

PROJECT AGREEMENT

This Project Agreement (the “Agreement”) is executed as of the ____ day of _____, 2021, by and among Rebar McCordsville, LLC, an Indiana limited liability company (“Developer”), Rebar McCordsville, Inc., an Indiana corporation (“Owner” and jointly and severally with the Developer, “Company”), the Town of McCordsville, Indiana, an Indiana municipal corporation (“Town”), and the Town of McCordsville Redevelopment Commission, a commission of the Town authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq.* (“MRC”), on the following terms and conditions:

Recitals

WHEREAS, Company is an Indiana real estate development company with a reputation of delivering complicated multi-family, office, retail and community amenities across central Indiana, including large, mixed-use developments like the Levinson in Noblesville, Founders Square in Speedway, the Barlow in Plainfield and the Ellsworth in Lafayette, Indiana, among others;

WHEREAS, the Town has developed and continues to fulfill its master development plan and now desires to induce the development of mixed-use residential structures and public amenities in its downtown core;

WHEREAS, specifically, the Town desires to encourage and support redevelopment in downtown McCordsville by master planning areas to provide the infrastructure necessary to support new development;

WHEREAS, the Town likewise desires to induce the development of multi-family living in its downtown;

WHEREAS, the Town and MRC have determined that downtown redevelopment will, among other benefits, have a positive economic impact on the Town while enhancing the quality of life for residents;

WHEREAS, Company has submitted a proposal to Town Bodies for the development of the Projects on the Project Site, and the Town Bodies have determined that Company's proposal was submitted pursuant to and consistent with the master development plan;

WHEREAS, as a result, Town Bodies have agreed to provide certain incentives to assist Company in the construction of the Projects pursuant to this Agreement;

WHEREAS, Company expects that its total development cost for (a) the Infrastructure Project will be an estimated Eight Million and no/100 Dollars (\$8,000,000.00), and (b) McCord Square Apartments will be an estimated Thirty One Million Dollars (\$31,000,000.00), in the aggregate, resulting in approximately Thirty-Nine Million and no/100 Dollars (\$39,000,000.00) of investment in McCordsville Phase I; and

WHEREAS, to stimulate and induce the development of the Projects on the Project Site, the Town Bodies have agreed, subject to further proceedings required by law, to provide the economic development incentives described herein.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Town, MRC, and Company agree as follows:

1. Defined Terms.

Acquisition Obligation shall mean the Town's right and obligation to acquire the Project Site pursuant to **Section 16.**

Additional Land shall mean (a) the real property currently owned by Star Financial and depicted on **Exhibit A-8;** and (b) the (2) parcels of real property generally known as 7677 & 7691 N. 600 W., McCordsville, Indiana and identified by property identification nos. _____, respectively. The Additional Land is outside the current boundary of McCord Square.

Ancillary Agreements shall mean all instruments and agreements referenced or contemplated herein, including, without limitation, the Completion Guaranty, Declaration, Multi-Party Agreement, Funding Agreement, Taxpayer Agreement, the Town Conveyance Deed, the Income Allocation Agreement and a recordable memorandum thereof, and any other agreements or reservations set forth therein and other documents needed to effectuate the intent of this Agreement.

Approved Costs shall mean all Hard Costs and Soft Costs related to the (a) Infrastructure Project; or (b) Mixed-Use Project.

Assessments shall mean all general and special governmental and utility assessments.

Bond Documents shall mean the documents evidencing and/or securing the Infrastructure Bonds and/or the Mixed-Use Bonds. At the election of the Town Bodies, the Bond Documents shall require the establishment and funding (out of the Bond Proceeds of the Infrastructure Bonds) of a debt service reserve, the minimum amount of which on deposit therein shall equal the aggregate amount of the debt service on the Infrastructure Bonds for one year.

Bond Interest Rate shall have the meaning ascribed to such term in Subsection 10(d).

Bond Proceeds shall mean, as applicable, the proceeds of the Infrastructure Bonds or the proceeds of the Mixed-Use Bonds.

Bonds shall mean, as applicable, the Infrastructure Bonds and/or the Mixed-Use Bonds.

Bond Term shall mean, whether referring to the Mixed-Use Bonds or Infrastructure Bonds, twenty-five (25) years from the date of issuance of such Mixed-Use Bonds or Infrastructure Bonds.

Catch-Up Plan shall mean a plan pursuant to which Company will, subject to **Section 21:** (a) avoid falling further behind the dates set forth in the Construction Schedule for construction of the Infrastructure Project and/or Mixed-Use Project, as applicable; and (b) complete the applicable Project in accordance with (and in no event more than ninety (90) days after) the applicable dates set forth in each such Construction Schedule.

Change Order shall mean a change order executed by Town (or its designee) and Company finalizing the inclusion into the Project Plans of a change proposed in a Change Order Request by Company that is approved by Town (or its designee); provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Company.

Change Order Request shall mean a written request for a change to the Project Plans.

Claims shall mean claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys' fees); provided that in no event shall Claims include consequential or punitive damages.

