''$ East and parallel to the North line of said $\frac{1}{4}$ Section 662.60 feet to the place of beginning, excepting therefrom the South 60.0 feet and the Southeasterly 33.0 feet for street purposes. Also excepting therefrom those lands conveyed in Document No. 4382939, as corrected by Award of Damages recorded January 21, 1969 as Document No. 4441351.

Parcel 6B:

That part of the East $\frac{1}{2}$ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Beginning at the Southeast corner of the Northeast $\frac{1}{4}$ of said Section; thence North along the East line thereof, 519.25 feet to a point; thence West on a line parallel to the South line of said Northeast $\frac{1}{4}$ Section, 204.0 feet to a point in a 40 foot right-of-way; thence Southwesterly along said right-of-way to a point on the South line of said Northeast $\frac{1}{4}$ Section, said point being 948.5 feet West of the Southeast corner of said $\frac{1}{4}$ Section; thence West along the North line of the Southeast $\frac{1}{4}$ of said Section to a point on the North and South $\frac{1}{8}$ line of said Southeast $\frac{1}{4}$ Section, said point being 1324.72 feet West of the Northeast corner of said Southeast $\frac{1}{4}$ Section; thence South along said $\frac{1}{8}$ line, 303 feet to a point; thence West on a line parallel to the North line of said Southeast $\frac{1}{4}$ Section, 662.45 feet to a point; thence South 602.13 feet to a point, said point being 662.60 feet West of said $\frac{1}{8}$ line; thence East on a line parallel to the North line of said Southeast $\frac{1}{4}$ Section; 662.60 feet to a point on said $\frac{1}{8}$ line; thence continuing Easterly on a line 662.62 feet to a point, said point being 663.25 feet West of the Southeast corner and 1733.79 feet North of the South line of said $\frac{1}{4}$ Section; thence North on a line 906.73 feet to a point on the North line of said Southeast $\frac{1}{4}$ Section, said point being 662 feet West of the Northeast corner of said Southeast $\frac{1}{4}$ Section; thence East along said North line to a point of beginning. Excepting therefrom that part of the Northeast $\frac{1}{4}$ of Section 4, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Southeast corner of said $\frac{1}{4}$ Section; thence North along the East line thereof, 519.25 feet to a point; thence North $87^{\circ} 16'$ West on a line parallel to the South line of said $\frac{1}{4}$ Section, 204.0 feet to a point in a 40 foot right-of-way; thence Southwesterly along said right-of-way, to a point in the South line of said $\frac{1}{4}$ Section, 948.5 feet West of the Southeast corner of said $\frac{1}{4}$ Section; thence East along the South line of said $\frac{1}{4}$ Section to the

point of beginning, excepting therefrom the East 60 feet thereof.

Parcel 6C:

The North 303 feet of the East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin.

Parcel 6D:

That part of the West $\frac{1}{2}$ of the East $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows, to-wit: Beginning at a point in the center line of the Old Loomis Road (formerly State Trunk Highway 36) which point is South $89^{\circ} 06'$ West 663.25 feet along the South line of said $\frac{1}{4}$ Section from the Southeast corner of Section 4; thence North 1003.85 feet to the center of Loomis Road; thence South $50^{\circ} 49'$ West along said center line 283.58 feet; thence South $42^{\circ} 14'$ West along said center line 90.56 feet which is the place of beginning of the land herein to be described; thence continuing South $42^{\circ} 14'$ West 135.01 feet; thence North $69^{\circ} 29'$ West 311.87 feet; thence North $0^{\circ} 02'$ East 957.79 feet; thence North $89^{\circ} 10'$ East 662.62 feet; thence South 558.34 feet to a point which is 1175.45 feet North of the South line of said $\frac{1}{4}$ Section; thence South $89^{\circ} 07'$ West 279.90 feet; thence South $0^{\circ} 02'$ West 414.02 feet to the place of beginning. Excepting therefrom that portion used for road purposes.

Parcel 6E:

That part of the Southeast $\frac{1}{4}$ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Northeast corner of the above said $\frac{1}{4}$ Section; thence Westerly along the North line of said $\frac{1}{4}$ Section, 662.00 feet; thence South $0^{\circ} 00' 00''$ West on a line a distance of 1,200.00 feet to the point of beginning, said line if extended would intersect the South line of the $\frac{1}{4}$ Section, 663.25 feet West of the Southeast corner of said $\frac{1}{4}$ Section; thence continuing along said line, South $0^{\circ} 00' 00''$ West, 264.60 feet; thence South $89^{\circ} 07' 00''$ West, 279.90 feet; thence South $0^{\circ} 02' 00''$ West, 354.31 feet to a point on the highway right-of-way of "Old Loomis Road" as laid out and traveled on January 1, 1971; thence along said highway right-of-way North $40^{\circ} 21' 43''$ East, 1,009.10 feet; thence South $52^{\circ} 56' 05''$ West, 236.19 feet; thence South $88^{\circ} 58' 09''$ West, 185.00 feet to the point of beginning. Together with that part of the Southeast $\frac{1}{4}$ of Section 4, Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Northeast corner of said $\frac{1}{4}$ Section; thence South along the East line of said $\frac{1}{4}$ Section, 981.07 feet; thence West 60 feet to the point of beginning, said point being the intersection of the West right-of-way line of South 76th Street and the North right-of-way line of relocated Old Loomis Road as laid out and traveled on June 1, 1973; thence continuing West along the North right-of-way line of said Old Loomis Road, 49.07 feet to the point of beginning of a curve; thence Westerly along said North right-of-way line 95.18 feet along the arc of a curve concave to the Southeast, said curve having a radius of 234.04 feet and a long chord of 94.53 feet bearing South $78^{\circ} 20' 55''$ West; thence North $52^{\circ} 57' 46''$ East, 177.46 feet to a point on the West right-of-way line of South 76th Street; thence South along said West right-of-way line, 87.80 feet to the point of beginning.

Parcel 6F:

That part of the Southeast $\frac{1}{4}$ of Section 4, Township 5 North, Range 21 East, in the City of Franklin,

County of Milwaukee, State of Wisconsin, bounded and described as follows: Beginning at the Northeast corner of said ¼ Section; thence continuing West along the North line of said ¼ Section 662 feet to a point; thence South on a line, which line runs 2421.40 feet to a point 215 feet North of the South line and 663.25 feet West of the East line of said ¼ Section (measured parallel respectively to the East and South lines), 1200 feet to a point; thence East and parallel to the North line of said ¼ Section 185 feet to a point; thence Northeasterly on a line to a point on the East line of said ¼ Section, 848 feet South of the Northeast corner thereof; thence North along the East line of said ¼ Section to the point of beginning. Excepting therefrom the East 60 feet thereof.

For Informational Purposes Only:

Tax Key No. 744-8980-001

Parcel 7:

Being a part of the Southwest 1/4 and Southeast 1/4 of the Southeast 1/4 of Section 4, Town 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at the Southwest corner of said 1/4 Section; thence North 88° 42' 47" East along the South line of said 1/4 Section 1325.89 feet to the West line of the East 1/2 of said 1/4 Section; thence North 00° 23' 05" West along said West line 376.36 feet to a point on the Northerly line of Crystal Ridge Road and the point of beginning of lands to be described; thence South 39° 56' 49" West along said Northerly line 27.65 feet; thence North 00° 41' 14" West 194.65 feet; thence North 05° 49' 46" East 174.78 feet to a point on said West line; thence South 57° 06' 37" East 108.90 feet; thence South 59° 00' 13" East 43.87 feet; thence South 82° 15' 13" East 21.11 feet; thence South 69° 48' 13" East 28.90 feet; thence South 50° 20' 13" East 28.33 feet to a point on the Northerly line of said Drive; thence South 39° 56' 49" West along said Northerly line 306.13 feet to the point of beginning.

For Informational Purposes Only:

Tax Key No. 744-8988-000

Parcel 8:

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

For Informational Purposes Only:

Tax Key No. 744-8989-000

Parcel 10:

That part of the East ½ of the Southwest ¼ of the Northeast ¼ of Section 4, Town 5 North, Range 21 East that lies within the City Limits of the City of Franklin, County of Milwaukee, State of Wisconsin. Together with that part of the Southeast ¼ of the Northeast ¼ of Section 4, Town 5 North, Range 21 East that lies within the City Limits of the City of Franklin, County of Milwaukee, State of Wisconsin. Excepting therefrom that part of the Northeast ¼ of Section 4, in Township 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Southeast corner of said ¼ Section; thence North along the East line thereof, 519.25 feet to a point; thence North 87° 16' West on a line parallel to the South line of said ¼ Section, 204.0 feet to a point in a 40 foot right-of-way; thence Southwesterly along said right-of-way, to a point in the South line of said ¼ Section, 948.5 feet West of the Southeast corner of said ¼ Section; thence East along the South line of said ¼ Section to the point of beginning, excepting therefrom the East 60 feet thereof. Further Excepting therefrom all that part of the Northeast 1/4 of Section 4, Town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Southeast corner of said 1/4 Section; running thence North 03° 51' 30" East on the East Line of Said 1/4 Section, 519.25 feet to a point; thence North 87° 16' West, 582.23 feet to the place of beginning of the land to be described; thence continuing North 87° 16' West, 148.77 feet to a point in the Easterly line of the park described in Document No. 2137727; thence South 03° 51' 30" West and parallel to the East line of said 1/4 Section, 367.55 feet to a point; thence North 58° 12' 34" East, 255.43 feet to a point; thence North 11° 00' 30" West, 229.27 feet to the place of beginning; together with a non-exclusive right-of-way 40 feet wide, extending from the Southeasterly corner of the above described premises to South 76th street the center line of said right-of-way being an extension in a Northeasterly direction of the Southerly line of the above-described premises. Further excepting therefrom all that part of the Northeast 1/4 of Section 4, Town 5 North, Range 21 East, in the City of Franklin, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at the Southeast corner of said 1/4 Section running thence North 03° 51' 30" East on the East line of said 1/4 Section, 519.25 feet to a point; thence North 87° 16' West, 204.00 feet to the place of beginning; thence continuing North 87° 16' West, 378.23 feet to a point; thence South 11° 00' 30" East, 229.27 feet to a point; thence North 58° 12' 34" East, 392.97 feet to the place of beginning, together with a non-exclusive right of way 40 feet wide, extending from the Southeasterly corner of the subject premises to South 76th Street, the center line of said right of way being an extension in the Northeasterly direction of the Southerly line of the subject premises.

EXCEPTING THEREFROM THE FOLLOWING:

PART OF THE SOUTHWEST 1/4 AND SOUTHEAST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 4, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 4; THENCE N00°19'12"W ALONG THE EAST LINE OF SAID 1/4 SECTION 519.27 FEET; THENCE S88°33'16"W 1190.88 FEET TO A POINT AT THE CENTERLINE OF THE ROOT RIVER AND THE POINT OF BEGINNING OF LANDS TO BE DESCRIBED; THENCE CONTINUING S88°33'16"W 47.5± FEET TO A POINT ON A MEANDER LINE AS SURVEYED BEING POINT "A"; THENCE CONTINUING S88°33'16"W 744.98 FEET; THENCE S00°03'36"W 489.23 FEET TO A MEANDER LINE AS SURVEYED, SAID LINE BEING N00°03'36"E 35.3± FEET OF A POINT AT THE CENTER LINE OF THE ROOT RIVER WHICH IS SOUTHWESTERLY 997 FEET OF THE POINT OF BEGINNING; THENCE

CONTINUING ALONG SAID MEANDER LINE N78°40'41"E 152.35 FEET; THENCE N65°31'16"E 157.47 FEET; THENCE N66°28'28"E 81.84 FEET; THENCE N42°32'22"E 276.26 FEET; THENCE N53°05'35"E 141.38 FEET; THENCE N46°16'35"E 88.66 FEET; THENCE N24°07'51"E 33.38 FEET TO SAID POINT "A", BEING S88°33'16"W 47.5± FEET OF THE POINT OF BEGINNING. LANDS TO INCLUDE ALL THAT WHICH LIES BETWEEN THE THREAD OF THE ROOT RIVER AND THE MEANDER LINE AS SURVEYED.

For Informational Purposes Only:
PART OF Tax Key No. 708-8996-000

Parcel 11:

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

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

Exhibit B

Option Agreement

See attached.

EXHIBIT B

OPTION TO PURCHASE AGREEMENT

“The Rock” and “Ballpark Commons” Athletic Complex
7900 Crystal Ridge Rd, Franklin, WI 53132
Taxkey Numbers: See Exhibit A

For and in consideration of the sum of Ten Thousand Dollars (\$10,000.00) (“Option Fee”) tendered herewith, Milwaukee County (the “County”) does hereby grant unto BPC County Land LLC, a Wisconsin limited liability company and/or its successors or assigns (“Developer”) an exclusive Option to Purchase (“Option”) the property at 7900 Crystal Ridge Road, Franklin, Wisconsin (the “Land”) more particularly described in Exhibit A attached hereto, on the following terms and conditions:

1. **Purpose.** This Option is granted for the purpose of granting the right to Developer to acquire and develop the Property, repair and replace landfill gas systems on the Property, and accommodate County improvements to the Oak Leaf Trail (the “Project”).
2. **Acceptance Date.** The “Acceptance Date” shall be the date on which both parties execute and deliver this Option Agreement.
3. **Agreement to Sell and Purchase.** If Developer exercises this Option, the County shall sell to Developer and the Developer shall buy from the County, the Land along with all of the following (collectively, the “Property”):
 - a. All rights and appurtenances pertaining to the Land, including, without limitation, any and all right, title, and interest of the County in and to adjacent roads, alleys, streets and ways, and any easements or other rights appurtenant to the Land;
 - b. All improvements, structures, facilities and fixtures placed, constructed or installed on the Land (collectively, the “Improvements”);
 - c. All mechanical systems and related equipment owned by the County and attached to the Improvements or located upon the Land (the “Systems and Equipment”), including, but not limited to, all electrical systems, plumbing systems, heating systems, and air conditioning systems; and all machinery, equipment, fixtures and supplies located in or on and used in connection with the Land or the Improvements or the operations thereon;
 - d. The County’s interest in any warranties and guaranties relating to the Land or Improvements, to the extent the same are assignable; and
 - e. Any governmental permits, approvals, environmental monitoring requirements and obligations, and licenses owned or held by County in connection with the Land or Improvements, and the right to the use thereof, all to the extent the same are assignable.

- f. The Land may be modified, by mutual agreement of the parties, to accommodate public use and access, specifically related to an extension of the Oak Leaf Trail, or to reconfigure certain Root River parcels, in which event the parties shall provide a substitute Exhibit A to replace the initial Exhibit A.

The transaction contemplated herein shall not include the County's personal property or any other property not falling within the definition of Property herein (collectively, the "County's Personal Property").

4. **Purchase Price.** If the Option is exercised, the purchase price shall be Eight Hundred Forty Thousand Dollars (\$840,000.00), less the accumulated Landfill Operating Costs (as defined in the Contribution and Participation Agreement between Developer and County of even date herewith) paid by the Developer ("Purchase Price"), payable by certified check or wire transfer, subject to customary deductions and pro-rations in a commercial real estate transaction in Franklin, Wisconsin. Any Option Fees or Extension Option Fees paid by the Developer shall be credited towards the Purchase Price. The Purchase Price shall not be paid at closing, but shall be deferred until the term of the TID expires. Developer shall receive a credit or offset against the Purchase Price (the "Purchase Price Offset") equal to all Landfill Operating Costs paid by Developer during the term of the TID, but in no event shall the Purchase Price be less than One Dollar (\$1.00). Until the Purchase Price is paid in full, County shall have the right to review the accounting for Landfill Operating Costs and the Purchase Price Offset, as more particularly set forth in the Contribution and Participation Agreement.

5. **County's Deliveries.**

- a. **Due Diligence Materials.** Within thirty (30) days from the Acceptance Date, the County shall (at the County's sole cost) deliver or make available to the Developer copies of the following documents, to the extent they are in the County's possession and control (all such documents being referred to as the "Due Diligence Materials"):
 - (i) All tests, inspections, evaluations and/or reports relating to the Property, including but not limited to, environmental, structural, topographical and geological studies and reports.
 - (ii) All surveys, maps, site plans, architectural plans, specifications, and other drawings of the Property, and any as-builts, blueprints, warranties or owners' manuals relating to the Improvements.
 - (iii) All notices, orders or other communications by or between County and any federal, state, municipal, local, or governmental agency regarding the Property, including without limitation, the Wisconsin Department of Natural Resources.
 - (iv) Any appraisal of the Property from 2010 to the present.

In the event information contained in the Due Diligence Materials materially changes at any time prior to Closing, or in the event such documents require updating due to the passage of time, the County shall immediately update such information and provide revised documentation to Developer. Likewise, if at any time prior to Closing any additional Due Diligence Materials come into the County's possession or control, or otherwise become reasonably obtainable by the County or its agents, the County shall deliver same to Developer. All documents required to be provided under the foregoing provisions shall hereinafter be referred to as the "Additional Due Diligence Materials." If the County delivers any Additional Due Diligence Materials after the Developer has exercised its Option hereunder, the Developer may, in its discretion, cancel the transaction and the Option Fee shall be returned to the Developer.

- b. **Title Commitment.** After the Acceptance Date, the County shall diligently seek to obtain a title insurance commitment showing title to the Property as of a date that is no more than fifteen (15) days before the delivery of such title commitment (the "Title Commitment"). The Title Commitment shall be subject only to those liens which will be paid out of the proceeds of Closing (as defined herein). The Title Commitment shall be issued by an insurer licensed to write title insurance in Wisconsin that has been approved by the Developer. The County shall pay all costs associated with the Title Commitment and Developer's title policy (except endorsements, which shall be Developer's cost).

6. **Manner of Exercise.** The Developer shall exercise this Option by delivering a written statement to the Economic Development Director on or before the end of the Option Period (or any extension thereof). Throughout this Option, the term "Economic Development Director" means the Milwaukee County Economic Development Director or, if that position is vacant, means the Director of the Milwaukee County Department of Administrative Services

7. **Term.** This Option shall commence immediately upon the Acceptance Date and, unless terminated or exercised earlier pursuant to terms elsewhere in the Option, shall continue in effect for six (6) months (the "Option Period"). Unless otherwise specified in this Option, the Option Fee is nonrefundable. The Option Period may be extended by Developer for up to one (1) additional six (6) month period, with written notice by Developer to the Economic Development Director.

8. **Closing.** Provided that all of the conditions for closing hereunder have been satisfied, the closing ("Closing") shall occur within thirty (30) days from the date of the Developer's written statement to exercise the Option (the "Closing Date"), unless another date is agreed to by the parties in writing. The transaction shall be closed at the place designated by Developer. Occupancy of the entire Property shall be given to Developer at the time of Closing. The County shall remove all of the County's Personal Property from the Property prior to Closing. At any time after exercising this Option, Developer shall have the right to inspect the Property at reasonable times upon reasonable notice to determine if there has been a significant change in the condition of the Property. If Developer reasonably determines there has been a significant change in the condition

of the Property, Developer may, in its discretion, terminate this Option Agreement and forfeit the Option Fee.

9. **Due Diligence Review.** Prior to the end of the Option Period:

- a. The Developer and/or Developer's agents and representatives shall have the right, in compliance with all applicable WDNR regulations, to conduct any soil, environmental or other assessment of the Property that the Developer deems necessary including, any geotechnical investigation, a Phase I and/or Phase II environmental assessment, or any procurement and testing of soil, groundwater, indoor air, or any other material located on the Property (collectively together the "Soil/Environmental Assessments"). Developer shall pay all costs associated with the Soil/Environmental Assessments and restore any portions of the Property damaged by such tests (i.e., soil borings) to substantially the same condition as existing just prior to such Assessment within thirty (30) days. Developer shall, and shall request that its agents, representatives, and independent contractors, perform such work in a manner that does not unreasonably cause disturbance to the Property.
- b. Before the end of the Option Period, Developer may, in its sole discretion, conduct any other test, inspection or review of the Property (or any information related to the Property) or seek to obtain any financing, approvals, or other information relating to the Project, including, but not limited to, (i) inspecting the Improvements, the Property's mechanical and electrical systems, roof, structure and foundation; (ii) reviewing the Due Diligence Materials; and (iii) reviewing or seeking to obtain any permit, notice, approval, variance, review or other matter relating to any federal, state, municipal, local or governmental agency involving the Property or the Project (collectively, the "Due Diligence Review").
- c. Notwithstanding the provisions of this Section 9, before engaging in any Soil/Environmental Assessment on the site, the Developer shall submit its contractor's proposed work plan to the Milwaukee County Economic Development Director for approval as to the location of the proposed work (which approval shall not be unreasonably withheld, conditioned or delayed). The County shall require any contractor to produce a certificate of insurance complying with the requirements set forth in Exhibit B attached hereto.

