

## DEVELOPMENT AGREEMENT

### Ballpark Commons

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2017, 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 September \_\_\_\_\_, 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 9<sup>th</sup> Street, Room 303  
Milwaukee, WI 53233

To the Developer: [DEVELOPER]  
[ADDRESS]

With a copy to: [Foley & Lardner LLP]

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. Noise and Light provisions described in Section 2.9 and Exhibit C shall survive expiration of the memorandum of Development 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]



DEVELOPMENT AGREEMENT  
BPC COUNTY LAND LLC  
EXECUTION PAGE

**BPC COUNTY LAND LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
( \_\_\_\_\_ )  
Notary Public, State of \_\_\_\_\_  
My Commission \_\_\_\_\_

[Signature Pages Follow]

*Approved with regards to County Ordinance Chapter 42:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
*Community Business Development Partners*

*Reviewed by:*

*Approved for execution:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
*Risk Management*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
*Corporation Counsel*

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
*Comptroller*

*Approved:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
*County Executive*

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
*Corporation Counsel*

**Exhibit A**

Legal Description of the Property

*See attached.*

**Exhibit B**

Option Agreement

*See attached.*

**Exhibit C**

Noise and Light Addendum

*See attached.*

**Exhibit D**

Compliance Plan

*See attached.*