Closing shall mean the closing with respect to: (a) the recordation of the Plat (if such recordation has not previously occurred); (b) Town's conveyance to Company of the Town Conveyance Parcel; (c) Company's acquisition (if such acquisition has not previously occurred) of the (i) Tower Land, and (ii) Mt. Comfort Property; (d) execution (if such execution has not previously occurred) of all Ancillary Documents; (e) Town's issuance and Company's acquisition of the Mixed-Use Bonds; and (f) Project Lender issuing the Project Loan to Company, which Closing shall occur by or before thirty (30) days from expiration of the Diligence Period, unless the parties mutually agree to a later Closing Date.

Closing Costs shall mean all recording fees, escrow closing costs, and such other closing fees, costs, and charges customarily associated with a commercial real estate closing and/or the closing of the Bonds.

Closing Date shall mean the date on which the Closing occurs, which Closing Date shall not be later than thirty (30) days after expiration of the Diligence Period, unless the parties mutually agree to a later Closing Date or except as provided to the contrary in Section 4.

Commercial Building Parcel shall mean that portion of the Future Development Parcels (which are located within the Project Site) delineated as such on **Exhibit A-7** and identified as parcel 17 on the Master Development Plan. The Master Development Plan contemplates the development and construction of a commercial building on the Commercial Building Parcel.

Completion Guaranty shall mean, with respect to each Project, a guaranty pursuant to which the Guarantor guarantees construction and completion of such Project in accordance with the terms and conditions of this Agreement, which guaranty shall expire with respect to a Project without further action of the parties either: (a) five business days after the Town Bodies conduct the Final Inspection for such Project, if, as of such date, the Town Bodies have not delivered a Non-Compliance Notice with respect to such Project to Company in accordance with Section 12; or (b) upon correction by Company of all Fundamental Flaws identified in a Non-Compliance Notice with respect to such Project delivered by the Town Bodies in accordance with Section 12.

Construction Schedule shall mean, whether for the Infrastructure Project or the Mixed-Use Project, the portion of the Project Plans comprised of the construction schedule.

Cure Period shall mean a period of: (a) ten (10) days after written notice of such default in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than ninety (90) days after the date of the default. Notwithstanding the foregoing, a Cure Period shall not be applicable to a default under **Section 15**, any specific cure periods for such defaults being expressly set forth in **Section 15**, and a Cure Period shall not be applicable to a default under an Ancillary Agreement, any specific cure periods for such defaults being expressly set forth in such Ancillary Agreement.

Current Year Taxes shall mean, with respect to the applicable parcel of real estate, the Real Estate Taxes assessed for, and first becoming a lien against, the applicable real estate during the year in which such real estate is acquired by the applicable party.

Declaration shall mean the Declaration Of Covenants, Conditions And Restrictions for McCord Square, which Declaration shall (a) provide minimum standards pertaining to the development, use and maintenance of McCord Square Phase I; (b) ensure the stability and enhancement of values of the land and improvements within McCord Square Phase I; (c) further development and improvement of McCord Square Phase I in an aesthetic and architecturally harmonious manner in accordance with applicable zoning ordinances; (d) establish and apportion rights and responsibilities with regard to facilities and services in, and required for the use and operation of McCord Square Phase I, including, without limitation, provisions allocating to the parcels within McCord Square Phase I a pro-rata share of the costs and expenses incurred in connection with the operation, maintenance, repair, and replacement of infrastructure and common areas; and (e) make, create, and reserve (i) pedestrian access in, on and across the Project Site; and (ii) access to and continuous use of the parking spaces constructed on and within the Project Site; which spaces, shall be publicly available spaces, including, without limitation for the Mixed-Use Project.

Diligence Period shall mean the period: (a) commencing on the Execution Date; and (b) ending not later than one hundred eighty (180) days thereafter; provided, however, that, if all of the conditions set forth in Section 7 and Section 8 are satisfied and/or waived (or deemed to have been waived) prior to such ending date, then the Diligence Period instead shall end on such date as the parties agree that the conditions all have been satisfied and/or waived (or deemed to have been waived).

Disbursement Agent shall mean, as elected by the Town Bodies, either the Project Lender or a third-party lender or other entity qualified to review the materials required to be submitted in connection with each Disbursement Request (such as, by way of example, The Veridus Group).

Event of Default shall have the meaning set forth in Section 14.

Execution Date shall mean the date set forth in the opening paragraph of this Agreement.

Final Inspection shall mean an inspection of the (a) Infrastructure Project, or (b) Mixed-Use Project, after Substantial Completion thereof.

Force Majeure shall mean, with respect to Company or Town Bodies any cause that is not within the reasonable control of Company or Town Bodies, respectively, including, without limitation: (a) an act or omission of one of the other parties hereto; (b) unusually inclement weather but not cold, ice, sleet, snow or hail in amounts typical in Indiana; (c) the unusual unavailability of materials, equipment, services, or labor; and (c) utility or energy shortages or acts or omissions of public utility providers; provided that a party's failure to anticipate normal and customary delays due to weather or normal and customary time periods to obtain Required Permits shall not be deemed Force Majeure.