10. **Closing Deliveries.**

- a. **Developer's Deliveries.** At Closing, or as otherwise provided herein, the Developer shall deliver the following:
 - (i) three (3) executed originals of the Contribution and Participation Agreement and any ancillary agreements described therein.

- (ii) three (3) executed originals of a Development Agreement (“Development Agreement”).
- (iii) three (3) executed originals of a Lease Agreement (“Lease”) for the areas in the Village of Greendale currently subject to the Sports Park Maintenance and Operations Services Agreement, but not subject to this Option Agreement.
- (iv) a landfill license transfer agreement approved by WDNR.
- (v) a modified landfill closure plan approved by WDNR.
- (vi) an Oak Leaf Trail Public Use and Access Easement.
- (vii) a Conservation Easement covering the primary environmental corridor as defined by SEWRPC, defined in Exhibit F.

b. County Deliveries. At Closing, County shall:

- (i) Deliver a Warranty Deed in recordable form warranting that title to the Property is free and clear of all liens and encumbrances except any of the following items identified in the Title Commitment to which Developer has not objected: any municipal and zoning ordinances and recorded agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants and the general taxes levied in the year of closing.
- (ii) Complete and execute the documents necessary to record the conveyance at County’s cost, including the payment of the Wisconsin Real Estate Transfer fee, if any.
- (iii) Deliver an owner’s policy of title insurance (from the same insurer issuing the Title Commitment) in the amount of the purchase price on a current ALTA form (the “Title Policy”). The Title Policy shall be the evidence of the County’s title. The Title Policy shall be subject only to those items shown in the Title Commitment which Developer has expressly accepted. The Title Policy shall contain a “gap” endorsement or other equivalent gap coverage (at the County’s sole cost) to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the Title Commitment and before the deed is recorded. All other endorsements to the Title Policy shall be issued at the Developer’s sole cost. The County shall provide any affidavits or other documents required by the title company to issue the GAP endorsement (or equivalent coverage), to remove the applicable standard exceptions to title and/or to issue any endorsements reasonably requested by Developer.

- (iv) Any other documents reasonably requested by Developer's lenders or otherwise required for the financing for the Project.
- (v) Any other documents customarily associated with the sale of commercial real estate in Franklin, Wisconsin.
- (vi) three (3) executed originals of the Contribution and Participation Agreement and any ancillary agreements described therein.
- (vii) three (3) executed originals of the Development Agreement.
- (viii) three (3) executed originals of the Lease.
- (ix) an approved County Highway K de-commissioning document, as more fully described in Section 10(c)(ii).

c. Additional Closing Terms.

- (i) **Restrictions on Assignment.** This Option shall not be assigned by Developer without the written consent of the Economic Development Director, other than to an entity in which Developer or Michael Zimmerman has an ownership interest and controlling managerial authority. Any assignment of the Option by Developer in violation of this Section shall result in termination of the Option by County and retention of the entire Option Fee by County as liquidated damages.
- (ii) **Crystal Ridge Drive and Old Loomis Road.** The County, prior to closing, shall decommission Crystal Ridge Drive as a county highway, and those portions of Old Loomis Road, as requested by Developer, and obtain all other governmental approvals and conveyances so that those portions of Crystal Ridge Drive and Old Loomis Road shall be transferred over to the Developer.
- (iii) **Sports Parks Maintenance and Operations Services Agreement.** Upon transfer of Title to the Property, the Developer and Seller acknowledge that the Sports Park Maintenance and Operations Services Agreement ("Services Agreement") attached hereto as Exhibit C will be declared null and void pertaining to all areas of the Agreement including the ski hill in the Village of Greendale which is not subject to this Option Agreement. Only the land located in the City of Franklin, that is subject to the Services Agreement shall be transferred to Developer.
- (iv) **Property in Greendale.** Pursuant to Section 10(c)(iii) above, Developer's current Services Agreement will be terminated. The land in Franklin will be sold to Developer ("Franklin Land") under this Option Agreement, but the remaining land in Greendale will be retained by County ("Greendale

Land”). The Greendale Land may be subject to a storm water easement for the benefit of the Franklin Land in an area established by County and Developer prior to executing the Option. Developer shall be entitled to continue to use the Greendale Land pursuant to the terms of a new Lease.

- (v) **Real Estate Proration.** General real estate taxes and private and municipal charges, if any, shall be prorated at Closing. Special assessments levied or attributable to work actually commenced prior to Closing shall be paid by County no later than Closing. Any income, taxes or expenses shall accrue to the County and be prorated through the Closing Date.
- d. **Development Agreement.** The “Development Agreement” shall define the Developer’s development obligations on the Project including commitments to provide certain community benefits. The Development Agreement shall be negotiated by the Developer and the Economic Development Director prior to the exercise of this Option by Developer. After execution of the Development Agreement, a Memorandum of the Development Agreement shall be recorded with the Register of Deeds.

11. **County’s Warranties and Representations.** County hereby makes the following warranties and representations with respect to the Property:

- a. County has the full power and authority to enter into this Option and to close the transaction contemplated hereunder, pursuant to County Board Resolution _____ and pursuant to Wis. Stats. §59.17(2)(b)3 and that certification attached hereto as Exhibit E.
- b. To the best of County’s current and actual knowledge, County has not received, and County has no knowledge of any predecessor receiving, notice of any violation of any law, municipal ordinance or other governmental requirement affecting the Property. County has no knowledge that any governmental authority is contemplating issuing such notice or that any such violation exists.
- c. Except as specified in Exhibit C, and other than this Option Agreement, County is not a party to any agreement, contract or commitment to sell, convey, lease, assign, transfer, provide option rights, provide rights of first refusal, or otherwise give any third party any rights to use or occupy all or any part of the Property.
- d. To the best of County’s current and actual knowledge, there are no service or maintenance contracts or equipment leases granting any person any rights to the Property after the Closing.
- e. To the best of County’s current and actual knowledge, there are no condemnation or eminent domain proceedings, nor any negotiations in lieu of condemnation, pending against the Property, and County is not aware of any condemnation or

eminent domain proceedings being contemplated or threatened against the Property.

- f. Except for the conditions contained Res. 2017-7260, adopted by the City of Franklin Common Council on April 18, 2017, and the conditions contained in Res. 17-373, adopted by the Milwaukee County Board of Supervisors on June 22, 2017, the County is not aware of any outstanding permits, certificates, licenses or other similar approvals or authorizations that are required (but have not been obtained) for the transfer of all or any part of the Property under any federal, state or local law, ordinance, rule or regulation, or by any governmental or quasi-governmental agency having jurisdiction over the Property.
- g. Except for any requirements or restrictions imposed by the Wisconsin Department of Natural Resources or the City of Franklin, the County has no actual knowledge of any existing law, ordinance, governmental requirement or restriction that would prevent or limit the Project or the Property.
- h. To the best of County's current and actual knowledge, there are no claims, actions, litigation, proceedings, inquiries, disputes, rulings, judgments, or orders that are (i) attached or pending against or relating to the Property or the transaction contemplated herein; or (ii) attached or pending that could affect the Property or the transaction contemplated herein.
- i. To the best of County's current and actual knowledge, there are no attachments, executions, assignments for the benefit of creditors, receiverships, or voluntary or involuntary proceedings in bankruptcy, or pursuant to any other debtor relief laws which have been (i) filed by County; (ii) contemplated by County; (iii) threatened against County; or (iv) which are currently pending against County in any judicial or administrative proceeding.
- j. Except as specified in Exhibit D, to the best of County's current and actual knowledge, (i) County has no knowledge of any Hazardous Material (as defined below) being or having been transported to or from, or generated, released, stored, or disposed of on or under the Property; (ii) County has no knowledge that the Property or any part of any Improvements and equipment thereon contains any asbestos or polychlorinated biphenyls; (iii) County has not received any notice of any action or proceeding relating to any Hazardous Material or notice of any release or threatened release thereof on or under the Property or any notice contrary to (i) and (ii) above; and (iv) no underground or above-ground storage tanks are or have been located on or under the Property.

For purposes of this Agreement, "Hazardous Material" means, without limitation, any substance or material defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "restricted hazardous waste", "toxic substances" (including toxic mold) or "known to cause cancer or reproductive

toxicity” (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited, limited or regulated under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law, or treaty regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment, or natural resources. For purposes of this sub-paragraph, laws and regulations shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1901, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701, et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651, et seq.; the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001, et seq.; A.R.S. §§ 49-201(16), 49-901(3), and 49-921(5); and in the regulations adopted pursuant to such laws; and any substance or material which has been determined by a state, federal or local governmental authority with jurisdiction over the Property to be capable of posing a risk of injury to health or safety.

- k. To the knowledge of County, no brokerage fee, commission or finder’s fee of any type is due any person in connection with the transaction contemplated by this Option.
- l. The County has provided to Developer all Due Diligence Materials in its possession or control and the County shall maintain the repository of such documents.

All such warranties and representations of County, together with any others made hereunder, shall be reaffirmed to be true and correct as of the Closing Date to the same extent as the date of this Option. If any of the foregoing warranties and representations becomes untrue in any respect after the execution of this Option and is not cured by County (at no cost to Developer) on or before Closing, then Developer may elect to terminate this Option, in which event the Option Fee shall be returned to Developer.

12. **Property Condition.**

- a. Except as otherwise provided herein, County shall convey the Property in its "AS IS" physical condition with all faults and defects, known or unknown, including but not limited to environmental defects, and without representation or warranty, express or implied. Such provisions shall bar all tort, warranty, and misrepresentation claims, including any action based on non-disclosure, except as otherwise provided herein or in the Contribution and Participation Agreement.
- b. County discloses that the Property may contain hazardous waste, building materials and other debris. Without changing the "AS-IS" nature of this transaction,

Developer is aware that the Property is or may be affected by adverse geotechnical conditions due to the presence of these materials or due to the load bearing capacity of the soil. County assumes no liability regarding suitability of the subsurface conditions for Developer's intended use. Developer is encouraged to undertake a geotechnical investigation and other due diligence reviews that it deems necessary upon execution of this Option by both parties.

- c. County shall not provide an updated survey of the Property.
13. **Audit.** The Developer shall allow the County, the Milwaukee County Audit Services Division, or any other party the County may name, when and as they demand, to audit, examine, access and make copies of, excerpts or transcripts from any records, books, files, premises or other information related to the Project in the Developer's possession. The Developer shall maintain and make available to the County the above described information for no less than three years after conclusion of the obligations and responsibilities of the Developer described herein and required by this Agreement. The Developer understands and will abide by all provisions of Chapter 34 of the Code of Ordinances. These requirements shall apply to any and all contractors and subcontractors to the Developer for the Project under this Agreement.
14. **ADA Compliance.** Developer agrees that the Project will comply with all requirements of the Americans with Disabilities Act of 1990, U.S.C. #12101, et. seq.
15. **Time is of the Essence.** It is understood that time is of the essence as to the provisions of this Option.
16. **Notices.** All notices and demands by either party to the other shall be given in writing and personally delivered or sent by United States certified mail, postage prepaid, and addressed:

To the County: Attention: Economic Development Director
 Dept. of Administrative Services
 Economic Development Division
 633 West Wisconsin Avenue, Suite 903
 Milwaukee, WI 53203

With copies to: Milwaukee County Corporation Counsel
 901 North 9th Street, Room 303
 Milwaukee, WI 53233

To the Developer: BPC County Land LLC
 [Address]

With a copy to:

Either party may, upon prior notice to the other, specify a different address for the giving of notice. Notices shall be deemed given upon receipt (in the case of personal delivery) or on the date of their deposit in the United States mail (in the case of mailing).

17. **Default.** A material failure to perform any obligation relating to the purchase or sale of the Property after the Developer's exercise of this Option shall be a default which may subject the defaulting party to liability for damages or other legal remedies. If the Developer defaults on the terms of the purchase of the Property after the Developer's exercise of this Option, the County may, as its sole and exclusive remedies either (i) request the Option Fee as partial payment of the purchase price, or (ii) terminate this Option Agreement and sue for actual damages. If County defaults on the terms of the purchase of the Property after the Developer's exercise of this Option, the Developer may sue for specific performance or terminate this Option Agreement and sue for actual damages. In addition, either party may seek any other remedies available in law or equity.

18. **Special Conditions.**

- a. **Force Majeure Delay.** If any party is delayed or prevented from the performance of any act required by this Option by reason of either fire, earthquake, war, flood, riot, strikes, labor disputes, judicial orders, public emergency or regulations, or other causes beyond the reasonable control of the party obligated to perform, then 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.
- b. **Distribution.** The County and the Developer agree that the Developer (or its agents) may distribute copies of this Option to any potential lenders, investors or other persons interested in the Project, and to any appraisers, title insurance companies and other settlement service providers connected to the transaction contemplated herein or the Project.
- c. **Dates and Deadlines.** Deadlines expressed as a number of "days" from an event, such as the calculation of the Option Period of the Closing Date, shall be calculated by excluding the day the event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day.
- d. **Counterparts.** The Option is executed in three (3) counterparts, each of which shall constitute one and the same instrument. The parties agree that a signature affixed to any counterpart of this Agreement and delivered by facsimile or email shall be valid, binding and enforceable against such party.
- e. **Further Assurance.** Each of the parties hereto hereby agrees to execute and deliver such documents and to take such other actions at any time and from time to time hereafter as may be reasonably requested by the other party hereto to carry out the provisions or purposes of this Option Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, The Developer has signed and sealed this Option this 20 day of December, 2017.

DEVELOPER

BPC COUNTY LAND LLC

By: Michael E Zimmerman
Name: MICHAEL E ZIMMERMANN
Title: MANAGER

Date: 12/20/17

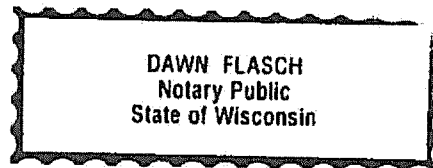
STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

Personally came before me this 20 day of December, 2017, Michael Zimmerman, to me known to be the Manager of BPC County Land LLC, and he executed the above and foregoing Option as the Manager on behalf of such limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(SEAL)

Dawn Flasch
Notary Public
MILWAUKEE County,



My Commission 02/13/18

IN WITNESS WHEREOF, Milwaukee County, has caused this Option to be duly executed in its name and on its behalf by the Milwaukee County Executive.

MILWAUKEE COUNTY

By: Chris Abele
Chris Abele, County Executive

Date: 11/15/17

Approved as to form: Margaret Daun
Margaret Daun, Corporation Counsel

Approved as to availability of funds: Scott Manske
Scott Manske, County Comptroller

STATE OF WISCONSIN)
) ss.
COUNTY OF Milwaukee)

Personally came before me this 15 day of November, 2017,
2016, to me known to be the persons who executed the above and
foregoing Option.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[SEAL]

David A. Collins
Notary Public
Milwaukee County,

My Commission 8-2-17

Exhibit A

Tax Key #	Acreage (Approx.)	Restrictions
7448980001	81.478	Conservation Easement for PEC
7448985001	7.1416	
7448985002	10.7634	
7458999004	0.2771	
7450029000	0.9002	
7458998000	4.9952	
7448988000	0.8259	
7448989000	0.431	
7088996000	14.6257 (excluding portion including Root River N and W of site)	Conservation Easement for PEC
7088999000	6.1601	

Exhibit B

Developer agrees to maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims for damages to property of and/or claims which may arise out of result from Developer's activities, by whomever performed, in such coverage amounts as required and approved by the County. Developer shall cause its consultants, contractors and subcontractors to have and maintain in connection with any Remedial Work or Contemplated Improvements being performed at the Property one more insurance policies with at least the following coverage and limits:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers' Compensation and Employers Liability & Disease	Statutory / Waiver of Subrogation \$100,000/\$500,000/100,000
General Liability Bodily Injury and Property Damage to include: Personal Injury, Fire Legal, Liquor, Products & Completed Operations	\$1,000,000 Per Occurrence \$2,000,000 General Aggregate
Umbrella Liability (Over General Liability, Employer's Liability, and Automobile Liability)	\$5,000,000 General Aggregate
Automobile Liability – Bodily Injury & Property Damage All Autos Uninsured Motorist	\$1,000,000 per Accident Per Wisconsin Requirements
Contractor's Pollution Liability	\$5,000,000 Per Occurrence \$5,000,000 General Aggregate
Professional Liability	\$1,000,000 Per Occurrence \$1,000,000 General Aggregate

Milwaukee County will be named as an additional insured for the Contractor's Pollution Liability, General Liability, Employer's Liability, Automobile Liability and Umbrella Liability. A waiver of subrogation for the Contractor's Pollution Liability, General Liability, Employer's Liability, Automobile Liability, Umbrella Liability, and Workers' Compensation by endorsement in favor of Milwaukee County shall be provided. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

The Developer is required to evidence Contractor's Pollution Liability insurance for any and all site development, construction and improvement activities, including the construction of the new Methane Control System, operation and maintenance of the Leachate System, Monitoring Wells, and Landfill cap, related to any work done at, or in relation to, the Property and Landfill.

Contractor's Pollution Liability shall be obtained on an occurrence based policy to include 10-year completed operations coverage. The definition of pollution on the Contractor's Pollution Liability policy shall include, and not be limited to, methane gas and leachate. The concussive / explosive effects of pollutants and/or methane gas shall be a covered event. The Developer and all contractors and all subcontractors shall be Named Insureds on the Contractor's Pollution Liability policy.

Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the County for each successive period of coverage for the duration of this Agreement. Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide.

Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this Agreement.

The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the County Risk Manager.

Exhibit C

Sports Park Maintenance and Operations Services Agreement

MILWAUKEE COUNTY WISCONSIN

**SPORTS PARK MAINTENANCE AND OPERATIONS SERVICES AGREEMENT
(Multi-Purpose Sports Complex)**

THIS SPORTS PARK MAINTENANCE AND OPERATIONS SERVICES AGREEMENT (this "Agreement") is entered into by and between MILWAUKEE COUNTY, WISCONSIN, a political subdivision of the State of Wisconsin, as represented through its Department of Parks, Recreation and Culture (the "County"), and The Rock Sports Complex, LLC (the "Operator"), with reference to the following recited facts:

RECITALS

A. The County met with the Operator to discuss the idea of building and operating a year-round multi-purpose sports center on land owned by the County with the Operator to provide certain services including but not limited to operational services relating to the design, construction, management, operation and maintenance of a year-round multi-purpose sports center (hereinafter referred to as the "Sports Park" and as more specifically described and defined in ARTICLE I) to be located on County-owned land commonly referred to as Crystal Ridge with a property identification number(s) of: 744-8980-001; 745-8998-000; 744-8985-002; 744-8985-001; 744-8988-000; 744-8989-000; 708-8996-000; 708-8999-000, and comprising approximately 140 total acres.

B. The County represents and warrants that it owns that certain real property specifically described in Exhibit "A" attached to this Agreement (the "Property"), subject to certain reservations, covenants, conditions or restrictions relating to the use of the Property.

C. The County and Operator desire to construct a top quality, for-profit, self-supporting year-round multi-purpose Sports Park facility on the Property.

D. The County and the Operator (hereinafter collectively the "Parties") desire to enter into this Agreement to set forth their rights and obligations to each other relating to the Operator's operation and maintenance of the Sports Park for the County following construction and installation of the Sports Park on the Property, if at all.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES OF THE COUNTY AND THE OPERATOR SET FORTH IN THIS AGREEMENT, THE COUNTY AND THE OPERATOR AGREE, AS FOLLOWS:

ARTICLE I

DEFINITIONS

1. The following definitions apply in this Agreement:

1.1 "***Affiliate***" means with respect to any Person, (i) any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the Operator, such Person or (ii) any general partner, officer or director of

such Person or of any other Person described in clause (i). As used in the previous sentence, "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. "Affiliated" shall have the correlative meaning.

1.2 "Annual Net Income Statement" means a financial statement, prepared in accordance with generally accepted accounting principles and in accordance with Operator's accounting policies.

1.3 "Application" means any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for any activity on the Property that this Agreement allows, including any application for any building permit, certificate of occupancy, utility service or connection, easement, covenant, condition, restriction, subdivision plat, or such other instrument as the Operator may from time to time reasonably request in performing services under this Agreement; (b) to enable the Operator from time to time to seek any Approval or to use or operate the Sports Park in accordance with this Agreement; or (c) otherwise reasonably necessary and appropriate to permit the Operator to perform its services under this Agreement.