Fundamental Flaw shall mean, whether referring to the Infrastructure Project or Mixed-Use Project: (a) any item or element of the Project that deviates materially from the Project Plans; or (b) a flaw in the design or construction of the Project that must be addressed to avoid, correct, rectify, or reverse: (i) a material violation of any Law; (ii) a violation of applicable insurance requirements that could result in an insurer: (A) disclaiming coverage or liability; or (B) canceling or refusing to renew a policy; (iii) a violation of applicable warranty requirements that could result in a contractor or material supplier: (A) disclaiming coverage or liability; (B) refusing to issue or honor a warranty; or (C) canceling or refusing to extend a warranty; (iv) an actual: (A) inability to obtain a Required Permit; or (B) attempt by a governmental authority to cancel or revoke a Required Permit; and/or (v) a design or construction issue that materially affects: (A) the structural integrity of the Project; and/or (B) the safe construction, maintenance, operation,

and/or use of the Project.

Funding Agreement shall mean an agreement executed by and among Company, the Town Bodies, and the Disbursement Agent pursuant to which the Bond Proceeds shall be disbursed to Company in a manner similar to disbursement by lenders of proceeds of construction loans, which agreement at a minimum shall contain the provisions set forth on Exhibit C. Company shall be responsible for all costs to design and construct the Mixed-Use Project and Infrastructure Project in excess of the Bond Proceeds of the applicable Bonds. The Town Bodies may elect to require a separate Funding Agreement for each of the Infrastructure Bonds and the Mixed-Use Bonds.

Future Development Parcels shall mean that portion of the Project Site delineated as such on Exhibit A-6, and listed as parcels 1-5, 8-12 and 16 on the Master Development Plan.

Guarantor shall mean Rebar Companies, LLC.

Hard Costs shall mean the costs incurred in connection with construction of a Project, which costs are customarily known in the industry as “hard costs”.

Income Allocation Agreement shall mean an agreement, the term of which commences upon the date of Substantial Completion and ends on the date that is [] years thereafter, executed by and between one or both Town Bodies and Company pursuant to which: (a) if, for any given calendar year during the term thereof, the actual net operating income exceeds the Net Income Projections by a factor of 1.15, then Company shall be obligated to remit to the applicable Town Body a pro-rata share of such excess, determined by multiplying: (i) the amount by which net operating income exceeds the 1.15 threshold; by (ii) []%; provided that if, as of the Execution Date, the parties have not agreed on the percentage multiplier, then reaching an agreement with respect thereto shall be part of the conditions of the obligation of the parties to proceed to the Closing; (b) Company is obligated to keep true and accurate books and records of its operating income and expenses; and (c) Company is obligated to provide regular reports to the Town Bodies detailing its operating income and expenses.

Incurred Costs shall mean, if this Agreement is terminated in accordance with its terms prior to the Closing, the actual, out-of-pocket, third-party costs and expenses incurred by a party through the date of such termination, to the extent not previously paid or reimbursed by another party.

Infrastructure Bonds shall mean one or more series of economic development revenue bonds, or bond anticipation notes, to be issued under Ind. Code § 36-7-12 and that results in the net amount of approximately \$4,000,000.00 being made available to Company for Approved Costs resulting from the Infrastructure Project. Company shall not be obligated to guaranty the Infrastructure Bonds, and the Infrastructure Bonds shall be payable solely by the applicable Town Body.

Infrastructure Project shall mean (a) performing the necessary due diligence and engaging the necessary engineers, architects and other professionals to design the Site Infrastructure; (b) constructing and/or installing the Site Infrastructure; and (c) producing, jointly with the Town Bodies, development standards and the site covenants for McCord Square Phase I. Company shall complete the Infrastructure Project within fifteen (15) months of the Closing Date.

Laws shall mean all applicable laws, statutes, and/or ordinances, building codes, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the Town’s Unified Development Ordinance and all applicable environmental laws.

Master Development Plan shall mean the conceptual site plan for McCord Square attached as **Exhibit A-1**. If and to the extent that the parties mutually agree to changes to the Master Development Plan, as currently reflected on Exhibit A-1, then, at or prior to the Closing, the parties shall replace the current Exhibit A-1 with an Exhibit A-1 reflecting the then-current Master Development Plan.

McCord Square shall mean an approximately forty-eight (48) acre downtown mixed-use development located at the southeast corner of Broadway Avenue (State Road 67) and Mt. Comfort Road (600 West) in McCordsville, Indiana, which development is comprised of McCord Square Phase I and McCord Square Phase II.

McCord Square Phase I shall mean the Mixed-Use Project, together with: (a) a civic green space; (b) approximately twenty-five to thirty (25- 30) single-family, attached townhomes; (c) additional retail, office, and restaurants; and (d) shared neighborhood amenities including ~~a~~-walking ~~path~~paths and at least one (1) pond, all as generally depicted on the Master Development Plan and/or as required by the zoning ordinance. McCord Square Phase I will be located on the Project Site.