1.4 "Approvals" means any and all licenses, permits, approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any use, maintenance, repair or operation of the Sports Park.

1.5 "Bankruptcy Law" means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.6 "Bankruptcy Proceeding" means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.7 "Building Equipment" means all fixtures incorporated into the Sports Park, whether acquired by the County or the Operator and used, useful, or necessary to operate the Sports Park as such (including, but not limited to, boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; irrigation systems; machinery; and pipes) as opposed to operating any business in the Sports Park.

1.8 "Capital Repair" means any work reasonably necessary to repair, restore, refurbish or replace any equipment, facility, structure or any other component of the Sports Park which has a useful life extending substantially beyond the Operating Year in which the repair was made.

1.9 "Casualty" means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting all or any part of the Sports Park, whether or not insured or insurable.

1.10 “Commencement Date” means the earliest of the following dates to occur, if at all: (a) the Operator issues a certificate of completion to its designated contractor(s) performing the design-build or construction activities required for installation of the Sports Park and, unless waived by the Operator, the Operator has obtained all Approvals as set forth in Section 21.2; or (b) the Operator opens all or any part of the Sports Park for use by members of the public.

1.11 “Concession Facility” means the family-style, sports-themed food and beverage restaurant type concession facility to be constructed as part of the Sports Park.

1.12 “Condemnation” means any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Property by condemnation, eminent domain, or any similar proceeding.

1.13 “Condemnation Award” means any award(s) paid or payable (whether or not in a separate award) to either Party after the Commencement Date because of or as compensation for any Condemnation, including: (1) any award made for any improvements that are the subject of the Condemnation; (2) the full amount paid or payable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in the Condemnation; (3) any interest on such award; and (4) any other sums payable on account of such Condemnation.

1.14 “Condemnation Effective Date” means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of any part of the Sports Park subject to the Condemnation.

1.15 “Contingent County Revenue” means a percentage of Operator’s net earnings before taxes generated by its use of the Property, payable to the County in the following amounts: (i) Years 1 through 5, five percent (5%), (ii) Years 6 through 15, eight percent (8%), (iii) Years 16 through 25, ten percent (10%). Operator shall calculate Contingent County Revenue on a cash accounting basis.

1.16 “County” has the definition set forth in the Preamble.

1.17 “County Approval” when used in this Agreement, any requirement of the “County’s approval” or “prior written approval” or “consent” or words of similar import shall be deemed satisfied by the written approval of the Director of Milwaukee County Department of Parks, Recreation and Culture (the “Parks Director”) or designee.

1.18 “County Existing Infrastructure” means the existing ski chalet, other buildings, utility infrastructure and any other non-real property on the Property, whether or not owned by the County, as of the date of this Agreement.

1.19 “County Parties” means and refers to, collectively, the County, its elected officials, County Commission, officers, employees, agents and legal representatives.

1.20 “County Party” means and refers to, individually, the County and each of its elected officials, officers, employees, agents and legal representatives.

1.21 **"County Representative"** means an employee, employees or agent of the County designated in writing by the Parks Director for the purpose of facilitating the review of the Sports Park Plans and Specifications and for post-Commencement Date coordination including scheduling of Public Events with the Operator.

1.22 **"County Revenues"** means, collectively, the Fixed County Revenue, and the Contingent County Revenue.

1.23 **"Default"** means any Monetary Default or Non-Monetary Default.

1.24 **"Default Interest"** means interest at an annual rate equal to the lesser of: (a) five percent (5%) per annum; or (b) the Usury Limit.

1.25 **"Effective Date"** means and refers to the first date on which all of the following have occurred: (1) this Agreement has been approved by the Milwaukee County Board of Supervisors and, (2) this Agreement has been executed by the authorized representative(s) of each Party.

1.26 **"Environmental Claim"** means any written complaint, summons, action, citation, notice of violation, directive, order, claim, litigation, investigation, judicial or administrative proceeding or action, judgment, lien, demand, letter or communication from any Person alleging non-compliance with any Environmental Law relating to any actual or threatened Hazardous Substance Discharge.

1.27 **"Environmental Laws"** means any and all applicable federal, state, tribal and local statutes, laws, rules, regulations, ordinances, codes, principles of common law, judicial orders, administrative orders, consent decrees, judgments, permits, licenses or other binding determinations of any judicial or regulatory authority, now or hereafter in effect, imposing liability, establishing standards of conduct or otherwise relating to protection of the environment (including natural resources, surface water, groundwater, soils, and indoor and ambient air), health and safety, land use matters or the presence, use, generation, treatment, storage, disposal, Hazardous Substance Discharge or threatened Hazardous Substance Discharge, transport or handling of Hazardous Substances.

1.28 **"Equity Interest"** means all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity, nature) in any entity, at any tier of ownership, that directly or indirectly owns or holds any ownership or equity interest in a Person.

1.29 **"Expiration Date"** means the date when this Agreement terminates or expires in accordance with its terms.

1.30 **"Fee Estate"** means the County's fee estate in the Property.

1.31 **"Furniture, Fixtures and Equipment ("FF&E")"** means all movable furniture, furnishings, equipment, and personal property (excluding Building Equipment) that may be removed without material damage to the Sports Park and without adversely affecting: (a) the

structural integrity of the Sports Park; (b) any electrical, plumbing, mechanical, or other system of the Sports Park; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Sports Park. FF&E includes items such as furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, and computer systems and peripherals.

1.32 "Fixed County Revenue" means a guaranteed rent of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) per Operating Year payable during the Initial Term of this Agreement. In the event Operator exercises its option to renew this Agreement, the County and Operator agree that further negotiation regarding the Fixed County Revenue may be appropriate at that time, and said revenue amount shall be negotiated and agreed upon in good faith as between the Parties; provided that if the Parties cannot agree on such revenue amount, such amount will be THIRTY ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$31,250.00) per Operating Year.

1.33 "Government" means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Property (or any activity this Agreement requires or allows), including the United States government, the State and County governments and their subdivisions and municipalities, including the City, and all other applicable governmental agencies, authorities, commissions, boards, department and subdivisions thereof.

1.34 "Hazardous Substance" includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (i) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (ii) substances designated as "hazardous substances" pursuant to 33 U.S.C. § 1321; (iii) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (iv) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. or any so-called "superfund" or "superlien" law; (v) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. § 9601(33); (vi) defined as "hazardous waste" under 40 C.F.R. Part 260; (vii) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262; (viii) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, et seq.]; any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; any matter, waste or substance regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or designated by the EPA, or any successor authority, as a hazardous substance [40 CFR Part 302]; and those substances defined as "hazardous waste" or, as a "hazardous substance" under Wisconsin Statutes or the Wisconsin Administrative Code; (ix) subject to any other Law regulating, relating to or imposing

obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (x) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under federal, state, or local laws or regulations and in the regulations adopted pursuant to said laws, and shall also include manure, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products.

1.35 **"Hazardous Substance Discharge"** means any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at or from the Property whether or not caused by a Party to this Agreement and whether occurring before or after the Commencement Date.

1.36 **"Immaterial Loss"** means a Casualty or Condemnation resulting in a loss of ten thousand dollars (\$10,000) or less.

1.37 **"Indemnify"** means, where this Agreement states that any Indemnitor shall "indemnify" any Indemnitee from, against, or for a particular matter, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the particular matter; or (b) in enforcing the Indemnitor's indemnity.

1.38 **"Indemnitee"** means any Party entitled to be Indemnified under this Agreement and its agents, directors, employees, Equity Interest holders, mortgagees, officers and elected officials.

1.39 **"Indemnitor"** means the Party that agrees pursuant to this Agreement to Indemnify the other Party to this Agreement.

1.40 **"Initial Term"** shall have the meaning set forth in Section 3.1.

1.41 **"Insubstantial Condemnation"** means any Condemnation, except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

1.42 **"Law"** means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Sports Park or this Agreement in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Sports Park, or relating to any Taxes, or otherwise relating to this Agreement or any Party's rights or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.43 **"Legal Costs"** of any Party means all reasonable costs and expenses such Party incurs in any legal proceeding where the Party prevails (or other matter for which such Party is

entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses.

1.44 "Loss" means any Casualty or Condemnation.

1.45 "Loss Proceeds" means any Condemnation Award(s) or Property Insurance Proceeds.

1.46 "Monetary Default" means the Operator's failure to pay any County Revenues.

1.47 "Naming Rights" shall mean the exclusive right (subject to County's written approval) to name through the use of available sponsor logo(s), trade name(s), trademark(s), or service mark(s), the fields within the Sports Park to be constructed on the Property and the Concession Facility to be constructed in the Sports Park but not including any Facilities or areas outlying the Sports Park or the Sports Park as a whole as further provided in Section 5.20.

1.48 "Non-Monetary Default" means the Operator's: (a) failure to comply with any materially affirmative or negative covenant or obligation in this Agreement, except a Monetary Default; or (b) material breach of any representation or warranty (as of the date made or deemed made).

1.49 "Notice" means any consent, demand, designation, election, notice, or request relating to this Agreement, including any Notice of Default.

1.50 "Notify" means give a Notice.

1.51 "Notice of Default" means any Notice claiming or giving Notice of a Default or alleged Default.

1.52 "Operating Year" means: (a) the twelve calendar months starting on the first day of the first full calendar month after the Commencement Date; and (b) every subsequent period of twelve calendar months during the Term. In this Agreement, Operating Years are referred to in consecutive numerical order starting with the Operating Year commencing on the first day of the first full calendar month after the Commencement Date being referred to as "Operating Year 1" and followed by "Operating Year 2," "Operating Year 3," etc.

1.53 "Operator" has the meaning set forth in the Preamble.

1.54 "Operator FF&E" means all FF&E used or located at the Sports Park and purchased by the Operator or anyone claiming through the Operator.

1.55 "Operator Parties" means and refers to, collectively, the Operator, its shareholders, directors, officers, employees, agents and legal representatives.

1.56 "Operator Party" means and refers to, individually, the Operator and each of its shareholders, directors, officers, employees, Affiliates, agents and legal representatives.

1.57 "Parties" means and refers, collectively, to the County and the Operator.

1.58 **"Party"** means and refers, individually, to either the County or the Operator, as applicable.

1.59 **"Person"** means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.60 **"Pro Forma"** means and refers to that certain pro forma gross revenue and sports team participation projections for the Sports Park prepared by the Operator based on the facility and its related amenities to be constructed on the Property attached hereto and incorporated herein as Exhibit "D" to this Agreement.

1.61 **"Property"** means that certain real property specifically described in Exhibit "A" attached to this Agreement.

1.62 **"Property Insurance"** means insurance providing coverage for all of the Sports Park, and all Building Equipment, against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County (except earthquake or war risk) from time to time during the Term, in an amount equal to 100% of the replacement value (without deduction for depreciation) of all of the Sports Park and all Building Equipment (excluding excavations and foundations) and in any event sufficient to avoid co-insurance. with "ordinance or law" coverage.

1.63 **"Property Insurance Proceeds"** means net proceeds (after reasonable costs of paid premiums, adjustment and collection, including Legal Costs) of Property Insurance, when and as received by the County or the Operator, excluding proceeds of the Operator's business interruption insurance in excess of the County's Revenues.

1.64 **"Remediation"** or **"Remedial Action"** and their derivatives (such as **"Remediate"**) means and includes any investigation, clean-up, corrective action or monitoring required to comply with applicable Environmental Laws including all actions within the definition of "removal" and "remedial" actions as those terms are defined in applicable Environmental Laws.

1.65 **"Renewal Term"** shall have the meaning ascribed to the term in Section 3.2.

1.66 **"Retail Facility"** means one or more retail merchandise sales facility to be constructed as part of the Sports Park.

1.67 **"Restoration"** means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration and safeguarding of the damaged or remaining Sports Park, substantially consistent with their condition before the Loss, subject to any changes in Law that would limit any such activities.

1.68 **"Restoration Funds"** means any Loss Proceeds to be applied to Restoration.

1.69 **"Restore"** means accomplish a Restoration.

- 1.70 **"Scheduled Expiration Date"** has the meaning set forth in Section 3.1.
- 1.71 **"Sports Park"** means, collectively the facilities constructed or installed by Operator on the Property as described in Article IV and any improvements, additions or renovations thereto, all constructed and installed in accordance with the Sports Park Plans and Specifications.
- 1.72 **"Sports Park Events or Sports Park Event"** shall mean sports events and any and all other sports contests, tournaments, music concerts, corporate sponsored events or other events of any kind which may be scheduled and exhibited at the Sports Park, except for those Public Events scheduled in coordination with the Operator on days or at times when there are no conflicting Sports Park Event or Sports Park Events.
- 1.73 **"Sports Park Expenses"** means all costs of operating and maintaining the Sports Park pursuant to the terms and conditions of this Agreement, after the Commencement Date.
- 1.74 **"Sports Park Plans and Specifications"** means the final landscaping plans, grading plans and construction drawings for construction and installation of the Sports Park as prepared by the Operator's design-build team and approved by the Parties pursuant to Article IV, subject to minor field changes in response to construction or property conditions during construction.
- 1.75 **"State"** means the State of Wisconsin.
- 1.76 **"Substantial Casualty"** means a Casualty that: (a) renders 25% or more of the Concession Facility not capable of being used or occupied for more than sixty (60) days; (b) renders, at least, two (2) of the Sports Park baseball fields significantly unusable for more than ninety (90) days; (c) renders 25% or more of the ski hill significantly unusable for more than ninety (90) days; (d) requires Restoration whose cost the County reasonably estimates in writing would exceed One Hundred Thousand Dollars (\$100,000); or (d) pursuant to Law, prevents the Sports Park from being Restored to the same bulk, and for the same use(s), as before the Casualty. Notwithstanding anything to the contrary, anything giving rise to an Environmental Claims, invoking the environmental indemnification obligations under Article XIII, or requiring Remediation, will be deemed a Substantial Casualty.
- 1.77 **"Substantial Condemnation"** means any Condemnation that (a) takes the entire Sports Park; (b) in the Operator's reasonable determination renders the remaining Sports Park uneconomic; or (c) occurs less than six (6) months before the end of the Term.
- 1.78 **"Taxes"** means all general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes, and the like), possessory interest taxes, assessments, municipal water and sewer fees, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect to any of the foregoing, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Sports Park, or the sidewalks or streets in front of or adjoining the Sports Park, or any vault, passageway or space in, over or under such sidewalk or

street, or any other appurtenances of the Sports Park, or any FF&E, Building Equipment or other facility used in the operation of any of the foregoing, or the fee or income received from the Sports Park, or any use or occupancy of the Sports Park. If at any time during the Term the method of taxation prevailing at the Commencement Date is altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Sports Park and imposed upon the County, then all such new taxes, assessments, levies, Taxes, or charges, or the part thereof, to the extent that they are so measured or based, shall be deemed to be included within the term "Taxes," to the extent that such amount would be payable, if the Sports Park were the only property of the County subject to such Taxes.

1.79 "Temporary Condemnation" means a Condemnation of the temporary right to use or occupy all or any portion of the Sports Park, as described in Section 15.5.

1.80 "Term" means the Initial Term and, if applicable, the validly exercised Renewal Term.

1.81 "Transfer" of any property, right or obligation under this Agreement means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation under this Agreement, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); (c) any transaction described in clause "b" affecting any Equity Interest(s) or any other interest in such property, right or obligation under this Agreement or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "b" through "d." shall be deemed a Transfer by the Operator even though the Operator is not technically the transferor. A "Transfer" shall not, however, include any of the following (provided that the other Party to this Agreement has received Notice of such occurrence) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State of Wisconsin real estate transfer tax; (b) to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; or (c) to any Person that, as of the Commencement Date, holds an Equity Interest in the entity whose Equity Interest is being transferred.

1.82 "Unavoidable Delay" means delay in performing any obligation under this Agreement, except payment of money, arising from or on account of any cause whatsoever beyond the obligor's reasonable control, despite such obligor's reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor's inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor), Loss, accidents, Laws,

governmental preemption (excluding the County's as a Party to this Agreement), war, or riots. Unavoidable Delay shall exclude delay caused by the obligor's financial condition, illiquidity, or insolvency.

1.83 "Usury Limit" means the highest rate of interest, if any, that Law allows under the circumstances.

ARTICLE II

OPERATION AND MAINTENANCE COVENANT

2. Exclusive License. The County hereby grants to the Operator and the Operator hereby accepts from the County an exclusive license to occupy the Property to use, to operate, to manage and to market the Sports Park, TO HAVE AND TO HOLD, subject to all the terms and conditions herein, throughout the Term for the sole purpose of managing and operating the Sports Park in accordance with the terms and conditions herein.

ARTICLE III

TERM

3.1 Term. The term of this Agreement (the "Initial Term") shall: (a) commence, if at all, on the Commencement Date; and (b) shall continue for a period of fifteen (15) years thereafter (the "Scheduled Expiration Date"), unless terminated sooner as provided under this Agreement.

3.2 Renewal Option. The Operator shall provide the County written notice of intent to renew no later than three (3) months prior to the Scheduled Expiration Date. Upon such Notice, this Agreement will be renewed on the same terms and conditions, for one additional successive period of ten (10) years (the "Renewal Term") commencing at the expiration of the Initial Term and for such other additional renewal periods thereafter as may be mutually agreed upon by the Parties.

ARTICLE IV

SPORTS PARK CONSTRUCTION; EXISTING INFRASTRUCTURE

4.1 Condition of the Property.

4.1.1 The Parties agree that Operator accepts the Property subject to all existing easements or restrictions on the Property and surrounding area, and Operator shall obtain any and all Approvals necessary for the construction of the Sports Park and its use of the Property, including from the Wisconsin Department of Natural Resources ("WDNR"), as contemplated herein. The County does not represent that the Property is suitable to Operator's proposed use. County is not responsible for any required Approvals, zoning changes, building permits or other required authorizations from regulatory agencies, without limitation; provided, however, County

agrees to use reasonable efforts to assist Operator in obtaining any such Approvals, changes, permits or authorization.

4.1.2 Based on the foregoing, the Operator understands that it cannot undertake any construction activities at the Property unless and until the condition of the Property is satisfactory to the County and the WDNR.

4.2 Construction.

4.2.1 This Agreement and the obligations of the County and the Operator hereunder are contingent upon Operator successfully meeting the Milwaukee County "Due Diligence" requirements (see attached as Exhibit "C") and upon Operator obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the proposed Sports Park. All costs associated with the construction, maintenance and operation of the Sports Park are the responsibility of Operator.

4.2.2 Prior to the start of any construction activities, including any subsequent alterations, renovations or improvements to the Property, Operator shall submit any, every and all detailed Sports Park Plans and Specifications, and any revisions thereto, to the County, to the Architecture and Engineering Division of the Milwaukee County Department of Administrative Services, and to the WDNR, together with the name of Operator's proposed contractor(s) for review and written approval, which approval shall not be unreasonably delayed or withheld. Operator shall reimburse County for the actual and out-of-pocket cost of a Milwaukee County Project Manager during construction phases of the project, including any subsequent construction, alterations or improvements, in an amount not to exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000.00).

It is understood by the Parties that the Operator anticipates that its improvements to the Property may proceed in stages with the installation of the fields, fencing, and Concession Facility being financed, submitted for approval, and constructed first; and with the other improvements, to be financed, submitted for approval, and constructed at a later date, dependent on the timing of Operator's financing. The provisions and requirements of this Article IV and its subparts shall apply with equal force and effect to any later construction.

4.2.3 Conditions for approval specified in Section 4.1.2 shall include, but not be limited to, provision that: (1) Operator shall obtain, prior to commencing any alterations, additions or improvements, all necessary permits and licenses from the appropriate governmental authorities, including the WDNR; and (2) Operator shall commence construction of the Sports Park described in the approved plans and specifications as soon as reasonably practicable following the County's and the WDNR's approval and shall complete the applicable construction within a reasonable time thereafter (subject to extension by reason of force majeure). As of the date of this Agreement the Parties agree that, with regard to the phases of construction, such reasonable time for completion is eighteen (18) months after the commencement of construction.

4.2.4 All development and landscaping shall be completed in a manner consistent with standards acceptable to the County and the WDNR. The County and the WDNR shall have the right to inspect the work at reasonable times provided it does not interfere with

Operator's construction and improvements. Any and all alterations, additions and additional improvements shall be made subject to Section 13.3 and in compliance with all statutes, laws, ordinances, rules and regulations of any governmental authority having jurisdiction of the Property, including the WDNR. Operator shall also indemnify and hold County harmless from and against all statutory liens or claims or liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Property undertaken by or on behalf of Operator. Any structures, alterations, additions or improvements installed on the Property by Operator that are necessary for the continued operation of the Sports Park shall become the property of the County upon the expiration or termination of this Agreement. In no event shall Operator make any alterations or additions to the Property without the prior written consent of the County, which consent shall not be unreasonably delayed, conditioned or withheld, except in the event of an emergency, when such consent shall not be required, provided that notice shall be given as soon as reasonably possible thereafter, provided further that routine instances of maintenance, painting, repair and like-kind replacement of materials needing repair or replacement do not constitute alterations or additions requiring such approval, providing they do not individually exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) in cost.

4.2.5 Operator or its general contractor shall provide and maintain Builders Risk insurance coverage on a completed value form insuring for special perils, with Milwaukee County as additional insured and loss payee on the insurance certificate, during any and all phases of construction. Coverage is during construction period(s) and is intended to terminate when the work has been completed.

4.2.6 Operator agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, Operator shall provide to County a complete set of construction documents to be included as a minimum: (a) as-built drawings; (b) a copy of all work orders and change orders; (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties; (f) a copy of all construction permits and signed drawings; (g) City of Franklin final occupancy permits, if applicable.

4.2.7 County shall use reasonable efforts to assist Operator in finding funding for the repair or replacement, and maintenance of the road commonly known as Crystal Ridge Drive, and all entrances therefrom into the Sports Park. Using reasonable efforts shall not impose on the County any obligation to budget or pay for the repair or replacement, and maintenance of Crystal Ridge Drive or the entrances therefrom, but may require County Staff time and advisory support.

4.3 Endowment Fund. Operator shall establish an Endowment Fund ("Fund") for Capital Repairs of the Property, which shall total FIFTY THOUSAND DOLLARS (\$50,000.00) (the "Fund Balance Minimum") which such amount shall increase to SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00) beginning with the fourteenth (14th) Operating Year. As additional consideration, Operator agrees to augment the Fund by depositing the interest accrued on any balance invested into the Fund, and hereby agrees that if the value of the Fund falls below the applicable Fund Balance Minimum at any time, Operator shall add to the Fund enough assets to maintain a the applicable Fund Balance Minimum. Failure to maintain the applicable Fund Balance

Minimum shall be grounds for termination of this Lease by County, provided Operator fails to cure any such shortage within thirty (30) days of receipt of notice from County that the shortage has occurred. The Fund is to be used as follows:

(a) Capital Repairs and major maintenance to assure upkeep of the Property and the improvements to be constructed on the Property.

(b) Additional improvements or non-routine maintenance to the Property as may be agreed upon in writing by Operator and County, which approval shall not be unreasonably withheld, conditioned or delayed.

Management of the Fund shall include the establishment of an interest bearing account(s), changing investment strategies, monitoring account activity, and providing joint written approval of all payments from account assets, which approval by County shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Operator shall have the right to make withdrawals from the Fund without County's approval, but upon ten (10) days written notice to County, for up to TEN THOUSAND DOLLARS (\$10,000.00) for any item described in clause (a) above, provided that the Fund does not fall below the applicable Fund Balance Minimum as a result thereof and the aggregate amount so withdrawn from the Fund without County approval in any twelve (12) month period does not exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000.00). Operator shall provide County with quarterly reports relating to Fund activities, including funds received, monies spent, and any long-term obligations, including an annual report.

ARTICLE V

SPORTS PARK OPERATION AND MAINTENANCE

5.1 General. The Operator shall have the right to operate, manage and market the Sports Park subject to the terms and conditions set forth in this Agreement. Such operation and management shall be conducted in a manner that will maximize opportunities to achieve and sustain a profit for each Operating Year from the operations of the Sports Park and the promotion of tourism in the County by attracting, promoting, and contracting for tournaments, outdoor activity and other sport related events and non-sport activities.

5.2 Except to the extent that this Agreement otherwise expressly provides or allows, the Operator shall, during the Term, keep and maintain the Sports Park in good order, condition, and repair, subject to Loss, reasonable wear and tear, and any other condition that this Agreement does not require the Operator to repair or Restore. The Operator shall remove trash, water, mud, sand and debris from the Sports Park.

5.3 Continuous Operation Covenant. The Operator covenants to the County to cause the Sports Park to be continuously operated as weather and Seasons permit throughout the Term.

5.4 General Operational Responsibilities. The Operator shall have the following described general responsibilities regarding operation of the Sports Park, which the Operator shall perform at its sole expense:

5.4.1 enter into and pay any costs associated with arrangements, if any, with concessionaires, vendors licensees, tournament promoters, contractors or other providers of services to or intended users of the Sports Park;

5.4.2 enter into and pay any costs associated with contracts for the furnishing of ongoing utilities and telecommunications services, maintenance, repair and other services to the Sports Park;

5.4.3 incur and pay such expenses as shall be reasonably necessary for the proper operation of the Sports Park, including, without limitation, employee salaries and benefits and applicable taxes and withholdings, and rental expenses for leased FF&E, as necessary;

5.4.4 maintain a level of Operating Inventory as applicable and reasonably appropriate for supplying the needs of the Sports Park and its customers;

5.4.5 apply for, obtain and maintain all licenses and permits required of the Operator in connection with the operation of the Sports Park, including beer and wine licenses and sign permits. The County shall reasonably cooperate with the Operator in the application for obtaining and maintenance of such licenses and permits, provided that such cooperation by the County is legally permitted and does not result in any direct or indirect cost to the County;

5.4.6 use commercially reasonable efforts to do, or cause to be done, all acts in and about the Sports Park as shall be reasonably necessary to comply with any applicable insurance policies or Law;

5.4.7 pay initial activation charges for utilities and services for the Sports Park, after initial construction of the Sports Park in accordance with the Sports Park Plans and Specifications;

5.4.8 operate a year-round sports center, offering a reasonable schedule of recreational sports programming in adult and youth softball, baseball, soccer, lacrosse, mountain biking and such other sports activities for all seasons as agreed upon in writing by the County and the Operator, recognizing that demand for some of the sports varies and it may not be commercially reasonable to offer programs for all of the above-listed sports in any or all of the seasons of the year; and

5.4.9 operate the ski hill as a ski hill.

5.5 Operational Services. Subject to the terms of this Agreement the Operator shall have the responsibility to: (a) determine, establish, and implement the policies, standards, prices and schedules for the operation of the Sports Park and all matters affecting customer relations; (b) hire, train, and supervise all employees; (c) supervise and direct advertising, sales and business promotion; and (d) establish accounting and payroll procedures and functions.

5.6 Personnel. The number of employees working at the Sports Park, and the compensation (salaries or wages, benefits and commissions) paid to them, shall be reasonably established by the Operator, but minimum staffing levels shall be comparable to those at similar recreational sports parks at other similar locations in Wisconsin.

5.7 Specific Operating Procedures. In addition to the more general responsibilities of the Operator for operation of the Sports Park described in 5.1, the Operator shall operate the Sports Park in accordance with the following operating procedures:

5.7.1 Sports Park Operating Hours. The Operator shall operate the Sports Park on days and at hours consistent with similar recreational sports parks at other similar locations in Wisconsin, subject to closure due to inclement weather, Substantial Casualty, Substantial Condemnation or Unavoidable Delay. The hours of operation of the Sports Park shall not allow any game or event to be scheduled to begin later than 9:00 p.m. on any night and all field lighting at the Sports Park shall be turned off and all use of the Sports Park fields and batting cages shall be concluded by 10:30 p.m. every night. The Concession Facility and any other parts of the Sports Park shall close by 2:00 a.m. every night. The County has the authority to adjust the hours of operation of County parks, including the Sports Park, in the County's sole discretion, and nothing in this Agreement is intended to limit or abrogate such authority.

5.7.2 Fees and Charges. All fees, charges and prices for services at the Sports Park shall be set by the Operator at amounts comparable to those of similar recreational sports parks at other similar locations in Wisconsin. If the County finds that the Operator is setting Fees and Charges at a rate the County determines in its reasonable discretion are excessive, the County and the Operator agree to negotiate in good faith Fees and Charges mutually acceptable to both Parties.

5.7.3 Limitation on Consumption of Alcoholic Beverages in the Sports Park. The Operator shall restrict users of the Sports Park to consuming alcoholic beverages in the Concession Facility, the sidewalks, patios, picnic areas and spectator seating areas within the Sports Park. Alcoholic beverages shall not be allowed to be consumed in any other areas of the Sports Park such as the playing surfaces, dug-outs, or playground areas.

5.7.4 Smoking Areas. The Operator shall designate reasonable smoking areas within the Sports Park, subject to the County's reasonable approval and in compliance with applicable Law.

5.7.5 Sports Park Operating Expenses. The Operator shall, at its sole expense, timely pay and discharge all Sports Park Expenses, in accordance with the provisions of this Section 5.7.

5.8 Noise. The Operator shall not use or permit the use of the Sports Park in any manner that creates or maintains any noise or sound in violation of the County's or any noise ordinance of the City of Franklin and the Village of Greendale, as applicable to the Property or to the Sports Park.

5.9 Nuisance. The Operator shall not itself and shall not allow any other Person to use the Sports Park for any unlawful purpose and shall not itself and shall not allow any other Person to perform, permit or suffer any act or omission upon or about the Sports Park that would result in a nuisance or a violation of any Law, as the same may now or hereafter be in force and effect.

5.10 Permits, Licenses, Etc. The Operator shall, for the full Term, at the Operator's cost and expense, maintain all franchises, permits, contractual arrangements, licenses, and registrations required for the Operator to conduct all sales, operations relating to the Sports Park that are contemplated in this Agreement to be undertaken by the Operator. The County shall use reasonable efforts in assisting Operator in maintaining all franchises, permits, contractual arrangements, licenses and registrations. Using reasonable efforts means approving or authorizing approval of such permits and licenses, provided Operator is not then in default under this Agreement.

5.11 Abandonment. The Operator shall not abandon or surrender the operation of all or any part of the Sports Park during the Term, except as otherwise expressly provided in herein.

5.12 Contracts and Agreements. All equipment leases, financing agreements, contracts and agreements relating to the Sports Park (including contracts for utility services, telecommunications services, Maintenance and Repair services, pest control, supplies, landscaping services, and agreements for tournaments, banquets and other group functions), entered into during the Term shall be entered into by the Operator as the contracting party. The Operator shall not have any authority to enter into any equipment lease, financing agreement, contract or agreement that extends beyond the Term of this Agreement, that is not terminable on thirty (30) days or less notice, if the Operator defaults under the terms of this Agreement, or that is secured by all or any part of the Sports Park or the Property. All contracts entered into by the Operator regarding the Sports Park shall automatically expire on the Expiration Date.

5.13 Business Name. During the entire Term, the Operator shall conduct business in the Sports Park under the name "The Rock Sports Complex" (or something similar); provided that the Operator may change the operating name of the Sports Park and the Operator shall notify the County in writing ninety (90) days prior to any such name change.

5.14 Security. The Operator may, at its own discretion, provide such security for the operation of the Sports Park to protect the customers, employees, guests, contractors and other invitees of the Sports Park. Operator is solely responsible for and assumes all liability and risks related to providing security for the operation of the Sports Park.

5.15 Signage.

5.15.1 All such signage must be pre-approved in writing by the County and comply with the County Code and any applicable code of the City of Franklin and the Village of Greendale. The County agrees to not unreasonably withhold, condition or delay such approval.

5.15.2 All signs on or in the Sports Park will be maintained by the Operator in good condition during the Term.

5.15.3 The Operator agrees to provide the County with prominent acknowledgment signage using the County Parks Logo as integral part of all promotions. The acknowledgment signage must be prominently displayed at the entrance to the Sports Park and in all of Operator's print, digital, and TV promotions and advertising related to the activities covered by this Agreement.

5.15.4 The Operator will remove all signs containing the Operator's name or logo installed in or on the Sports Park by the Operator on or before the Expiration Date, except as otherwise agreed between the Operator and the County, and will repair and restore any damage caused by installation or removal of such signs. The Operator shall not cause or allow the display of any advertising of tobacco products or adult entertainment on, in or about the Sports Park.

5.16 Event Programs And Merchandising. The County grants to the Operator the sole and exclusive right to sell, lease, or contract for the sale or lease of event programs, yearbooks, novelties, pendants, hats, clothing, sporting equipment, cameras, film, binoculars, headsets, or any other items, goods, or equipment which the Operator may desire to offer for sale or lease at the Sports Park. The County shall also grant to the Operator or its designee the right to set up carts, kiosks, and other similar temporary structures for the sale of such items at locations within the Sports Park selected by the Operator in its reasonable discretion, taking into consideration public safety and access. Further, the Operator shall have the right to grant any of the rights held by the Operator under this Section to a single supplier or to enter into multiple agreements with multiple suppliers. The County agrees that the Operator may determine the items of merchandise to be offered for sale or lease in such areas and the prices to be charged for such items of merchandise and shall select any suppliers for such merchandise. The County has the right to offer complimentary materials at the Sports Park during the Sports Park Events solely for the purpose of promoting tourism or economic development within the County.

5.17 Concessions.

5.17.1 Right To Sell. Milwaukee County hereby grants to the Operator the sole and exclusive right to sell or contract others, including without limitation the Operator Affiliates, to sell, all food, beverages, and other concessions within the Sports Park, during any Sports Park Events held by Operator, and to operate the Concession Facility and concessions stands. The rights granted to the Operator with regard to concessions pursuant to this Agreement shall also include the right (without limitation) to grant to third party(s) any and all so-called "pouring rights" or similar beverage designations with regard to the use of the Sports Park at all times. Operator is solely responsible for and assumes all liability and risks related to the activities covered under this Section.

5.17.2 Food And Beverage. Any concessionaire contracted by the Operator shall be entitled to bring a reasonably sufficient number of workers into the Sports Park, free of charge, in order to operate the concessions, pursuant to this Agreement. The Operator shall have

the right to determine items of food or beverage offered for sale, the prices to be charged for such items of food or beverage, or the concessionaire or concessionaires selected to provide such food and beverage concessions. The County agrees that the Operator may determine the items of to be offered for sale or lease in such areas and the prices to be charged for such items and shall select any suppliers. Except for Public Events, the County shall have no right to offer any food or beverage items for sale at any Sports Park Events without the consent of the Operator. The Operator shall have the right to determine the location of concession stands for the sale of food and beverage concessions and staging areas for the storage and preparation of food and beverages prior to sale, both within the Sports Park and elsewhere on the Sports Park Property, in its reasonable discretion, subject to considerations for public safety and access.

5.17.3 Access To Facility. The Operator shall establish all policies relating to access to the Sports Park including, but not limited to, entry to Sports Park with consumables, parking rates, and signs and banners subject to applicable Law. The County shall entrust the Operator with keys to the Sports Park, and the Operator shall at no time be denied access to the Sports Park by the County unless the Operator is in default or the Agreement has been terminated as provided herein.

5.18 Parking. The Operator is solely responsible for and assumes all liability and risk related to managing and controlling the parking in or on the Property for all Sports Park Events. The Operator or its designee may charge patrons of Sports Park Events a fee in an amount to be determined on an event basis for the right to park within the Sports Park Property. The Operator is further authorized to grant, within its reasonable commercial discretion, to any promoter of Sports Park Events the right to collect and keep for its own account any and all parking fees.

5.19 Parking Overflow. In the event that the Sports Park does not have adequate parking available during an event, the County may assist the Operator in locating sufficient parking in a nearby location. Under no circumstances, however, shall the County be legally obligated to expend funds or resources to secure or staff additional parking areas outside of the Sports Park Property for Sports Park Events nor shall it be liable for any uses or activities that may occur on or at any such alternative parking locations it may identify for the Sports Park.

5.20 Naming Rights.

(a) General. The County acknowledges that the marketing and sale of naming rights of the field(s) within the Sports Park (as distinguished from naming rights for all of the "Sports Park" or any other non-field structures) is to be an integral component for the Sports Park to achieve its primary objective of positive cash flow. The Operator may receive money or other consideration in exchange for granting to such third party(s) the right to name all or any part of the Sports Park. The County grants to the Operator the right to market and to sell the naming rights for the Sports Park during the Term of this Agreement. The Operator shall have the right to sell the rights to any third party or parties or to any the Operator's Affiliate, and to receive all monies. The County grants the Operator the right to market and to license or assign any other advertising or promotional rights within the Sports Park Property. The provisions of this Section are subject to the Operator providing the County at least ten (10) calendar days notice of such grant of naming rights and the County's prior written approval, which shall not be

unreasonably withheld, conditioned or delayed. No agreements entered into by the Operator with any third party or parties or to any the Operator's Affiliate relating to the Naming Rights specified herein shall extend beyond the Term of this Agreement.

(b) Effect Of Grant. Upon the grant of the Naming Rights to any third party or parties and the determination of a name or names for the Sports Park or for any other part of the Sports Park Parcel, the County agrees that it shall recognize such name(s) and shall use such name(s) in all correspondence and promotional activity of the County with regard to the Sports Park or the Sports Park Property. Further, the County agrees that upon the determination of a name(s) for the Sports Park and for any other part of the Sports Park Property as a result of the sale or exercise of the Naming Rights, the County shall use such descriptive name(s) on street signs, maps, promotional materials, and other similar items, to the extent that a descriptive name shall be necessary or appropriate, provided, however, that this provision shall apply only to street signs, maps, promotional materials and other similar items which are erected or produced subsequent to the initial determination of the descriptive name or names for the Sports Park and the Sports Park Property and shall not require the County to incur any costs with regard to modifying or replacing existing signs, maps, promotional materials, or similar items.

5.21 Premises Advertising.

(a) Grant Of Rights. As part of the rights granted to the Operator under this Agreement, the County hereby also grants to the Operator the right to undertake any and all advertising or marketing of any kind on the Property including but not limited to any advertisements or marketing distributed through the signage and any related media, whether printed, transmitted on a video screen or message board transmitted verbally, or otherwise, whether presently available or made available in the future, for Sports Park Events, and at all other times during the Term hereof, and to contract with third parties and grant to such third parties the right to exercise such advertising rights for Sports Park Events, and at all other times during the Term hereof. The Operator agrees to allow the County to place signage within the Sports Park or Sports Park Parcel at a mutually agreeable location identifying the name of the County and contact information or other material for the County's use in tourism development.

(b) Quality And Control. The Operator agrees that all advertising of Sports Park Events and related activities shall be accurate and straightforward, and not be considered discriminatory or vulgar. The Operator shall have responsibility for and control over the distribution, posting, exhibition and removal of all signs, advertisements, show bills, lithographs, posters or cards of any description at, in or about the Sports Park (except for County promotional material).

5.22 County Organized Sports League Events. The County shall have the right to use the Sports Park for County Organized Sports League Events that are scheduled with the prior written approval of the Operator, in the Operator's reasonable discretion (each of which shall be considered a "County Organized Sports League Event"), but no less than one (1) calendar day Monday through Thursday per week. The Operator shall provide the County use of the Sports Park for County Organized Sports League Events free of any facility rental or admission charge,

except the County reserves the right to collect and keep for its own account any and all league/rental fees the County may in its sole discretion charge its league/rental participants.

5.23 Outreach. To provide increased baseball and softball programming in underserved areas of Milwaukee County, the Operator agrees to commit not less than TWENTY THOUSAND DOLLARS (\$20,000.00) in funding annually (the "Outreach Funding") to develop and implement programming and scholarships for low income minority and low income children who reside in Milwaukee County. Eligibility shall be based on the criteria set forth for Milwaukee Public Schools low-income school lunch program, and may include a sliding-scale basis for determining the amount of the scholarships. The Outreach Funding is to subsidize the cost of participation in local little leagues for low-income children. At the same time the Operator pays the County its Contingent County Revenue, Operator shall submit a written report to the County listing a description of the types of funding provided; and, if applicable, the focus and types of any new funding planned for the upcoming Operating Year.

5.24 Control And Supervision. The Operator shall have the sole responsibility for, and sole right of control and supervision of its employees and the methods, details and all other aspects of its operation of the Sports Park pursuant to this Agreement, subject, however, to any provision to the contrary in this Agreement and to the following additional terms and conditions:

(a) Control. The Operator shall have the right to eject or cause to be ejected from the Sports Park any person whose conduct is unlawful or otherwise objectionable. In addition, the County and the Operator shall each have the right to make announcements at any time during Park Events and activities in the interest of public safety, proper operation of the Sports Park, crowd control and compliance with applicable laws, ordinances, regulations and rules.

(b) No Waste. The Operator shall not allow any waste, nuisance or ultra-hazardous activities at the Sports Park, or engage in, or permit others to engage in, any activity which may cause physical damage to the Sports Park or discredit Milwaukee County.