McCord Square Phase II may include a five-acre civic commons and amphitheater, additional restaurants and retail options, a new town hall, and/or additional housing options. The portion of the Project Site anticipated to comprise McCord Square Phase II is delineated as such on **Exhibit A-2**.

Mixed-Use Allocation Area shall mean a separate and distinct tax allocation area established, pursuant to Ind. Code § 36-7-14 *et seq.*, by the Town Bodies prior to Closing, which allocation area is comprised of the Mixed-Use Parcel.

Mixed-Use Bond shall mean one or more series of taxable economic development revenue bonds, or bond anticipation notes, to be issued under Ind. Code § 36-7-12 in a maximum par amount that Company and Town Bodies jointly determine will ensure that one hundred percent (100%) of all increment generated in the Mixed-Use Allocation Area, less \$5,000.00 annually for the payment of fees and costs associated with the Mixed-Use Bonds, is utilized to pay debt service on the Bonds, which par amount currently is estimated to be approximately \$5,500,000.00. Except to the extent that the Taxpayer Agreement operates to “guarantee” receipt by MRC of a specified annual minimum amount, Company shall not be obligated to guaranty the Mixed-Use Bonds, and the Mixed-Use Bonds shall be payable solely from the Pledged Increment.

Mixed-Use Parcel shall mean that portion of the Project Site delineated as such on **Exhibit A-5**, and comprised of lots 6 and 7 on the Master Development Plan, on which the Mixed-Use Project shall be constructed.

Mixed-Use Project shall mean a mixed-use building and related amenities consisting of approximately (a) two hundred (200) Studio, 1- and 2- bedroom Class-A Units; (b) six thousand square feet (6,000 sq. ft.) of commercial space; and (c) amenities including a resort-style pool and courtyard, work-from-home lounge, pet park, pet spa, fitness and wellness studio, indoor bike storage, and large balconies overlooking a beautiful civic green space, some of which amenities will be located on the building rooftop.

Mt. Comfort Property shall mean the real property described and depicted on **Exhibit A-3**. The Mt. Comfort Property will be part of the Project Site.

Multi-Party Agreement shall mean an agreement by and among Town Bodies, Company, and the Project Lender pursuant to which the Project Lender agrees to give to the Town Bodies: (i) notices of defaults by Company under the Project Loan Documents; (ii) the right (but not obligation) to cure defaults by Company

under the Project Loan Documents; (iii) the right (but not the obligation) to purchase the Project Loan in the event of a default by Company under this Agreement or the Project Loan Documents, if such default is not cured within the Cure Period or other applicable cure period as provided in such Agreement. The Multi-Party Agreement shall recognize the rights of MRC under, and be consistent with, **Section 15** of this Agreement.

Net Income Projections shall mean projections of the annual net operating income to be generated by the Mixed-Use Project following completion thereof, which projections are set forth on **Exhibit E**.

Non-Compliance Notice shall mean a written notice identifying Fundamental Flaws discovered during an inspection.

Permitted Change shall mean a change to the Project Plans for the applicable Project that: (a) is not material in the overall scope and design of the Project; (b) is in conformity with the Laws; (c) does not result in the Project Plans containing a Fundamental Flaw; and (d) does not make it unlikely, impracticable, or impossible for Company to complete and open the Project, or any component thereof, by the applicable date set forth in a Construction Schedule. In addition to the foregoing, any change required by the Laws shall constitute a Permitted Change.

Permitted Exceptions shall mean, with respect to the:

(a) Tower Land and/or the Mt. Comfort Property: (i) the lien of Current Year Taxes and Assessments not delinquent; (ii) the lien of Real Estate Taxes first assessed on January 1 of the year immediately prior to the year in which Company acquires the Tower Land or the Mt. Comfort Property, as applicable, so long as such Real Estate Taxes are not delinquent; and (iii) any exceptions to title approved by the Town Bodies in writing prior to the acquisition of the Tower Land or the Mt. Comfort Property, as applicable;

(b) the Town Acquisition Land: (i) the lien of Current Year Taxes and Assessments not delinquent; (ii) the lien of Real Estate Taxes first assessed on January 1 of the year immediately prior to the year in which the applicable Town Body acquires the Town Acquisition Land, so long as such Real Estate Taxes are not delinquent; (ii) any exceptions to title reflected in the final, marked title commitment or pro-forma owner's policy received in connection with Company's acquisition of the Tower Land and/or the Mt. Comfort Property, as applicable, to the extent that such exceptions were approved in writing by the Town Bodies pursuant to clause (a) of this definition; (iii) this Agreement, together with any applicable Ancillary Agreements and non-monetary encumbrances created as a result of this Agreement; and (iv) such other matters as are accepted by the applicable Town Body in writing or which the applicable Town Body is deemed to have waived pursuant to the terms and conditions of this Agreement;