(c) Periodic Meetings And Communications. The Operator shall meet with the County at such reasonable times and places as may be mutually agreed for the purpose of presenting any issues or resolving problems related to the Sports Park.

(d) Schedule Of Park Events. The Operator shall provide the County, on a quarterly basis, with an updated twelve (12) month schedule of upcoming Park Events for the Sports Park, including but not limited to twelve tentative dates for future events in negotiation.

5.25 Disadvantaged Business Enterprise (DBE) Utilization. Operator shall use reasonable efforts to cause its contractors to establish Disadvantaged Business Enterprise (DBE) participation goals, consistent with Milwaukee County DBE goals of 25% for construction and 17% for professional services, for the planning, development and construction of improvements and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist the Operator in soliciting potential DBE vendors for

the improvements and monitor such goal attainment. Operator's contact regarding DBE participation is: Director, CBDP, at 414-257-5248.

5.26 Non-Discrimination. There shall be no discrimination against or segregation of any Person, or group of Persons, on account of gender, sexual orientation, age, race, color, religion, creed, national origin or ancestry in the transfer or use of the Sports Park, and the Operator (or any Person claiming under or through the Operator) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Sports Park or the Property.

5.27 Form of Non-discrimination and Non-segregation Clauses. The Operator covenants and agrees for itself, its successors, its assigns, that the Operator, such successors and such assigns shall refrain from restricting the use of all or any part of the Sports Park or the Property on the basis of gender, sexual orientation, race, color, religion, creed, ancestry or national origin of any Person. All contracts pertaining to the Sports Park or the Property shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

5.27.1 In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of gender, sexual orientation, age, race, color, creed, religion, national origin, or ancestry, in the sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or agreement, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

ARTICLE VI

OPERATOR FISCAL RESPONSIBILITIES; COMPENSATION; SPORTS PARK REVENUE ALLOCATIONS

6.1 Capital Improvement Plan. The Operator shall prepare a three (3) year capital improvement plan for written approval by the County within ninety (90) days following the completion of each construction phase.

6.2 Fixed County Revenue. Within the first month of each Operating Year, Commencing on the first day of the last month of Operating Year 1, the Operator shall pay to the County, without Notice, the Fixed County Revenue agreed to within this Agreement.

6.3 Contingent County Revenue. The Contingent County Revenue shall be paid annually, without Notice, within one hundred twenty (120) calendar days following the end of each Operating Year, with the first payment of Contingent County Revenue occurring during Operating Year 2, based on the Sports Park net income from the immediately preceding Operating Year.

6.4 County Revenue Payment. The Operator shall pay all County Revenues payable to the County in lawful money of the United States, by good and sufficient check payable to the County or in immediately available funds, at such address as the County shall designate, from time to time. Checks shall constitute payment only when collected.

ARTICLE VII

SPORTS PARK EXPENSES

7.1 Operator to Pay All Sports Park Expenses. In addition to the County Revenue, the Operator shall pay all Sports Park Expenses, regardless of the amount of Sports Park revenues or whether or not there are any Sports Park revenues at all.

7.2 Pre-Opening Expenses and Operating Losses. The Operator acknowledges that it will be responsible for the initial capitalization of the Operator's business operations at the Sports Park and will be responsible for start-up expenses in connection with such business operations, including, without limitation, hiring and training of employees, acquisition of inventory and pre-opening marketing expenses, without any reimbursement or contribution from the County. The Operator further acknowledges and agrees that it will be solely responsible for operating losses or deficits arising in its operation of the Sports Park and that any such losses or deficits shall not abate any obligations of the Operator under this Agreement.

7.3 Taxes. Due to the fact that the Sports Park Property is owned by the County, a political subdivision of the State of Wisconsin and as such are exempt from property taxes and that the use of the Property as a Sports Park is for the public purpose of promoting and enhancing tourism and business development within the County, the County and Operator intend that no ad valorem taxation will apply to the Sports Park or use thereof in accordance with this Agreement by the Operator. In the event that the Sports Park or the Operator is held to be subject to ad valorem, real property, intangible or other taxes or for any other reason arising in connection with Operator's operation or interest in the Sports Park, the Operator will be legally obligated for such taxes.

The Operator shall pay and discharge all other Taxes payable or accruing for all period(s) within the Term. The Operator shall also pay all interest and penalties any Government assesses for late payment of any Taxes. The Operator shall, within a reasonable time after Notice from the County, give the County reasonable proof that the Operator has paid any Taxes that this Agreement requires the Operator to pay.

7.4 Assessments in Installments. To the extent Law allows, the Operator may apply to have any assessment payable in installments. Upon approval of such application, the Operator shall pay and discharge only such installments as are attributable to the Term.

7.5 Direct Payment by the County. If any Sports Park Expenses must be paid directly by the County, then: (a) the County appoints the Operator as the County's attorney-in-fact to make such payment; and (b) if the payee nevertheless refuses to accept payment from the

Operator, then the Operator shall Notify the County and shall pay such amount to the County in a timely manner with reasonable instructions on remittance of such payment. In such event, the County shall with reasonable promptness comply with the Operator's reasonable instructions.

7.6 Utilities. The Operator shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, internet, cable or satellite television and other utility charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Sports Park during the Term of this Agreement. Operator is solely responsible for and assumes all liability and risk related to utility services at the Sports Park.

ARTICLE VIII

RECORDS, REPORTS AND AUDITS

8.1 Sales Recording and Records. The Operator shall keep:

8.1.1 full and accurate books of account and records including, without limitation, a sales journal, general ledger and all bank account statements showing deposits and withdrawals of Sports Park revenues; and

8.1.2 detailed original records of any Sports Park revenues exclusions.

8.2 Annual Income Statements.

8.2.1 Annual Net Income Statement. Within ninety (90) calendar days after the end of each Operating Year, including the Operating Year ending in the month in which the Term ends, the Operator shall furnish the County with an Annual Net Income Statement for the just concluded Operating Year.

8.2.2 Accounting And Bookkeeping. The Operator agrees to maintain separate accounting and bookkeeping records for the operations of the Sports Park pursuant to this Agreement and to utilize generally accepted accounting principles and practices in such accounting records. The Operator shall, at reasonable times and upon request, permit the County's auditors to inspect, examine and copy any and all of the Operator's books, papers, reports, correspondence, sales tax returns, federal and state tax returns memoranda, cash register records and other records of the Operator which are pertinent to this Agreement for purposes of verifying the Sports Park revenues for any given Operating Year.

8.3 Audit and Examination Rights.

8.3.1 Audit Procedures.

(a) Annual Audit. Pursuant to Milwaukee County Ordinance section 56.30(6)(e), Operator and its Affiliates shall allow Milwaukee County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Operator or its Affiliates, including

handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to County. Any subcontracting by Operator in performing the duties described under this Agreement shall subject the subcontractor or its associates to the same audit terms and conditions as Operator. The County shall preserve the confidentiality of such information to the extent permitted by Wisconsin law, as determined by County's Corporation Counsel. If any Net Income Statement for any Operating Year is found to be less than the amount of the Operator's actual Net Income for such Operating Year, the Operator shall immediately pay to the County any earned but unpaid amounts of County Revenues due to the County.

8.4 Retention of Books and Records. The Operator and its Affiliates shall, for a period of five (5) years following the end of the Term, keep and maintain, safe and intact, all of the records, books and accounts required to be maintained by such Persons regarding the Sports Park pursuant to this Agreement, and shall from time to time, upon request, make these records available to the County, the County's auditor, representative or agent for examination at any reasonable time, on ten (10) calendar days advance written notice. The County shall also have the right to make abstracts from the records, to make copies of any or all of the records and to examine and make copies of any or all contracts, licenses and concession agreements. In addition, on request of the County or the County's representative, the Operator shall furnish copies of the Operator's State and local sales and use tax returns and federal and state income tax return.

ARTICLE IX

COMPLIANCE

9.1 Generally. The Operator shall during the Term, at the Operator's sole expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

9.2 Copies of Notices. The County shall promptly give the Operator a copy of any notice of any kind regarding the Sports Park or any Taxes (including any bill or statement), and any notice of nonrenewal or threatened nonrenewal of any Approval that the County receives from any Government, utility company, insurance carrier or insurance rating bureau.

ARTICLE X

NO ALTERATIONS TO SPORTS PARK

10.1 The Operator shall have the right to alter the facility as needed to allow for success of the facility, subject to the provisions contained in Article IV.

10.2 Alterations, Renovations And Additions. Operator shall not, without the advance written approval of the County, remove from the Sports Park, or permit the removal of, any

equipment, furnishings and other property of the County. If at any time the County supplies the Operator with labels, plates, or other markings identifying equipment, furnishings and other property of the County, the Operator shall affix and keep the same in a prominent place on such equipment, furnishings and other property.

ARTICLE XI

HAZARDOUS SUBSTANCES

11. Restrictions. The Operator shall not during the Term: (a) knowingly allow any violation of any Environmental Law at the Sports Park, or (b) knowingly permit the introduction, onto the Property of any Hazardous Substance.

ARTICLE XII

COUNTY'S SPECIAL RIGHTS

12.1 County's Right to Utilize the Sports Park During Local State of Emergency. In those situation where a local state of emergency has been declared by the County pursuant to its authority under Wisconsin law or County code, or is continuing to exist within the County, the County shall have the right to exercise sole control over the Sports Park Property and to implement such emergency measures and to make such use of the Sports Park Property as it deems necessary for the health, safety and welfare of the residents of the County. The County, in taking such action, will attempt at all times to minimize any damage to the Sports Park and will repair or provide funds for the Operator to effect repairs for any Capital Repairs that may be required as a result of such emergency use(s).

12.2 County's Access to the Sports Park.

(a) Notwithstanding anything to the contrary in this Agreement, the County, its agents, representatives or designees may enter the Sports Park to: (a) ascertain whether the Operator is complying with this Agreement; (b) cure the Operator's Defaults; (c) inspect the Sports Park; (d) perform such tests, borings, and other analyses as the County determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) operate, maintain, test, and repair the County's gas control system and monitoring wells. In entering the Sports Park, the County and its designees shall not unreasonably interfere with operation of the Sports Park. The County shall Indemnify the Operator against any claims arising from the County's activities related to the entry upon the Sports Park from the County's negligence, except to the extent arising from the willful misconduct or negligence of the Operator Parties or upon termination of this Agreement or the occurrence of an Event of Default.

(b) Operator understands and acknowledges that the Property is a former County landfill. Should the County need to access the Property for the purposes described in this Section, the County shall notify the Operator and schedule its repairs in coordination with the Operator in an attempt to minimize the County's impacts to Sports Park Events while achieving

the primary goals of protecting the health, general welfare, and safety of the general public and placing the gas control system back into operation.

ARTICLE XIII

INDEMNIFICATION; LIMIT ON LIABILITY OF COUNTY

13.1 General Indemnification. The County and the Operator shall each Indemnify the other and their respective shareholders, elected officials, officers, directors, partners, employees, attorneys and other agents against any claims, actions or suit arising from: (a) wrongful act, wrongful omission, or negligence of the Indemnitor (and anyone claiming by or through the Indemnitor) or its or their shareholders, directors, officers, elected officials, partners, attorneys, agents or employees which may arise out of or are connected with the activities covered by this Agreement; (b) breach or default by the Indemnitor under this Agreement; or (c) breach of any representation or warranty the Indemnitor makes in this Agreement. Notwithstanding anything to the contrary in this Agreement, no Indemnitor shall be required to indemnify any Indemnitee to the extent of the Indemnitee's wrongful intentional acts or negligence. Milwaukee County's liability shall be limited by Wis. Stat. §§ 345.05(3) for automobile and 893.80(3) for general liability.

13.2 Operator is solely responsible for conducting its own geotechnical investigation to determine soil bearing capacity and for all site development expenses. In the event that Operator reasonably determines as a result of its own investigation that Hazardous Substances exist or may possibly exist in or on the Property, Operator shall have the right, at its sole option, by written notice to County, to terminate this Agreement. Operator shall keep the results of its investigations confidential, unless otherwise required by law or court order. In no event shall the discovery or disturbance of any Hazardous Substances by Operator preclude the Operator from performing its remediation responsibilities as contained in this Section.

13.3 Environmental Indemnification. Operator shall to the fullest extent provided for under any Environmental Laws be responsible for any repair, cleanup, Remediation or detoxification arising out of: (1) any Hazardous Substance brought onto or introduced into the Property or surrounding area by Operator, its agents or guests, or (2) any Hazardous Substance whose presence pre-exists the Effective Date of this Agreement, located in or on the Property, that are discovered or disturbed as result of Operator's construction activities on, at or near the Property. Operator shall indemnify, defend and hold the County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom. Prior to the Commencement Date, Phase I or other environmental reports and geotechnical reports may be obtained at Operator's expense to help determine anticipated remediation requirements and expenses, as well as for identifying structural issues on, in and under the site, or to provide recommendations or suggestions for further review.

13.4 Limitation on Liability. During the Term: (a) the Operator is and shall be responsible for operation of the Sports Park; and (b) the County shall not be liable for any injury or damage to any property (of the Operator or any other Person) or for any accident, injury or death to any Person occurring on or about the Sports Park, except to the extent caused by the County's intentional or negligent act or omission. Provisions of this Agreement regarding the

County's ownership of or access to the Sports Park shall not impose upon the County any liability to third Persons.

13.5 Strict Liability. The indemnification obligations of an Indemnitor shall apply regardless of whether liability without fault or strict liability is imposed or sought to be imposed on one or more Indemnitees. The indemnification obligations of an Indemnitor shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a claim against an Indemnitee was proximately caused by the negligence or willful misconduct of that Indemnitee.

13.6 Independent of Insurance Obligations. The Operator's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying the Operator's insurance or other obligations under this Agreement and is independent of the Operator's insurance and other obligations under this Agreement. The Operator's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify the Operator's indemnification obligations under this Agreement and are independent of the Operator's indemnification and other obligations under this Agreement.

13.7 Survival of Indemnification and Defense Obligations. The indemnification and defense obligations under this Agreement shall survive the expiration or earlier termination of this Agreement, until all claims against any of the Indemnitees involving any of the indemnified matters are fully, finally, and absolutely and completely barred by the applicable statutes of limitations.

13.8 Independent Duty to Defend. The duty to defend under this Agreement is separate and independent of the duty to Indemnify. The duty to defend includes claims for which an Indemnitee may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of the Indemnitor or the Indemnitee have been determined. The duty to defend applies immediately, regardless of whether the Indemnitee has paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any claims. It is the express intention of the Parties that an Indemnitee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor's duty to defend the Indemnitee at any stage of any claim or suit within the scope of the Indemnitor's indemnity obligations under this Agreement.

13.9 Indemnification Procedures. Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

13.9.1 Prompt Notice. The Indemnitee shall promptly Notify the Indemnitor of any claim. To the extent, and only to the extent, that the Indemnitee fails to give prompt Notice and such failure materially prejudices the Indemnitor in providing indemnity for a particular claim, the Indemnitor shall be relieved of its indemnity obligations for such claim.

13.9.2 Selection of Counsel. The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory. Even though the Indemnitor shall

defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel. The Indemnitor and its counsel shall, however, fully control the defense, except to the extent that the Indemnitee waives its rights to indemnity and defense for such claim.

13.9.3 Settlement. The Indemnitor may, with the Indemnitee's consent, not to be unreasonably withheld, settle the claim. The Indemnitee's consent shall not be required for any settlement by which: (a) the Indemnitor procures (by payment, settlement, or otherwise) a release of the Indemnitee from the subject claim(s) by which the Indemnitee need not make any payment to the claimant; (b) neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee admits liability; (c) the continued effectiveness of this Agreement is not jeopardized in any way; and (d) the Indemnitee's interest in the Sports Park is not jeopardized in any way.

13.9.4 Insurance Proceeds. The Indemnitor's obligations shall be reduced by net insurance proceeds the Indemnitee actually receives for the matter giving rise to indemnification obligation.

ARTICLE XIV

INSURANCE

14.1 Operator to Insure. The Operator shall, at its sole expense, during the Term, maintain the insurance specified in this Article.

14.2 Nature of Insurance Program. All Property Insurance and Liability Insurance policies this Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A" and a minimum financial size category of "VIII"; and (b) are admitted to do business in the State of Wisconsin by the State Department of Insurance. **The Operator may provide any Property Insurance or Liability Insurance coverage under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Sports Park, which amount(s) shall equal or exceed the amount(s) required by this Agreement and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Agreement.**

14.3 Policy Requirements and Endorsements. Operator agrees to evidence and maintain or cause its contractors to evidence and maintain proof of financial responsibility to cover costs as may arise from claims of tort, statutes and benefits under Workers' Compensation laws or vicarious liability arising from employees at least to the minimum limits established now and in the future by Milwaukee County's Risk Manager. Such evidence shall include insurance coverage for Workers' Compensation claims as required by the State of Wisconsin, including employer's liability and business insurance covering general liability and automobile coverage in the following minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers' Compensation Or Proof of All State Coverage	Statutory
Employers' Liability	\$100,000/\$500,000/\$100,000
Commercial General Liability	
Bodily Injury & Property Damage	\$1,000,000 Per Occurrence
(Incl. Personal Injury, Fire, Legal	\$2,000,000 Aggregate
Contractual and Products/Completed	
Operations	
Umbrella Policy	\$2,000,000
Liquor Liability	\$1,000,000 Per Occurrence
Automobile Liability	
Bodily Injury & Property Damage	\$1,000,000 Per Accident
All Autos-Owned, non-owned or hired	
Uninsured Motorists	Per Wisconsin Requirements

Milwaukee County shall be named as an additional insured for General Liability and Automobile Liability; in the event there is a General Contractor, then the Operator and Milwaukee County shall be named as additional Insureds. A waiver of subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

A certificate of insurance shall be submitted for review to Milwaukee County for each successive period of coverage for the duration of this Agreement.

The insurance requirements contained within this Agreement are subject to periodic review and reasonable adjustment by the County Risk Manager consistent with similarly situated properties within the properties owned by Milwaukee County.

14.4 No Representation. Neither Party makes any representation that the limits, scope, or forms of insurance coverage this Agreement requires are adequate or sufficient.

ARTICLE XV

LOSSES AND LOSS PROCEEDS

15.1 Notice. If either Party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such Party shall promptly Notify the other.

15.2 Effect of Casualty. If any Casualty occurs, then: (a) the Operator's obligation to make any payments under this Agreement shall not abate; (b) this Agreement shall not terminate or be impaired; and (c) the Operator shall Restore with reasonable promptness regardless of cost. If, however, the Casualty is a Substantial Casualty, then the Operator may, by Notice to the County, given within thirty (30) days after the occurrence of the Casualty, (i) invoke the indemnity procedures outlined in Article XIII, or (ii) terminate this Agreement effective ninety (90) days after such Notice, provided that the Operator assigns to the County all of the Operator's right, title and interest in and to any Property Insurance Proceeds (and rights thereto) arising from the Casualty.

15.3 Substantial Condemnation. If a Substantial Condemnation occurs, then this Agreement (except as it relates to allocation of the Condemnation Award and other matters surviving termination of this Agreement) shall terminate on the Condemnation Effective Date. The Condemnation Award shall be the sole and exclusive property of the County, except the portion of any such award applicable to the Operator's FF&E or other personal property, if any.

15.4 Insubstantial Condemnation. If an Insubstantial Condemnation occurs, then any Condemnation Award shall be paid to the County to be applied first for Restoration in the same manner as Property Insurance Proceeds. The Operator shall Restore in the same manner as Restoration upon Casualty. Any Condemnation Award remaining after Restoration shall be applied in the same manner as a Condemnation Award from an Immaterial Loss.

15.5 Temporary Condemnation. If a Temporary Condemnation relates to a period longer than ninety (90) days and more than twenty five percent (25%) of the Sports Park, then the Operator may, by Notice within sixty (60) days after notice of such Temporary Condemnation, terminate this Agreement effective on the Condemnation Effective Date. If the Temporary Condemnation relates to a shorter period, or if the Operator does not terminate this Agreement, then the Operator shall receive any Condemnation Award (to the extent compensating for periods within the Term) for use for Restoration, without affecting the Operator's obligations under this Agreement in any way.

15.6 Immaterial Loss. If an Immaterial Loss occurs, then the Operator shall receive any Condemnation Award in trust to be applied first to Restoration. The Operator shall Restore in accordance with this Agreement. After Restoration, the County shall receive any remaining Condemnation Award as its sole and exclusive property.