(c) Town Conveyance Parcel: (i) the lien of Current Year Taxes and Assessments not delinquent, (ii) the lien of Real Estate Taxes first assessed on the year immediately prior to the year in which the Closing occurs, so long as such Real Estate Taxes are not delinquent; (iii) exceptions to title reflected in the Title Commitment for the Town Conveyance Parcel; and (iv) such other matters as are accepted by Company in writing or which Company is deemed to have waived pursuant to the terms and conditions of this Agreement; and

(d) Project Site (whether in connection with a commitment for the entirety of the Project Site obtained by Company prior to the Closing, or the exercise by Company of the Acquisition Obligation): (i) the lien of Current Year Taxes and Assessments not delinquent; (ii) the lien of Real Estate Taxes first assessed on January 1 of the year immediately prior to the year in which the Closing, or a closing following the exercise by Company of the Acquisition Obligation, occurs, so long as such Real Estate Taxes are not delinquent; and (iii) such other exceptions as are approved by Company or the Town Bodies, as applicable in writing; provided that, all exceptions in the Title Commitment previously approved by the applicable party in connection with the acquisition by Company of the Tower Land, the Mt. Comfort Property, and/or the City Conveyance Parcel, as applicable, shall be deemed to be Permitted Exceptions.

Planning Schedule shall mean, with respect to the Infrastructure Project and the Mixed-Use Project, (a) the schedule attached hereto as **Exhibit B**, which may be replaced by Company within 15 days of Closing, in accordance with which: (i) Company shall prepare and provide to MRC for its approval of schematic, design, and construction drawings, documents, and schedules for the Infrastructure Project and the Mixed-Use Project, (ii) the parties intend to pursue finalization and recordation of the Plat; (iii) Company intends to pursue rezoning (or obtaining variances) that it deems to be necessary or appropriate; and (iv) the parties intend to proceed to the Closing; as such schedule may be modified by the agreement of the parties. Notwithstanding the foregoing, prior to replacing Exhibit B, Company shall be required to obtain the written approval of the Town Bodies of the intended replacement Exhibit B, which approval may be via email.

Plan Refinement Process shall mean the process described in **Section 11** hereof.

Plan Review Panel shall mean a plan review panel comprised of the Planning Director and such other parties as may hereafter be designated by Town.

Plat shall mean the plat that has received all final approvals on or before Closing and is recorded in the Office of the Recorder of Hancock County, Indiana contemporaneous with other documents needed for Closing, which Plat shall, at a minimum, create lots depicted on the Master Development Plan. The parties acknowledge that the final parcels as platted may vary from the current boundaries of the parcels.

Pledged Increment shall mean one hundred (100%) of the tax increment revenue generated within the Mixed-Use Allocation Area, less \$5,000.00 annually for the payment of fees and costs associated with the Mixed-Use Bonds, which Pledged Increment shall be pledged by the MRC to the repayment of the Mixed-Use Bonds.

Projects shall mean, individually (if “Project” is used) or collectively (if “Projects” is used), design, development, and construction of the Mixed-Use Project and/or the Infrastructure Project. For purposes of clarity, notwithstanding that the Project Site is comprised of the entirety of McCord Square Phase I, the “Projects” are limited solely to the Mixed-Use Project and the Infrastructure Project.

Project Lender shall mean the financial institution that is not affiliated with Company making the Project Loan, and any successor or assignee thereof.

Project Loan shall mean a construction loan to Company, the proceeds of which, along with the Bond Proceeds from the Mixed-Use Bonds, shall be used to fund development and construction of the Mixed-Use Project. The Project Loan shall be disbursed pursuant to the Project Loan Documents, and not pursuant to the Funding Agreement.

Project Loan Documents shall mean, individually or collectively, the documents evidencing or securing the Project Loan.

Project Plans shall have the meaning ascribed to such term in Section 11.

Project Site shall mean the real estate delineated on Exhibit A-2 as either the “Project Site” or “Phase I”. It is comprised of, collectively, the Tower Land, the Mt. Comfort Property, and the Town Conveyance Parcel.

Property Inspections shall mean surveys, borings, tests, inspections, examinations, studies, and investigations, including, without limitation, environmental assessments and financial feasibility studies and inspections of the Project Site.

Real Estate Taxes shall mean all real estate taxes levied on, against, or with respect to all or any specified portion of the Project Site.

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for construction, occupancy, and use of the applicable Project.

Site Infrastructure shall mean infrastructure improvements benefitting McCord Square Phase I, including, without limitation: (a) all work necessary to render the Project Site (including the Future Development Parcels) “pad ready”; (b) the construction and/or installation of the roads, ponds, walking paths, and other amenities reflected on the Master Development Plan; and (c) such other improvements reflected in the Project Plans for the Infrastructure Project. ~~Additional information and/or requirements with respect to the Site Infrastructure is (or may be) set forth on Exhibit G.~~

Soft Costs shall mean costs incurred in connection with a Project, which costs are customarily known in the industry as “soft costs”.

Substantial Completion shall mean, with respect to the (a) Infrastructure Project, the date that the Company’s architect certifies, per AIA Form G704, that the construction of the Infrastructure Project is substantially complete in compliance with all Laws, this Agreement, the Project Plans, and the Required Permits; and (b) the Mixed-Use Project, the later of the date that: (i) that Company receives the final certificate of occupancy for the Mixed-Use Project; and (ii) the date that the Company’s architect certifies, per AIA Form G704, that the construction of the Mixed-Use Project is substantially complete in compliance with all Laws, this Agreement, the Project Plans, and the Required Permits subject only to tenant improvements, certificates of occupancy for individual tenant spaces, and minor punchlist items that do not interfere with the use or operation thereof.

Survey shall mean an ALTA survey of the Project Site, certified as of a current date by a reputable licensed surveyor; which Survey does not show any matters that would: (a) materially and adversely will interfere with the construction and/or use of the Projects; or (b) render construction of the Projects unusually difficult or costly.

Taxpayer Agreement shall mean an agreement pursuant to which Owner, as the owner of the Mixed-Use Parcel and the Mixed-Use Project, agrees to make payments in addition to Real Estate Taxes that result in Company, annually (in semi-annual payments on or before the date that is five days prior to the next due payment of debt service on the Mixed-Use Bonds) paying MRC the positive difference, if any, between \$430,800.00 and the Pledged Increment distributable to MRC for the applicable year. At a minimum, the Taxpayer Agreement shall include the provisions set forth in Section 13.

Title Commitment shall mean, as applicable, a commitment for an owner’s policy of title insurance with

respect to the Town Conveyance Parcel, the Tower Land, the Mt. Comfort Property, or the entirety of the Project Site, as applicable, that: (i) is issued by the Title Insurer; and (ii) commits to insure marketable, indefeasible fee simple title in the name of the Company.

Title Defects shall mean conditions disclosed in the Title Commitment or by the Survey that, in the reasonable determination of Company and the Town Bodies that: (a) materially and adversely will interfere with the construction and/or use of the Projects; or (b) will render construction of the Projects unusually difficult or costly. For purposes of clarity, Title Defects shall include any environmental condition with respect to the Project Site that falls into one or both of the foregoing categories and shall not be Permitted Exceptions.

Title Insurer shall mean Fidelity National Title.

Tower Land shall mean the real property delineated as such, and more particularly described, on **Exhibit A-3**. The Tower Land will be part of the Project Site.

Town Acquisition Land shall mean the portions of the Project Site on which the Infrastructure Project has been constructed, consisting generally of the parcels of real property listed and depicted on the Master Development Plan as lots 13-16 and 18.

Town Acquisition Land Closing shall mean the closing with respect Company's transfer and conveyance of the Town Acquisition Land to the MRC pursuant to the Town Acquisition Land Deed, which Town Acquisition Land Closing shall occur within thirty (30) days' after the Town Bodies complete the Final Inspection of the Infrastructure Project and Company, in accordance with Section 12, has corrected any Fundamental Defects identified in a Non-Compliance Notice. The MRC shall be solely responsible for all Closing Costs of the Town Acquisition Land Closing.

Town Acquisition Land Deed shall mean a limited warranty deed by which the Company shall convey its interest in the Town Acquisition Land to MRC together with all improvements thereon, which deed shall be subject only to: (a) the Permitted Exceptions; (b) non monetary encumbrances created as a result of the Infrastructure Project; and (c) matters created or consented to by MRC.

Town Body or Town Bodies shall mean Town and/or MRC, as applicable.

Town Conveyance Deed shall mean a limited warranty deed by which the applicable Town Body shall convey its interest in the Town Conveyance Parcel to Company together with all improvements thereon, which deed shall be subject only to: (a) the Permitted Exceptions; and (b) matters created or consented to by Company.

Town Conveyance Parcel shall mean the parcel of real property generally known as 5759 W. Broadway, McCordsville, Indiana 46055, which parcel is described and depicted on **Exhibit A-4** and identified as parcels 3 and 4 on the Master Development Plan. The Town Conveyance Parcel will be part of the Project Site.

Town Fees shall mean all local fees assessed by Town in connection with Company's development and construction of the Projects on the Project site, including but not limited to, impact fees, improvement location fees, building permit fees, sign permit fees, sewer and stormwater fees (such as capacity, connection, impact, and tap fees associated with initial construction, but not including post-occupancy monthly user fees, variance requests, and inspection fees). For purposes of clarity, Town Fees shall not include: (a) any fees that are assessed by the County or the State of Indiana; (b) customary storm water fees; (c) customary sanitary sewer capacity, connection, impact, and tap fees; (ed) the costs incurred by the Town Bodies in performing: (i) inspections after Company, in accordance with Section 12, has corrected

any Fundamental Defects identified in a Non-Compliance Notice; or (ii) inspections in addition to those customarily performed by the town Bodies in connection with projects in which it has provided economic incentives, to the extent that such inspections are requested by Company; or ~~(de)~~ any fees applicable to: (i) any property other than Mixed-Use parcel or the portions of the Project Site in or on which the Infrastructure Project is constructed; or (ii) any project on the Project Site other than the Projects.