15.7 Voluntary Conveyance Under Threat of Condemnation. A voluntary conveyance by the County of title to all or a part of the Property or the Sports Park to a public or quasi-public agency or entity in lieu of and under threat by that agency or entity to take such property by eminent domain proceedings shall be considered a Condemnation of the subject part of the Property or the Sports Park, for the purposes of this Agreement.

15.8 Rights and Obligations Governed by Agreement. If during the Term there is any taking of all or any part of the Sports Park or any interest in this Agreement by Condemnation, the rights and obligations of the Parties shall be determined pursuant to this Section.

ARTICLE XVI

REPRESENTATIONS AND WARRANTIES

16.1 No Litigation. Operator represents and warrants to County that there is no existing or, to the Operator's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting the Operator, any holder of an Equity Interest in the Operator or any Affiliate that would, if adversely determined, materially adversely affect the Operator, this Agreement or the Operator's ability to perform its obligations under this Agreement.

16.2 Litigation; Environmental Claims. County represents and warrants to Operator that there is no existing or, to the County's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting the County, that would, if adversely determined, materially adversely affect the County, this Agreement or the County's ability to perform its obligations under this Agreement.

ARTICLE XVII

COUNTY TRANSFERS

17.1 County's Right to Convey. The County may Transfer the Fee Estate from time to time, but only if the County promptly Notifies the Operator of such Transfer. Notwithstanding the forgoing, in the event the County decides to sell the Property and the County receives an offer to purchase acceptable to the County, during the Term of the Agreement, the County, prior to acceptance thereof, shall give the Operator, with respect to such offer, written notice thereof and a copy of said offer; and Operator shall have the option and right of first refusal for sixty (60) days after receipt of such notice within which to elect to purchase the Property on the terms of said offer. If Operator shall elect to purchase the Property pursuant to the option and first refusal herein granted, it shall give notice of such election within such sixty (60) day period. Operator's failure to exercise its option under this paragraph shall not affect this Agreement and the continuance of Operator's rights under this and any other paragraph contained herein.

17.2 Release of the County. Upon any Transfer of the entire Fee Estate in compliance with this Agreement, provided such Transfer does not adversely affect the Operator's rights under this Agreement, the grantor shall be automatically freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by the County after the Transfer, provided that the successor to the County assumes the County's future obligations under this Agreement. This Agreement shall bind the County only while the County owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer of the Fee Estate.

ARTICLE XVIII

OPERATOR TRANSFERS

18. The Operator's Limited Right. The Operator may Transfer this Agreement to any Affiliate. The Operator may Transfer this Agreement to a non-Affiliate with the County's prior written consent, which may be given or withheld in the County's sole and absolute discretion, prior to the effective date of any such Transfer. Any permitted transferee, franchisee or assignee of the Operator shall assume all obligations and liabilities of the Operator under this Agreement in a writing reasonably satisfactory to the County, prior to the effective date of any such Transfer. The Operator shall pay all transfer and other taxes payable on account of any Transfer by the Operator or any holder of any Equity Interest in the Operator. The Operator shall promptly Notify the County at least ninety (90) days in advance of the effective date of any proposed Transfer by the Operator. After the Operator assigns this Agreement and the assignee, franchisee or transferee assumes the Operator's obligations under this Agreement, in accordance with this Agreement, the Operator shall have no obligation or liability under this Agreement, except: (a) any obligation to hold and apply Restoration Funds held by the Operator at the date of the assignment (unless transferred to the assignee); and (b) any unperformed obligations that arose before the assignment (unless assumed in writing, in recordable form, by the assignee). If the Operator assigns this Agreement, then as between the County and the Operator, the Operator shall be deemed to have assigned to the assignee, franchisee or transferee all claims against the County then existing, and the assignee, franchisee or transferee shall be deemed, by assuming this Agreement, to have assumed all liabilities and obligations of the Operator then existing or thereafter arising under this Agreement (except as this Agreement otherwise expressly states).

ARTICLE XIX

EVENTS OF DEFAULT; REMEDIES

19.1 Definition of "Event of Default." An "Event of Default" means the occurrence of any one or more of the following:

19.1.1 Monetary Default. If a Monetary Default occurs and continues for thirty (30) days after Notice from the County, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

19.1.2 Bankruptcy or Insolvency. If the Operator ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within sixty (60) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of the Operator's assets or the Operator's interest in this Agreement (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within sixty (60) days).

19.1.3 Non-Monetary Default. If any Non-Monetary Default occurs and the Operator does not cure such Non-Monetary Default within sixty (60) days after Notice from the County describing the Default in reasonable detail.

19.2 Remedies. If an Event of Default occurs, then the County shall, at the County's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at Law or in equity or under any other terms of this Agreement. The County's remedies shall include:

19.2.1 Termination of the Operator's Rights. The County may terminate this Agreement by written Notice of termination of this Agreement to the Operator or by any other lawful means, in which case this Agreement and the Term shall terminate, such Termination Date shall be considered the Expiration Date of the Agreement, and the Operator shall immediately vacate the Sports Park. Additionally, the County may bring an action to recover any or all of the following from the Operator:

- (a) any unpaid County Revenues earned as of the Expiration Date; and
- (b) any other amount necessary to compensate the County for all detriment proximately caused by the Operator's failure to perform the Operator's obligations under this Agreement.

19.2.2 Suits Before Expiration Date. The County may sue the Operator for damages or to recover County Revenues. from time to time, at the County's election, without terminating this Agreement.

19.2.3 Receipt of Moneys. No receipt of money by the County from the Operator after the Expiration Date, or after the giving of any Notice of termination of this Agreement, shall reinstate, continue, or extend this Agreement or affect any Notice previously given to the Operator, or waive the County's right to enforce payment of any amount payable or later falling due, or the County's right to enter the Sports Park, except as this Agreement expressly states otherwise, it being agreed that after service of Notice of termination of this Agreement or the commencement of suit or proceedings, or after final order or judgment, the County may demand, receive, and collect any moneys due or thereafter falling due, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use of the Sports Park or, at the County's election, on account of the Operator's liability to the County.

19.2.4 No Waiver. No failure by the County to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial County Revenues during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by the Operator, and no Default, shall be modified, except by a written instrument executed by the County. No waiver of any Default shall Modify this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and

effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

19.2.5 Injunction of Breaches. Whether or not an Event of Default has occurred, the County may obtain a court order enjoining the Operator from continuing any Default or from committing any threatened Default. The Operator specifically and expressly acknowledges that damages would not constitute an adequate remedy to the County for any Non-Monetary Default.

19.2.6 Continue Agreement. The County may, at the County's sole option, allow the Operator to continue operating the Sports Park after an Event of Default. In that case, this Agreement shall continue and the County may continue to enforce it, including the right to collect County Revenues when due and exercise any remedies for nonpayment.

19.2.7 Restoration Funds. Upon any termination of this Agreement, to the extent that the County then holds any Restoration Funds, they shall be the sole property of the County and may be applied solely as the County directs.

19.3 Accord and Satisfaction; Partial Payments. No payment by the Operator or receipt by the County of a lesser amount than the amount owed under this Agreement shall be deemed to be other than a part payment on account by the Operator. Any endorsement or statement on any check or letter accompanying any check or payment of County Revenues or any other amount shall not be deemed an accord or satisfaction. The County may accept any such check or payment without prejudice to the County's right to recover the balance of such County Revenues or other payment or pursue any other remedy.

19.4 Survival. No expiration or termination of this Agreement and no entry into or onto the Sports Park by the County after such expiration or termination shall relieve the Operator of its liabilities and obligations under this Agreement, all of which shall survive such expiration, termination or entry.

ARTICLE XX

DISPUTE RESOLUTION

20.1 Mediation. As a condition precedent to filing any action in law or equity on any claim against the County that may be arise out of this Agreement or the subject thereof, the Operator agrees to provide thirty (30) calendar days advance notice to the County of its intent to file a lawsuit or other action against the County. Each of the other Parties further agrees to submit the dispute in good faith to non-binding mediation before a single mediator, pending completion of which any lawsuit or other action that may have been filed by or on behalf of, either Party shall be tolled. The costs for such mediation shall be equally split between the Parties.

(a) Venue for Mediation. The mediation shall be conducted within Milwaukee County at a venue agreed to by both parties.

(b) Selection of Mediator. The mediator shall be selected from the official list of certified mediators and shall possess a minimum of ten (10) years experience in handling commercial transactions and litigation.

(c) Rules and Administration. Unless otherwise contrary to this Agreement, to any subsequent written expression of mutual intent executed by the parties, or to any provision of the law, the mediation shall be administered by the rules of the American Arbitration Association.

ARTICLE XXI

END OF TERM; OPERATOR CONDITIONS

21.1 Upon any Expiration or Termination Date: (a) the Operator shall vacate the Sports Park (including removal of all of the Operator's personnel and Operator's FF&E), in the condition this Agreement requires, subject to any Loss that this Agreement does not require the Operator to Restore; (b) the Operator shall deliver title to the Sports Park including all permanent alternations, modifications, additions and improvements to the Property necessary and appropriate for the continued operation of the Property, free and clear of all claims, except claims that the County or any of its agents caused; (c) the Operator shall remit to the County all remaining amounts in the Endowment Fund; (d) the Operator shall assign to the County, without recourse, and give the County copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Sports Park; (e) the Parties shall cooperate to achieve an orderly transition of operation of the Sports Park from the Operator to the County or a designee of the County, without interruption, including delivery of such books and records (or copies thereof) as the County reasonably requires; and (f) the Parties shall adjust for all other expenses and income of the Sports Park and any prepaid County Revenues and shall make such payments as shall be appropriate on account of such adjustment (but any sums otherwise payable to the Operator shall first be applied to cure any Default). Notwithstanding anything to the contrary in this Section, the Operator may remove from the Sports Park any Operator FF&E, but the Operator must do so, if at all, before the Expiration Date. The Operator shall repair any material damage from any such removal of Operator FF&E. Should the Operator fail to make such repairs, the County reserves the right to perform the work involved and to seek compensation as otherwise provided herein. Any Operator FF&E not removed before the Expiration Date or Termination Date shall be deemed the sole and exclusive property of the County. This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third Person (excepting permitted successors or assigns of the Operator or the County pursuant to the terms of this Agreement) any right to claim damages or to bring any suit, action or other proceeding against either the County or the Operator because of any breach of this Agreement or to enforce any term, covenant, condition, restriction, reservation, provision or agreement contained in this Agreement.

21.2 Operator Conditions. This Agreement is conditioned on the obtainment of all Approvals required to operate the Sports Park, Concession Facility and all related activities described in this Agreement within a reasonable time after the final approval of the County as set forth in Section 22.18. County agrees to use reasonable efforts to assist Operator in obtaining all such Approvals.

ARTICLE XXII

MISCELLANEOUS

22.1 Further Assurances. Each Party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the Parties' intent in entering into this Agreement.

22.2 No Waiver by Silence. Failure of either Party to complain of any act or omission on the part of the other Party shall not be deemed a waiver by the noncomplaining Party of any of its rights under this Agreement. No waiver by either Party at any time, express or implied, of any breach of this Agreement shall waive the same such breach at another time or any other breach.

22.3 Performance Under Protest. If a dispute arises about performance of any obligation under this Agreement, the Party against which such obligation is asserted shall have the right to perform such obligation under protest, which shall not be regarded as voluntary performance. A Party that has performed under protest may institute appropriate proceedings to determine the Parties' rights and obligations regarding such performance and, if appropriate, to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with Default Interest.

22.4 Survival. All rights and obligations that by their nature are to be performed after any termination of this Agreement shall survive any such termination.

22.5 Unavoidable Delay. Each Party's obligation to perform or observe any nonmonetary obligation under this Agreement shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

22.6 Recitals. The recitals are incorporated herein as true and correct and made part of this Agreement.

22.7 Captions. The captions of this Agreement are for convenience and reference only and in no way affect this Agreement.

22.8 Counterparts. This Agreement may be executed in counterpart originals, each of which shall constitute an original of this Agreement and that, collectively, shall constitute one and the same agreement.

22.9 Delivery of Drafts. Neither Party shall be bound by this Agreement unless and until the authorized representative(s) and such Party has/have executed, at least, one counterpart original of this Agreement and delivered such executed counterpart original to the other Party. The submission of draft(s) or comment(s) on drafts shall not bind either Party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Agreement. Submission of this Agreement document for examination or signature by the Parties does not constitute an option or offer regarding the Property on the terms in this document or a reservation of the Property in favor of the Operator. This document shall not be binding on either Party, unless and until all of the conditions of this Section are satisfied.

22.10 Entire Agreement. This Agreement contains all of the terms, covenants, conditions and agreements between the Parties regarding the Sports Park. The Parties have no other understandings or agreements, oral or written, about the Sports Park.

22.11 Modification. Any modification to this Agreement must be evidenced by a writing agreed upon and executed by both the County and the Operator to be binding on either Party.

22.12 Governing Law and Venue. This Agreement, its interpretation and performance, the relationship between the Parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State of Wisconsin, without regard to principles of conflicts of laws.

22.13 Partial Invalidity/Severability. If any term or provision of this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to Persons or circumstances, except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Agreement shall be valid and be enforced to the fullest extent Law allows.

22.14 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from counsel and other advisers of their own selection. A term defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Agreement. The words "include" and "including" shall be construed to be followed by the words: "without limitation."

22.15 Reasonableness. Wherever this Agreement states that a Party's approval shall be "reasonable" or not unreasonably withheld: (a) such approval shall not be unreasonably delayed or conditioned; (b) no withholding of approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a Party grants its consent to any matter, this shall not waive its rights to require such consent for any further or similar matter.

22.16 Time of Essence. Time is of the essence with respect to the performance of each term, provision, covenant or agreement contained in this Agreement.

22.17 Independent Contractor/Disclaimer of Partnership. The relationship of the Parties to this Agreement is that of the owner and third-party contractor, and it is expressly understood and agreed that the County does not, as a result of this Agreement, in any way, nor for any purpose, become a partner of or a joint venturer with the Operator in the conduct of the Operator's business or otherwise. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association as between the County and the Operator.

22.18 Condition: Final Approval. This Agreement is expressly conditioned upon and subject to the approval of the Milwaukee County Board of Supervisors and shall not be or become effective or binding on either the County or the Operator, unless and until formally approved by the Milwaukee County Board of Supervisors and fully executed by the authorized representative(s) of each Party.

22.19 No Third Party Beneficiaries. This Agreement shall bind and benefit the County and the Operator and their successors and assigns. Nothing in this Agreement is intended to confer on any Person (except the County and the Operator or the Operator's approved successor or assign) any right to insist upon, or to enforce against the County or the Operator, the performance or observance by either Party of its rights or obligations under this Agreement.

22.20 Notices. All Notices shall be in writing and addressed to the County or the Operator (and their designated copy recipients) as set forth in Exhibit "B". Notices (including any required copies) shall be delivered personally or by Federal Express, United Parcel Service or other nationally recognized overnight (one-night) courier service to the addresses set forth in Exhibit "B", in which case they shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the courier service) to such address(es). Either Party may change its address for delivery of Notices by written Notice in compliance with this Agreement. Notice of such a change shall be effective only upon receipt. Any Party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of their client.

22.21 Nor Brokers. Each Party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Agreement and no Person is entitled to any commission or finder's fee on account of any agreement or arrangement made by such Party; and (b) shall indemnify the other Party against any breach of such representation.

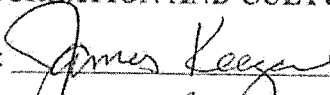
22.22 Attachments. The following attachments are intended to be incorporated into and made part of this Agreement:

- Exhibit "A" = Property Legal Description
- Exhibit "B" = Notice Addresses
- Exhibit "C" = Milwaukee County Due Diligence Requirements
- Exhibit "D" = Sports Park Pro Forma

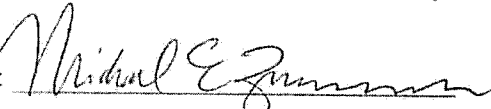
SIGNATURE PAGE
TO
SPORTS PARK MAINTENANCE AND OPERATIONS SERVICES AGREEMENT

IN WITNESS WHEREOF, the County and the Operator have executed this Agreement as of the Effective Date.

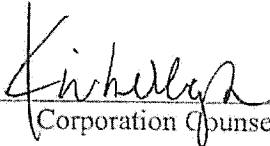
COUNTY: DEPARTMENT OF PARKS,
RECREATION AND CULTURE

By: 
Name Printed: James Keegan
Title: Interim Parks Director

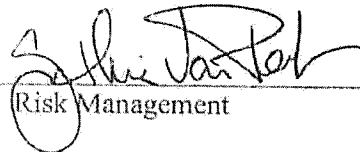
OPERATOR:

By: 
Name Printed: MIKE ZIMMERMAN
Title: CEO

Approved as to form and Independent
Contractor status:

By:  9/24/2012
Corporation Counsel

Reviewed by:

By: 
Risk Management

Approved with regards to County Ordinance
Chapter 42:


By:  9/21/2012
Community Business Development Partners

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

EXHIBIT "B"

NOTICE ADDRESSES

Party:	Notice Address:	With a copy to:
County	Department of Parks, Recreation and Culture Attn: Parks Director 9480 Watertown Plank Road Wauwatosa, WI 53226	
Operator	The Rock Sports Complex, LLC Attn: Mike Zimmerman 4600 W. Loomis Road, Suite 310 Milwaukee, Wisconsin 53220	

EXHIBIT "C"

MILWAUKEE COUNTY DUE DILIGENCE REQUIREMENTS

**Procedure REVISION DATE CHAPTER TITLE CHAPTER NO. ADMINISTRATIVE
MANUAL Financial & Management 7 MILWAUKEE COUNTY Accounting**

ORIG ISSUE DATE SECTION TITLE SECTION NO. 09-28-O 1

Due Diligence 7.92

CHECKLIST. Prior to recommending any venture for consideration, responsible County agencies shall ensure that any of the following applicable factors have been identified:

- **Letter of Full Disclosure and Cooperation**
- **Cash flow projections for the venture.**
- **Operating budget impact.**
- **Debt management responsibilities, schedules and procedures.**
- **Legal liability for all priorities.**
- **Financial reporting systems and controls.**
- **Right-to-audit provisions.**
- **Project feasibility studies and market analysis.**
- **Key factors for success/failure of the venture.**
- **Governance structure and procedures.**
- **Public policy impacts (e. g. Affirmative Action, Disadvantaged Business).**
- **Employee/labor relations impacts (including benefits).**
- **Environmental concerns.**
- **Tax consequences.**
- **Capital management (e. g. maintenance).**
- **Conflicts of interest/ethics.**
- **Performance measurements.**
- **Organization Chart and Mission Statement**
- **Name of Lending institution or Bank to determine single or combined reporting**

Each relevant item noted above should be included in the description of the proposal, which is subtitled for approval by the County Executive and County Board.

EXHIBIT "D"

SPORTS PARK PRO FORMA

Exhibit D

Hazardous Waste Reports

Title	Author	Date	Comments
Preliminary Geotechnical Engineering Services Report	PSI	8/31/2012	
Landfill Boundary Delineation	PSI	8/12/2016	
Geotechnical Exploration and Subgrade Elevation Report (W Edgerton Ave)	GESTRA	5/5/2015	

Title	Author	Date	Comments
Phase I and II ESA	RMT	Aug-91 x2	
Geotechnical Engineering Exploration and Analysis (Proposed Theater, W Rawson Ave)	Giles	6/10/1999	
REP - O&M of the Franklin and Doyne Park Landfill Gas Control Systems	MKE County	Oct-13	
Franklin Landfill Infrastructure Pre-Design Report	AECOM	May-14 x2	
Final Abandonment Plan for Milwaukee County Landfill Site	Donahue & Associates	3/6/1980 x2	
REP - O&M of the Franklin and Doyne Park Landfill Gas Control Systems	MKE County	Dec-16	
2016 Annual Operation, Monitoring, and Maintenance Report	SCS	4/10/2017	
Landfill Gas Analysis and Evaluation of Potential Air Emissions for Ethylene Oxide and PCBs	SCS	1/25/2017 x2	
2015 Annual Operation, Monitoring, and Maintenance Report	SCS	8/16/2016	
2014 Annual Operation, Monitoring, and Maintenance Report	SCS	Feb-15	
2013 Annual Report	SCS	3/11/2014	
2012 Annual Report	SCS	2/19/2013	
2010 Annual Documentation Report	AECOM	Mar-11	
2009 Annual Documentation Report	AECOM	Mar-10	
2008 Annual Monitoring Report	AECOM	Mar-09	
1999 Annual Monitoring Report	EarthTech	Mar-00 x2	
1996 Annual Report	CDM	Dec-97 x2	
Supplemental Investigation of West Loomis Road Interchange Ramps at South 76th Street and West Rawson Avenue	RMT	Nov-91	
Gaseous Emission Compliance Study	Mostardi-Platt Associates	12/21/1995	
Presence of Subsurface Gases (Letter)	Hydro-Search Inc.	12/21/1988	
Groundwater Monitoring Reports (Letter)	EarthTech	3/1/2007	
Closure Plan - Vol. II	CDM	Sep-95	
Remedial Action Plan - Vol. II	CDM	Oct-96	
Remedial Action Plan - Vol. I	CDM	Oct-96	
In-Field Conditions Report - Vol. I	Hydro-Search Inc.	5/10/1991	
In-Field Conditions Report - Vol. II	Hydro-Search Inc.	2/14/1991	
Site Investigation Report - Vol. I	CDM	5/4/1995	
Landfill Final Cover and Active Gas Extraction - Addendum #1	MKE County & CDM	11/22/1996	
Request for Plan Modification Landfill Cap and Gas Extraction System	CDM	Oct-97	
Groundwater Monitoring Reports (Letter)	EarthTech	3/6/2006	
Groundwater Monitoring Reports (Letter)	EarthTech	9/14/2005	
Milwaukee County Landfill Site Interim Gas Extraction and Flaring System Construction Documentation Report	CDM	Jun-95	
Landfill Cap Assessment	MKE County DPPI - Environmental Services	Dec-04	
Soil Sampling/Cap Characterization	Himalayan Consultants, LLC	11/24/2004	
Construction Observation Report and As-Built Drawings - Phase 2 Infrastructure Upgrades	SCS	9/2/2016	
Expedited Plan Modification Landfill Gas Control System Improvements	SCS	9/22/2015	
Photos			
In-Field Conditions Report - Vol. II	Hydro-Search Inc.	2/14/1991	
Geotechnical Engineering Exploration and Analysis (Proposed Theater, W Rawson Ave)	Giles	6/10/1999	
Preliminary Geotechnical Engineering Services Report	PSI	8/31/2012	

Title	Author	Date	Comments
O'Malley Development Binder (scans)	O'Malley Development, LLC	?	
Access to State Trunk Highway 36 (Loomis Road) Between County Trunk Highway "BB" (Rawson Avenue) and Drexel Avenue (Letter)	City of Franklin	6/16/2000	
Wetland Delineation Report	JSD	5/19/2016	
Remedial Action Plan - Record Drawings	CDM	Nov-98	
Geotechnical Engineering Exploration and Analysis (Proposed Theater, W Rawson Ave)	Giles	6/10/1999	
Preliminary Geotechnical Engineering Services Report	PSI	7/27/2016 x2	
Landfill Boundary Delineation	PSI	8/12/2016 x2	
Ballpark Commons Development Traffic on Existing Transportation System (Memo)	Graef	10/7/2016	
Traffic Impact Study - Franklin Area A Development	Graef	2/10/2016	
Phase I and II ESA	RMT	Aug-91	

Title	Author	Date	Comments
Milwaukee County Landfill Transfer Pipe Sewer Connection Design Investigation Report	Hydro-Search, Inc. & Triad Engineering, Inc.		6/17/1988 x2
Hydrogeologic Investigation	Donohue & Associates Inc.		Jun-77 x3
Transfer Pipe Sewer Connection Construction Documentation Report	Hydro-Search, Inc. & Triad Engineering, Inc.		10/16/1989 x2
Landfill Abandonment Plan - Additional Information	Donohue & Associates Inc.		11/7/1980 x2
Milwaukee County Landfill Expansion - Anderson Pit Area	Donohue & Associates Inc.		3/21/1979 x3
Final Abandonment Plan	Donohue & Associates Inc.		3/5/1980
Landfill Boundary Delineation	PSI		8/12/2016
Milwaukee County Landfill Expansion - Anderson Pit Area	Donohue & Associates Inc.		1/10/1978
Technical Memo & Letter - Milwaukee County Landfill Ground-water Monitor Well and Borehole Abandonment	Hydro-Search, Inc.		9/13/1989
Technical Memo - Milwaukee County Landfill Ground-water Monitor Well Installation	Hydro-Search, Inc.	Received 9/22/1989	
Transfer Pipe Sewer Connection Bid Documents	Hydro-Search, Inc. & Triad Engineering, Inc.		7/25/1988
Phase I and II ESA	RMT		Aug-91
Supplemental Investigation	RMT		Nov-91
Site Investigation Report - Vol. I	CDM		May-95
Site Investigation Report - Vol. II	CDM		May-95
In-Field Conditions Report - Vol. I	Hydro-Search, Inc.		5/10/1991

Photos

1995 O&M	CDM
1996 O&M	CDM
1997 O&M	CDM
1998 O&M	CDM
1999 O&M	CDM
2000 O&M	EarthTech
2001 O&M	EarthTech
2002 O&M	EarthTech
2003 O&M	EarthTech
2004 O&M	EarthTech
2005 O&M	EarthTech
2006 O&M	EarthTech
2007 O&M	EarthTech
2008 O&M	EarthTech
2009 O&M	AECOM
2010 O&M	AECOM
2011 O&M	AECOM
2012 O&M	SCS
2014 O&M	SCS
	SCS

Exhibit E

Certification pursuant to Wis. Stats. § 59.17(2)(b)3

CERTIFICATION APPROVING THE SALE OF
7900 W. Crystal Ridge, Dr.
City of Franklin
COUNTY OF MILWAUKEE, WISCONSIN

The undersigned certify that each has reviewed the terms and conditions of the sale of vacant land at 7900 W. Crystal Ridge, Dr. and hereby certifies, pursuant to Wis. Stats. § 59.17(2)(b)3 that the sale is in the best interests of Milwaukee County; and

The Economic Development Division of Milwaukee County is hereby authorized to commence all actions necessary to complete the sale of 7900 W. Crystal Ridge, Dr. as soon as practicable, in accordance with the Offer to Purchase from BPC County Land, LLC, attached hereto.

Dated this 2/16 day of 2018.

Pursuant to Wis. Stats. § 59.17(2)(b)3 this certificate is valid if signed by two of the following.

1. Chris Abele, Milwaukee County Executive
2. Scott Manske, Milwaukee County Comptroller
3. Doug Milinovich, an individual who is a resident of the City of Franklin who has been appointed by the Milwaukee County Intergovernmental Cooperation Council (ICC), an executive council, as defined in Wis. Stat. § 59.794(2)(d.)

Scott Manske

Scott Manske, Milwaukee County Comptroller
And/or assigns

STATE OF WISCONSIN)
) ss.
COUNTY OF Milwaukee)

Personally came before me this 16 day of February, 2018,
Scott Manske, to me known to be the persons who executed the above and
foregoing Option.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[SEAL]

Paul D. Kuglitsch
Notary Public
Milwaukee County,

My Commission expires permanent



Exhibit F

Conservation Easement

Exhibit C

Noise and Light Addendum

See attached.

EXHIBIT C NOISE AND LIGHT ADDENDUM

The Rock Sports Complex and Ballpark Commons project is a multi-use facility developed for a multi-use sports and entertainment complex (“Project”) encompassing the boundaries set forth in Exhibit C.1 (“Abatement Boundaries”). Residents in the communities of Franklin and Greendale have expressed concerns regarding noise and light levels at and beyond the Project Boundaries, originating from activities associated with the Project. This Noise and Light Addendum shall be incorporated into Project documents¹ and consists of three components:

- 1) 2017/2018 Noise and Light Mitigation Plan;
- 2) Noise and Light Standards and Development Plan;
- 3) Noise and Light Compliance Plan.

As specified further herein, BPC County Land, LLC, The Rock Sports Complex LLC, and/or any subsequent or related owner, user, operator, sub-lessee, etc. shall comply with the following:

1. 2017/2018 Noise and Light Mitigation Plan

Attached as Exhibit C.2² are:

- To mitigate unintended light trespass and glare visible from nearby residential areas:
 - This Mitigation Plan details current conditions and identifies 67 lights for new improved glare reduction and control over unintended light trespass (“Gold Standard Visors”) and 11 existing lights for retrofitting with Gold Standard Visors. These new visors and retrofits will be installed on or before the beginning of the Spring 2018 baseball season. All 223 existing fixtures will be adjusted as part of the retrofit effort.
 - New fixtures for lighting outdoor facilities shall meet or exceed the performance of the retrofit fixtures with respect to glare and unintended light trespass.
- To mitigate noise and measure compliance:
 - Past compliance has been measured through handheld monitoring devices. This Mitigation Plan details the installation of permanent monitoring devices at the Abatement Boundaries in the three approximate locations shown in Exhibit C.1. The monitoring devices will be installed at an elevation above ground level and will trigger a notification in the event of an exceedance and record continuous performance data. Since the monitors require permanent electrical connections, the installation needs to coincide with utility installations, commencing in Spring, 2018 and completed during the outdoor concert season in 2018 (no later than

¹ The Project documents are: 1) Development Agreement between BPC County Land, LLC and Milwaukee County

2) Lease Agreement between BPC County Land, LLC and The Rock Sports Complex, LLC and Milwaukee County ; and 3) Development Agreement between BPC County Land, LLC and City of Franklin; 4) the Contribution and Participation Agreement between BPC County Land, LLC and Milwaukee County; and the 5) Option to Purchase .

² Exact locations for noise and light remediation tools and fixtures are subject to reasonable adjustment.

November 1, 2018) generally at the locations shown in the Mitigation Plan. As further mitigation, the operator will install a dedicated sound system to ensure that the sound at the Umbrella Bar is directional controlled to minimize the spillover effect beyond the property boundary.

2. Noise and Light Standards and Development Plan

To ensure compliance with objective standards, the Project shall be subject to the following noise and light standards as set forth in the Franklin Ordinances (“Noise and Light Standards”):

- Section 15-3.1104 Glare;
- Division 15-5.0400 Lighting;
- Section 183-41 Noise;
- With approval by the City of Franklin, such other applicable Noise or Light standards as may apply for a particular event or specified uses within the Project Boundaries.

The point of compliance for application of the Noise and Light Standards, and all activities conducted at the Project, shall be the Abatement Boundaries as set forth in Exhibit C.1.

All development within the Abatement Boundaries shall be subject to final plan approval by the City of Franklin following the specifications and process set forth in the Franklin Ordinances. A Lighting plan meeting the requirements of Section 15-5.0402 shall be submitted to the Plan Commission for the City of Franklin, with a copy provided to the Village of Greendale.

3. Noise and Light Compliance Plan

To ensure ongoing compliance, the Project operator(s) shall maintain a compliance log with the following information:

Light Compliance. The City of Franklin shall conduct a final inspection following the installation of any new permanent light emitting outdoor fixture extending or mounted more than 20 feet above ground. The City shall, within 15 days of its inspection, indicate whether any modifications are needed to comply with the plan. The operator and the City of Franklin shall jointly visually inspect light compliance in the Spring, prior to the start of each baseball season, at or across the roadway from the Abatement Boundaries, as designated on the attached Exhibit C.2 as “visual compliance inspection locations.”

Noise Monitoring.

Annually, the operator will provide the City of Franklin with a list of concerts and special events requiring a permit, including dates and times for operations during the event. A copy of the list of concerts and permitted events shall be provided to the Manager for the Village of Greendale. Events will also be posted at the Property and through electronic media to ensure neighbors can be aware of forthcoming events. The Operator shall provide a means for receiving complaints, through a web page or equivalent electronic media, and shall preserve a record of complaints that will be provided to the City of Franklin, Village of Greendale or County upon request. These records shall be preserved for a minimum of two years. Nothing herein is intended to prevent

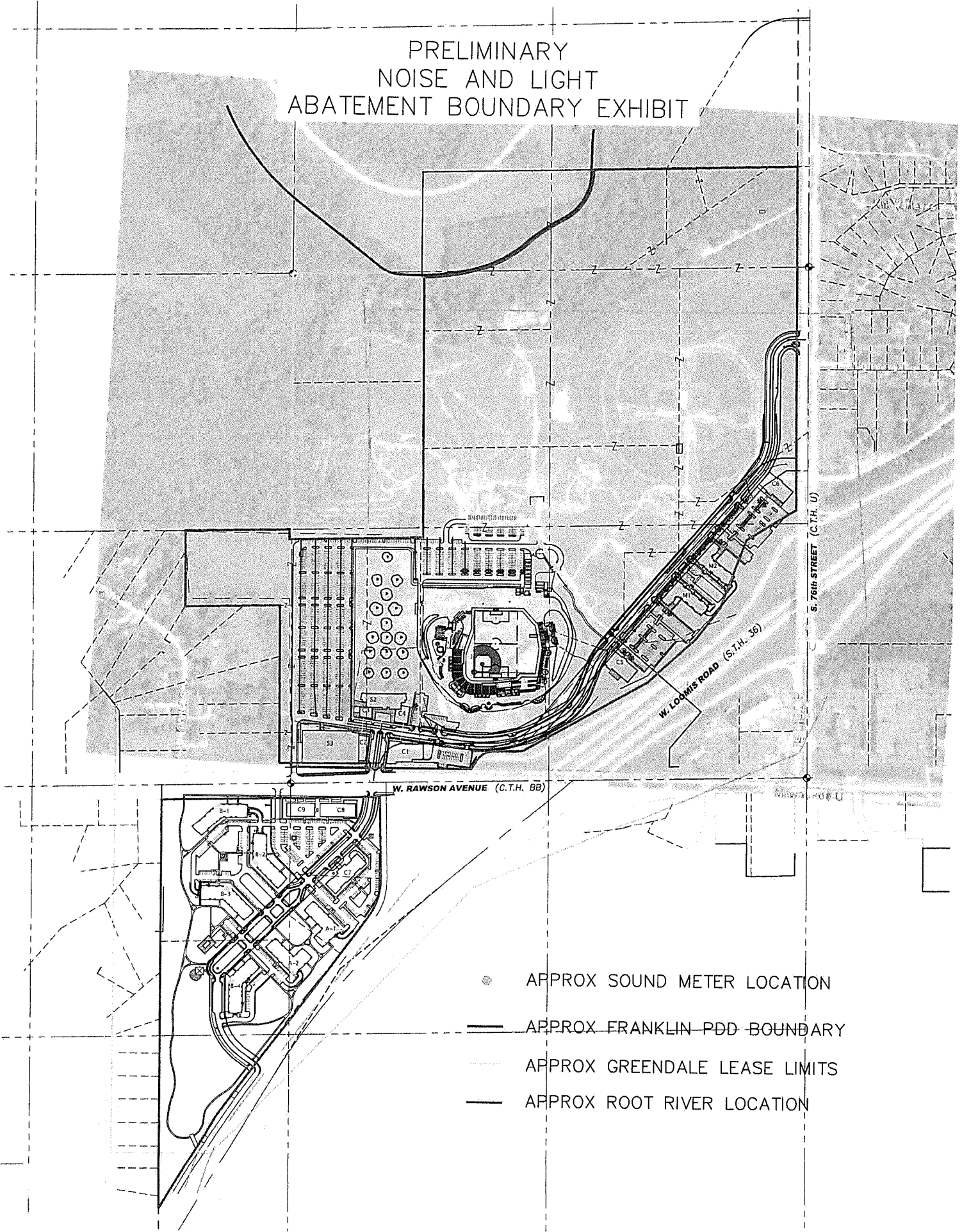
citizens from being able to file public complaints, but this is intended to allow verification of whether or not a complaint and violation occurred.

Continuous noise monitoring data shall be kept for twelve months. Upon reasonable request by the County, City of Franklin, or the Village of Greendale, noise monitoring data and reports, and a record of complaints, shall be provided to the County, City or Village, evidencing the status of compliance. A violation will be considered material if it represents a complaint filed with the operator or the City of Franklin and is evidenced in the monitoring data logs by an exceedance ("Trigger Event") that is not permitted and is not corrected and remediated within 30 minutes of the Trigger Event. The City shall have the right to enforce payment of the penalties specified in the Noise and Light Standards, which may include payment of a double permit fee for any material violation. If the operator has more than four unpermitted material violations in a calendar year, the operator shall be subject to stepped-up enforcement measures as specified in the Noise and Light Standards. If the City declines to take enforcement action, the County, under the terms of this agreement, shall have the right to impose penalties on the operator, in the County's reasonable judgment given the severity and duration of the violation and the number of violations, which shall not exceed \$1,000 for an individual violation and \$10,000 in aggregate for a calendar year.

No provision of this addendum shall be construed to impair any common law or statutory cause of action or legal remedy or to replace the obligations more specifically set forth in the Noise and Light Standards.

EXHIBIT C.1
Abatement Boundaries

PRELIMINARY NOISE AND LIGHT ABATEMENT BOUNDARY EXHIBIT



- APPROX SOUND METER LOCATION
- APPROX FRANKLIN PDD BOUNDARY
- - - APPROX GREENDALE LEASE LIMITS
- APPROX ROOT RIVER LOCATION

**EXHIBIT C.2
Mitigation Plan**

Exhibit D

Compliance Plan

See attached.

BALLPARK COMMONS
COMMUNITY BENEFITS COMPLIANCE PLAN
Developer: BPC County Land LLC.

OVERVIEW

BPC County Land LLC (“DEVELOPER”) proposes to utilize this Community Benefits Compliance Plan with Milwaukee County to fulfill its obligations under the Development Agreement to provide perceptible community benefits for the taxpayers of Milwaukee County. It is the intent of DEVELOPER to successfully establish relationships with certified Targeted Business Enterprise (“TBE”) construction contractors and professional service providers to participate on contracts awarded for the completion of this Project. It is also the intent of DEVELOPER to provide apprenticeship opportunities for workers on the project. Thus, in an effort to provide such benefits, and to remain in compliance with the Development Agreement, DEVELOPER has set the following goals with respect to employing TBEs and members of the local workforce (residents):

TBE PARTICIPATION GOALS:

Hard Construction Project Costs: **25%**

Professional Services Project Costs: **17%**

ENHANCED APPRENTICESHIP/JOB TRAINING GOALS:

Project Hours by participants in Apprenticeship/Job Training Program: **10%**

SECTION ONE: TBE PARTICIPATION

General Information

The County’s Community Business Development Partners (CBDP) department ensures compliance with Chapter 42 of the Milwaukee County Ordinances, which requires good faith efforts (GFE) to achieve participation of certified Targeted Business Enterprise (TBE) firms. CBDP knows the TBE market, handles the certification of firms, can assist in the portioning out of contracts to increase TBE participation and be instrumental in the facilitation of contractor/TBE relationships.

CBDP reserves the right to reasonably adjust more or less participation to TBE categories, as it deems necessary to meet program requirements, based upon knowledge of the available TBE firms to perform on specific project work. CBDP will coordinate with DEVELOPER when it believes an adjustment to a goal could be made.

Commitment

In construction of the Project and performance of its duties and obligations hereunder, the Developer shall not discriminate against any employee or applicant for employment race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking which shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships. The Developer will post in conspicuous places, accessible to employees, notices setting forth the provisions of the foregoing nondiscriminatory clause. The Developer will strive to implement the principles of equal employment opportunities through an effective affirmative action program, which program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups in the Developer's employment at the Project for so long as it is located there, and in construction of the Project. The Developer will include this requirement in any and all contracts and subcontracts entered into under this Compliance Plan. Prime contractors further agree to take affirmative action to ensure that TBE Firms have the maximum opportunity to compete for and substantively perform on the Project. Accordingly, each prime contractor shall commit to achieve the participation requirements established above.

All construction bidders further commit that they will not require TBE firms to engage in exclusive relationships with them (other than joint venture relationships approved by Milwaukee County) as a condition to their participation in the construction services being bid. Bidders who engage in such restraint of trade or attempts to monopolize utilization of TBE firms may have their bids rejected.

Certification

In reviewing the initial participation plan, firms must be certified prior to award. No TBE credit can be given for expenditures with a non-certified firm.

A TBE firm must be certified by one of the members of the Unified Certification Program Partners ("UCP"): the Wisconsin Department of Transportation, City of Madison, Dane County and Milwaukee County. The UCP applies only to TBE certification granted under federal USDOT regulation (49 CFR Part 26). Firms that do not have current certification can find instructions and the necessary application forms at the following site:
<http://www.county.milwaukee.gov/CertificationService12282.htm>

All TBE firms participating in the development must maintain TBE certification during the entire term of their contract. CBDP will work with firms to assist in obtaining or updating TBE certification. If documented efforts to have uncertified firms receive certification through the UCP are unsuccessful, DEVELOPER may still receive participation credit, at the discretion of CBDP, if the firm is certified under one of the following reputable programs: City of Milwaukee SBE, MMSD SWMBE, or State of Wisconsin Supplier Diversity Program (State of Wisconsin DOA). The CBDP office should be contacted directly at 414-278-4747 with specific questions and concerns.