2. Town's Obligations. Subject to the terms and conditions of this Agreement, including, without limitation, **Section 8**, the applicable Town Body shall: (a) in connection with Company, jointly submit the Plat for final approval and recordation at or prior to Closing; (b) at Closing, transfer the Town Conveyance Parcel to Company; (c) accept fee simple title to the Town Acquisition Land at the Town Acquisition Land Closing; (d) execute and perform (or cause the applicable Town Bodies thereto to execute and perform) the Ancillary Agreements, including, without limitation, the Declaration; (e) issue the Mixed-Use Bonds and, consistent with the Funding Agreement, make available the Bond Proceeds for Approved Costs incurred in connection with the Mixed-Use Project, together with Closing Costs and fees associated with closing the Mixed-Use Bonds, at Closing and, thereafter, within thirty (30) days after a completed draw request is approved pursuant to the Funding Agreement (which requests shall not be submitted more frequently than monthly); (f) issue the Infrastructure Bonds and make available, consistent with the Funding Agreement, Bond Proceeds for Approved Costs incurred in connection with the Infrastructure Project within thirty (30) days after a completed draw request is approved pursuant to the Funding Agreement (which requests shall not be submitted more frequently than monthly); (g) prior to Closing, create the Mixed-Use Allocation Area and pledge the Pledged Increment to repayment of the Mixed-Use Bonds; (h) provide reasonable assistance to Company in connection with any zoning changes or variances determined to be necessary or appropriate by Company for the construction and use of the Projects in accordance with the Project Plans; provided that neither Town Body shall be obligated to incur any expenses in connection with such assistance; (i) waive all Town Fees; (j) exercise commercially reasonable efforts to cause the review and timely issuance of the Town's development and permit applications necessary to develop and construct the Projects on the applicable portions of the Project Site, including, whenever reasonably possible without the Town Bodies incurring any expenses, coordinating with the Company to lower the Projects' costs by supporting the issuance of interim, partial, and/or conditional approvals to allow project critical activities to occur while reserving final approval of less critical activities, to the extent allowed by the Laws; (k) upon the Town Acquisition Land Closing, continuously maintain, at its sole cost and expense, the Town Acquisition Land in good repair consistent with its maintenance of similar property owned by Town or MRC, as applicable, including, without limitation, performing or causing to be performed, mowing, snow removal, plantings, trash removal, and other upkeep, maintenance and repair for the improvements constructed on the Town Acquisition Land (for the avoidance of doubt, Company shall not be liable for any costs associated with the Town Acquisition Land in excess of the cost to complete the Infrastructure Project) consistent with the performance of such activities with respect to similar property owned by Town or MRC, as applicable, which obligation shall be recorded in the Declaration; and (l) perform its other obligations set forth herein.

3. Company's Obligations.

Subject to the terms and conditions of this Agreement, including **Section 7**, Company shall: (a) in connection with the Town, jointly submit the Plat for final approval and recordation; (b) acquire in fee the Town Land and the Mt. Comfort Property; (c) within thirty (30) days of completing the Infrastructure Project, convey the Town Acquisition Land to the MRC pursuant to the Town Acquisition Land Deed at the Town Acquisition Land Closing; (d) complete each of the Infrastructure Project and the Mixed-Use Project by or before the date specified in the applicable Construction Schedule, which date: (i) for the Infrastructure Project is anticipated to be by or before fifteen (15) months after Closing; and (ii) for the Mixed-Use Project is anticipated to be by or before thirty-six (36) months after Closing; (e) pay, when due, all Real Estate Taxes and Assessments on the Mixed-Use Project and the Mixed-Use Parcel; (f) make or cause to be made the payments required by the Taxpayer Agreement; (g) at Closing, purchase the Mixed-Use Bonds; (h) obtain the Project Loan; (i) construct and complete the Projects in accordance with

the Construction Schedules, Project Plans and this Agreement; (j) obtain all Required Permits; (k) execute and perform the Ancillary Agreements; (l) maintain, repair and replace the Mixed-Use Project in good condition and repair subject to the terms and conditions of this Agreement; (l) ~~endeavor~~exercise commercially reasonable, good faith efforts to acquire the Additional Land; and (m) exercise commercially reasonable efforts to develop and construct at a future date a commercial building on the Commercial Building Parcel, subject to market circumstances and the ability of Company to obtain financing that, in the exercise of its reasonable discretion, it determines to be adequate.

Company acknowledges and agrees that: (a) the economic incentives to be provided pursuant to this Agreement are being provided to fill a financing “gap”; (b) Company would not be able to develop, design, and construct the Mixed-Use Project but for the provision of such economic incentives; (c) the Town Bodies have agreed to provide the economic incentives in part because Company intends to retain (or for an affiliated entity to accept and retain) ownership of the completed Mixed-Use Project; (d) the economic incentives are not intended to result in receipt by Company of a “windfall”; and (e) the Net Income Projections reflect sufficient net income to allow Company to realize a reasonable and satisfactory return on its investment. Accordingly, in connection with the Closing, Company shall execute the Income Allocation Agreement.