Participation Calculation

The TBE participation credited towards the contract goals for both TBE and non-TBE prime contractors is calculated on the following criteria:

1. One hundred percent (100%) participation credit will be allowed for all work self-performed where the **prime contractor is a TBE firm**. TBE firms at the first tier are encouraged to subcontract with other TBE firms.
2. One hundred percent (100%) participation credit will be granted for all contracts and purchase orders awarded to TBE firms if the identified scope of work has a **commercially useful function** in the actual work of the contract and is performed directly by the TBE firm with its own workforce. CBDP shall determine and evaluate whether or not the firm is performing a commercially useful function on the project.
 - a. To determine whether a firm is performing a commercially useful function, CBDP may evaluate the amount of work subcontracted, reasonable and customary industry practices, and other relevant factors. The participation credit allowed shall be based upon an analysis by CBDP of the specific duties that will be performed by the TBE firm(s). Each TBE firm shall be expected to actually manage and supervise the work contemplated for it by any subcontract or agreement through the use of its own employees and equipment and shall perform that portion of the actual work which is reasonable and customary within their industry.
 - b. CBDP reserves the right to deny or limit participation credit to the contractor where any TBE firm is found to be engaged in subcontracting without prior approval of CBDP. TBE firms must be independent businesses.
3. One hundred percent (100%) participation credit granted for contracts held with **lower tier TBE subcontractors** performing work with its own workforce.
4. One hundred percent (100%) participation credit will be granted for contracts held with **lower tier TBE subcontractors who subcontract with other TBE firms**. If TBE further subcontracts a portion of its work to another firm, the value of the subcontracted work will be counted towards TBE goal only if the work is performed by another TBE firm.
5. One hundred percent (100%) participation credit will be granted for the **cost of all materials and supplies purchased and installed by the TBE** for the work of the project. Credit shall also be given for the cost of leasing equipment provided the TBE subcontractor does not lease the equipment from the prime contractor, construction manager or affiliates thereof.
6. One hundred percent (100%) participation credit for all purchases for materials or supplies from **TBE manufacturers or fabricators**. A TBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises goods from raw materials or substantially alters the materials or supplies obtained by the contractor.
 - a. **CERTIFICATION ALONE IS NOT ACCEPTABLE**. Contractors should submit a copy of the official and legal wholesale distributor agreement(s) between the supplier and the manufacturer for all brands to be supplied by the wholesaler. If legal agreements are not provided, products supplied by the wholesaler may not be counted for participation credit, or at best, credit towards participation will be limited to the amount of profit actually realized by the supplier.

7. Sixty percent (60%) participation credit will be granted on expenditures for materials or supplies purchased from a TBE "Regular Dealer." A **Regular Dealer** is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies are kept in stock, and regularly sold to the public in the usual course of business. A Regular Dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns and operates distribution equipment.
 - a. Brokers, packagers and manufacturers' representatives or other persons who arrange or expedite transactions are **not** regarded as Regular Dealers. TBE firms may be utilized to assist in the procurement of materials and supplies, but credit will be allowed only from the amount of fees or commissions realized by the TBE firm and not the full price of the merchandise provided under any circumstance.
8. One hundred percent (100%) participation credit will be granted for the **fees or transportation charges** for the delivery of materials or supplies by a TBE to a job site, provided the Developer determines that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the material and supplies transported under this provision will not be considered towards TBE participation unless the materials or supplies are from TBE manufacturers as covered elsewhere in this document.
9. One hundred percent (100%) participation credit will be granted for **transportation expenditures with TBE trucking firms** provided the TBE firm is responsible for the management and supervision of the entire trucking operation for which it has contracted. The TBE must also use trucks it owns, insures, and operates using drivers it employs. The TBE may lease trucks from another TBE firm, including an owner- operator who is certified as a TBE. The TBE who leases trucks from another TBE receives credit for the total value of the transportation services the lessee TBE provides on the contract. The TBE may also lease trucks from a non-TBE firm, including an owner-operator. However, the TBE who leases trucks from a non-TBE firm is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The TBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a TBE. (Concrete ready- mix operators may not get credit for leased concrete delivery trucks from non-TBE firms).
10. TBE participation credit will be affected proportionately by **approved change orders**. On change orders, Contractor shall be expected to achieve the level of participation for the change order segment of work in the contract documents, i.e., if a scope of work is contracted at 25% TBE, then change orders for that scope of work should also have at least the 25% TBE participation. This applies equally to construction costs and professional services costs.
11. Prorated participation credit will be granted for contracts where the Contractor is a legal joint venture. Credit for participation of TBE firms as joint venture partners shall be based upon an analysis of the duties, responsibilities and risks undertaken by the TBE firms as specified by the joint venture's executed joint venture agreement, as approved by CBDP prior to the bid due date. CBDP reserves the right to deny or limit TBE participation credit to the contractor where any TBE joint venture partner is found to have duties, responsibilities, risks or loss and management control over the joint venture that are not commensurate with or in proportion to its joint venture ownership percentage.

CBDP may request, and a proposer or prime contractor shall promptly furnish, additional information to assist in the making of participation credit determinations, including, without limitation: (1) specific information concerning any supplier's broker fees, mark-up, and/or commissions; (2) intended suppliers or other sources of labor, equipment, materials and/or services; (3) specific financial or other risks to be assumed by the TBE firm; and (4) identification of employees and supervisory personnel assigned to perform the project.

Reporting Forms

Throughout the excavation and construction period, DEVELOPER will issue several bid packages. The individual monitoring TBE participation shall inform CBDP and DAS-Economic Development of the bid release date, date of pre-bid meeting(s) and provide copies of the bid documents/specifications. This will allow CBDP to promote the event/opportunity with certified firms, and to attend the meeting to answer questions, if any. Prior to beginning the work specified in said bid documents, DEVELOPER shall submit to CBDP, with copies to DAS-Economic Development, forms TBE-14 (Commitment to Contract with TBE Firms) and TBE-02 (Subcontractor/Subconsultant/Supplier Information). Listing a TBE on these forms shall constitute a written representation and commitment that the prime contractor has communicated and negotiated directly with the TBE firm(s) listed and intends to utilize them. The prime contractor will be required to enter into subcontract agreements or execute purchase orders with the TBE firm(s) for the work and price set forth on the commitment form. Copies of agreements and/or purchase orders with all TBE firms shall be submitted to CBDP and DAS-Economic Development at least seven (7) days prior to the TBE firm beginning work on the project.

DEVELOPER must also maintain TBE participation and performance logs, which will be reported to the CBDP and DAS-Economic Development on a monthly basis using B2Gnow. If a TBE firm listed on TBE-14 cannot perform, or the DEVELOPER or prime contractor has a problem meeting the TBE goal, or any problem relative to this Compliance Plan's requirements, DEVELOPER shall immediately contact CBDP at 414-278-4747, or via email at rick.norris@milwaukeecountywi.gov. No TBE subcontractor shall be replaced without written approval from CBDP. Requests for substitution must be made in writing and include the reason for the request.

Project subcontractors under a prime contractor (whether TBE or non-TBE) must be paid, upon satisfactory performance of its subcontract, no later than seven (7) calendar days from the receipt of each payment the prime contractor receives. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written notice to CBDP. If CBDP determines there is no good cause for delaying or withholding payment, the prime contractor must pay the subcontractor within five (5) calendar days of such written decision from CBDP. All prime contractors are required to ensure that all subcontractors will include this prompt payment provision in all subcontracts at all level or tiers of subcontracting. The County reserves the right to require DEVELOPER to utilize B2Gnow, or other internet-based system for reporting purposes.

GOOD FAITH EFFORTS TO ACHIEVE COMPLIANCE

Developer pledges to undertake the following activities to reach its TBE participation goal:

- Utilize a public process to solicit bids

- Publish notice of the opportunity to bid in local publications, as well as contact the minority chambers of commerce with the submittal information
- Meet with CBDP prior to issuing bid packets to gain a better understanding of current TBE capacities and get assistance structuring project packages to encourage participation
- Hold pre-bid meetings so TBE firms are able to ask questions, connect with larger firms who may serve as primes (if the TBE would be a sub), or otherwise.

Compliance Review and Sanctions

DEVELOPER shall be subject to periodic compliance review by CBDP and DAS-Economic Development. In situations of noncompliance, the County may retain all or a portion of DEVELOPER'S compliance deposit, and/or prohibit the DEVELOPER from participating in future Milwaukee County contracting opportunities for a period of up to three (3) years. In the event DEVELOPER consistently submits late or incomplete reports, it shall be in the discretion of the County whether to seek remediation via withholding a portion of the performance deposit.

SECTION TWO: ENHANCED APPRENTICESHIP/JOB TRAINING

General Information

DAS-Economic Development administers the local workforce hiring provision of the Development Agreement, which requires good faith efforts on behalf of DEVELOPER to encourage enhanced apprenticeship and job training opportunities at levels consistent with their stated goal.

Good Faith Efforts

DEVELOPER has pledged to undertake the following activities, all of which shall be recorded on form ECD-01 if DEVELOPER anticipates that it will not achieve its participation goal. Unless otherwise approved by DAS-Economic Development in writing, DEVELOPER shall complete the following:

- Advertise in notices that Developer is looking for County resident participation
- All subcontractors must meet with a pre-apprenticeship program that is recognized by the State of Wisconsin to identify hiring opportunities.
- Connect with local organizations such as Employ Milwaukee, Esperanza Unida, Milwaukee Urban League and WRTP/Big Step to assist in locating resident workers

SECTION THREE: REPORTING SCHEDULE

All reports referenced in this Community Benefits Compliance Plan are attached hereto. Their submittal should be consistent with the following schedule. Should DEVELOPER desire to utilize different reports, written consent from DAS-Economic Development and CBDP is required.

The following reports required at any time DEVELOPER anticipates it will not meet a stated goal:

- ECD-01: Certificate of Good Faith Efforts – Enhanced Apprenticeship

The following reports are due 7 DAYS PRIOR TO BEGINNING WORK on the contract:

- TBE-14: Commitment to Utilize TBE
- TBE-02: Bidder Information
- Copies of agreements and/or purchase orders with all TBE firms listed in TBE-14

The following reports are due on a MONTHLY BASIS and shall be submitted within 7 days of the end of a month:

- TBE Utilization entered into B2Gnow

The following reports are due on a VARIABLE BASIS, as laid out below:

- Employee affidavits and proof of residency due when the employee commences work on the project

All reports shall be submitted to:

Community Business Development Partners
Milwaukee County Dept. of Admin. Services
633 W. Wisconsin Avenue, Suite 902
Milwaukee, WI 53203

With a copy to:

DAS-Economic Development
Milwaukee County Dept. of Admin. Services
633 W. Wisconsin Avenue, Suite 903
Milwaukee, WI 53203

TIF FUNDS DISBURSING AGREEMENT

Knight Barry Title, Inc. File No. 897214

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

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

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

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

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

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

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

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

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

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

B. AIA Document Nos. G702 and G703, as applicable, signed by Owner and Owner's general contractor, Marso Construction, LLC, a Wisconsin limited liability company ("General Contractor");

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

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

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

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

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

5. Prior to the disbursement of the Advance, Escrow Agent shall determine if any constructions liens have been filed against the property legally described in the attached **Exhibit D** ("Property") in the Milwaukee County Clerk of Courts office since the last effective date of the Title Commitment. If an intervening construction lien is discovered, Escrow Agent shall promptly notify the City and Owner and shall, at Escrow Agent's sole discretion, either: (a) hold the deposited Advance until the construction lien has been disposed of or otherwise addressed to the satisfaction of the City, or (b) return the Advance to the City. If there are no such intervening

construction liens, then Escrow Agent shall disburse the Advance per Section 4, above, and will either (I) increase the amount of title insurance coverage issued to the City in Escrow Agent's file no. 897214 by the amount of the Advance and date down the coverage for construction liens with the pending disbursement endorsement attached hereto as **Exhibit C** (the "Endorsement") or (II), upon the release of the City's mortgage, increase the amount of title insurance coverage issued to the Owner by the amount of the Advance and date down the coverage for construction liens with the Endorsement modified for an owner's policy. Notwithstanding the foregoing, in no event shall the amount of the City's Loan Policy of Title Insurance to be issued pursuant to the Title Commitment exceed \$3,835,000.

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

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

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

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

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

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

8. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. This Agreement is only between the parties hereto, and is not intended to be, nor shall it be construed as being, for the benefit of any third party. This Agreement can be amended or modified only by a written amendment signed by the parties hereto. This Agreement and any modifications to this Agreement may be executed in several counterparts, and as so

executed, shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

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

10. Escrow Fee. An escrow fee ("Escrow Fee") shall be paid to Escrow Agent by the Owner in the amount of \$250 per Advance. The Escrow Agent may deduct the Escrow Fee from each Draw.

11. No Owner Lien Coverage Granted. The only responsibility of Escrow Agent to Owner created by this Agreement is the faithful performance of the obligations created by this Agreement. Except for the Endorsement to Owner's title policy, Owner acknowledges that this Agreement is not a promise by Escrow Agent to provide Owner with any protection against construction lien claims, either under this Agreement or in a title insurance policy.

12. No Interest on Escrowed Funds. All parties acknowledge that no interest will be paid on any money while held by Escrow Agent pursuant to this Agreement and that, in addition to the fees payable to Escrow Agent for its services, Escrow Agent may receive ancillary benefits from the use of the funds while held in escrow.

13. Action Against Escrow Agent. The parties agree that any action in relation to an alleged breach of this Agreement by Escrow Agent shall be commenced within two years of the date of the breach, without regard to the date the breach is discovered. Any action not brought against Escrow Agent within that two-year time period shall be barred, without regard to any other limitations period set forth by law or statute, and Owner and City hereby waive any statute of limitations to the contrary.

14. Notices. Any notice required under this Agreement shall be given in writing at the addresses set forth at the end of this Agreement and by: (a) certified or registered mail, postage prepaid, (b) overnight courier guaranteeing next day delivery, (c) personal delivery, (d) facsimile, or (e) email. All notices shall be deemed given three (3) business days following deposit in the United States mail with respect to certified or registered letters; one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery; and on the same day if sent by personal delivery, facsimile (with proof of transmission) or email (with proof of transmission).

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

ESCROW AGENT:

KNIGHT BARRY TITLE, INC.

By: _____

Print Name: _____

Title: _____

Address: _____

Phone No.: _____

Email: _____

[SIGNATURE PAGE TO DISBURSING AGREEMENT]
SIGNATURES CONTINUE ON NEXT PAGE

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

OWNER:

BPC MASTER DEVELOPER, LLC,
a Wisconsin limited liability company

By: _____
Print Name: _____
Title: _____
Address: _____

Phone No.: _____

Email: _____

[SIGNATURE PAGE TO DISBURSING AGREEMENT]
SIGNATURES CONTINUE ON NEXT PAGE

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

CITY:

CITY OF FRANKLIN

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

Phone No.: _____
Email: _____

By: _____
Sandra L. Wesolowski, City Clerk
Address: _____

Phone No.: _____
Email: _____

[SIGNATURE PAGE TO DISBURSING AGREEMENT]

EXHIBIT A

**TIF Improvements and TIF Improvements Budget
NORTH OF RAWSON TOTAL BUDGET**

* Sanitary Sewer	499,495
*+ Storm Sewer	2,015,848
* Water	551,404
* Streets	3,294,435
Shared Parking	1,930,196
County Methane Collection System (2017-18)	3,887,300
County Methane Collection System (2035)	
Relocate Methane Gas Line	458,000
Excavate Unsuitable Soils	2,602,500
* Oak Leaf Trail	95,000
Sound & Light Modifications	100,000
Privacy Berms	340,000
Contingency @ 15%	2,366,127
	<hr/>
TOTAL -- NORTH OF RAWSON	18,140,305

SOUTH OF RAWSON

* Sanitary Sewer	282,771
* Storm Sewer	548,179
* Water	459,720
* Streets	1,862,964
* Oak Leaf Trail	50,000
Privacy Berms	580,000
Contingency @ 15%	567,545
	<hr/>
TOTAL -- SOUTH OF RAWSON	4,351,179

TIF CREATION & ADMINISTRATION 30,000++

GRAND TOTALS 22,521,484

*Public Improvements, but only to the extent

accepted by the City and located within public easements or rights of way.

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

++ As is set forth more fully on page 5 of Exhibit C, this is an annual, re-occurring (and fluctuating) fee listed in the column "Admin (including water and air quality monitoring)." In event the City's actual admin fees in any year are less than the amounts listed in this column on page 5 of Exhibit C, the City may use any such savings to reimburse itself for the City's accumulated administrative expenses, including but not limited to those incurred prior to the date hereof to set up the District (which are currently estimated at approximately \$200,000).

EXHIBIT B
(Construction and development milestones)

MILESTONE BENCHMARKS

Dated: 2/9/2018

Week Of Goal	Development & Entitlement Events	Type	Status	Verified	TIF Spend Cap	Cumulative
1/15/2018	S3:Anchor Tenants Commitment: SC Waukesha & PT Academy	LOI, Press Release	Completed			
1/22/2018	C1 Retail Anchor Tenant Commitment	LOI, Press Release	Completed			
1/22/2018	B1, B2, B3, and B4 Apartment Site Plan Application	City Submittal	Completed			
1/22/2018	C1 Mixed Use (Office & Retail) Site Plan Application	City Submittal	Completed			
1/22/2018	CSM and PDD Amendment	City Submittal	Completed			
2/6/2018	City Approval of Development Agreement	City Action	Completed			
2/12/2018	Developer to Close on Sale of Landfill with Milwaukee County	Sale Contract				
2/12/2018	Closing on Remaining Parcels South of Rawson	Sale Contract				
2/12/2018	Stadium American Association, New Franchise Binding Commitment	League Letter	Completed			
2/19/2018	Start Reconstruction of Methane Control System & Infrastructure	Construction				
2/19/2018	C1 Office Tenants Commitment	LOI, Press Release	Completed			
2/26/2018	B1, B2, B3, and B4 Apartment GC Selection	Contract			3,080,000	3,080,000
3/5/2018	C1 GC Selection	Contract				
3/5/2018	B1, B2, B3, and B4 Apartment Management Company Selection	Contract				
3/12/2018	Stadium UWM Binding Commitment	Lease, Press Release				
3/12/2018	PDD Amendment and Site Plan Application: Senior Housing	City Submittal				
3/19/2018	S3, C2 Site Plan Application, Indoor Facility	City Submittal				
3/19/2018	C2 Medical Anchor Tenant Commitment	LOI, Press Release				
3/19/2018	S3 Naming Rights Commitment	LOI, Press Release				
3/26/2018	S2, C3, and C4 (Restaurant & Golf) Site Plan Application	City Submittal				
3/26/2018	S2, C3, and C4 (Restaurant & Golf) Tenant Commitments	LOI, Press Release			1,540,000	4,620,000
4/2/2018	Site Plan Application - Stadium Phase 1	City Submittal				
4/9/2018	Install of Ballfield Light Visors	City Inspection			1,551,000	6,171,000
5/21/2018	B1, B2, B3, and B4 Apartment Financing & Building Permit	City Approval				
5/21/2018	C1 Mixed Use (Office & Retail) Financing & Building Permit	City Approval				
5/21/2018	Start Stadium Construction	City Approval				
5/21/2018	Ground Breaking Ceremony & Start of Construction -- Apartments & Office	Public Event			2,612,500	8,783,500

EXHIBIT C
(Pending Disbursement Endorsement)

DISBURSEMENT ENDORSEMENT TO LOAN POLICY

Issued by Knight Barry Title, Inc. agent for Chicago Title Insurance Company

Attached to and made a part of Commitment/Policy No. 987214

\$ _____, has been (or is about to be) disbursed by the Company as of this _____ day of _____, 2018 from the TIF proceeds as described in the TIF Funds Disbursing Agreement dated _____, which brings the total amount of funds disbursed by the Company to \$ _____. Notwithstanding the foregoing, in no event shall the Loan Policy Amount exceed \$3,835,000.

The Company hereby insures the Insured against loss or damage by reason of lack of priority of the lien of the insured mortgage over any lien, or right to a lien, imposed by law for the cost of services, labor or material furnished for improvements on the Land prior to the above effective date of this endorsement.

All other coverages provided by the Commitment and Endorsements thereto are not hereby extended.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____, 2018

Effective Date: _____, 2018

Exhibit D