4. Closing. Subject to the terms and conditions of this Agreement,

(a) Closing. Closing shall occur: (i) on or before the date that is thirty (30) days after the expiration of the Diligence Period if all conditions in **Sections 7 and 8** have been satisfied or waived (or deemed to have been waived), but in no event later than [REDACTED], and (ii) at the office of the Title Insurer or at such other place as Town and Company mutually may agree.

(b) Deliveries. At the Closing, unless another time is specifically stated:

(i) Company shall execute and deliver to the Title Insurer all Project Loan Documents needed to close the Project Loan.

(ii) Company shall pay all Closing Costs associated with the Town Conveyance Parcel by wire transfer of immediately available funds. Company shall be exclusively responsible for all other Closing Costs; provided, however, Bond Proceeds of the Mixed-Use Bonds may be used to pay such Closing Costs.

(ii) Company shall pay the cost of the Survey and the Plat.

(iv) Company shall pay all other title insurance premiums Company desires for insurance in excess of the amounts the other party is obligated to provide, lender’s policies, endorsement fees for the owner’s policy and any lender’s policies, costs and expenses charged for other than the owner’s policies of title insurance (including that Company shall be responsible for charges for endorsements to the owner’s policies).

(v) Except as provided specifically to the contrary in this Agreement, each party shall be responsible for its own legal fees incurred in connection with negotiation of this Agreement and the Closing of this Agreement.

(vi) Company and/or the applicable Town Bodies shall execute and deliver the following:

(A) the Town Conveyance Deed conveying to Company fee simple title to the

Town Conveyance Parcel;

(B) a vendor's affidavit from the applicable Town Party in form and substance such that the Title Insurer agrees to delete the standard exceptions for non-survey matters for the Town Conveyance Parcel;

(C) an affidavit that Company is not a “foreign person”, in form and substance required by the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder;

(D) a certification by the Town Bodies and Company that all representations and warranties set forth in **Subsection 9(a) and (b)**, respectively, remain true and accurate in all material respects as of the Closing Date;

(E) the executed Ancillary Agreements;

(F) the Bond Documents for the Mixed-Use Bonds (and the Bond Documents for the Infrastructure Bonds if the Town Bodies elect to close the Infrastructure Bonds at the Closing);

(G) the Project Loan Documents, including the Multi-Party Agreement;

(H) copies of such resolutions, consents of members, partners, officers and/or shareholders and other evidence as MRC, Town, Company, or the Title Insurer reasonably may request, establishing that: (1) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action; and (2) the execution and delivery of such documents, and the conveyance of the Town Conveyance Parcel to Company has been properly authorized by the signatories thereto;

(I) such other customary documents or instruments as Town, MRC, Company or the Title Insurer may request in connection with the Closing (including, for example, a sales disclosure form and a closing statement); and

(J) certificates of policies of insurance required pursuant to **Section 12(H)**.

(c) Expenses.

(i) Each of the Town Bodies and Company is entering into this Agreement, and incurring significant expense, under the good-faith assumption that the other parties will proceed to the Closing prior to the date set forth in Subsection 4(a) (as the same may be extended by the agreement of the parties). Accordingly, if this Agreement is terminated in accordance with its terms prior to the Closing:

(A) due to a continuing Event of Default by a party, then the defaulting party shall reimburse the non-defaulting party for all of the non-defaulting party's Incurred Costs; provided that, for purposes of this provision only, the Town Bodies, collectively, shall be deemed to constitute a single defaulting or non-defaulting party;

(B) by either party as a result of the failure of any of the conditions set forth in Subsections 7(i) and 8(a) (relating to Required Permits), Subsections 7(j) and 8(c) (relating to adequate funds), Subsection 8(g) (relating, and to the extent applicable, to execution by the Guarantor), Subsections 7(m) and 8(h), (relating, and to the extent applicable, to the closing of the Project Loan), Subsection 8(k) (relating to acquisition of Tower Land and Mt. Comfort Property), and/or Subsection 8(m) (relating to Company resolutions and consents), then Company shall reimburse the Town Bodies for all of the Town Bodies' Incurred Costs, except to the extent that any of the foregoing fail due to an Event of Default by a Town Body such that Subsection 4(c)(i)(A) applies; or

(C) by either party as a result of the failure of any of the condition set forth in Subsection 8(i) (relating, and to the extent applicable, to procedural requirements applicable to the Town Bodies), then the Town Bodies shall reimburse Company for all of Company's Incurred Costs, except to the extent the foregoing fails due to an Event of Default by Company such that Subsection 4(c)(i)(A) applies.

If this Agreement is terminated for any reason other than those set forth above, then each party shall be responsible for paying its own costs and expenses.

(ii) Any reimbursement due from either party under this Subsection shall paid by such party within 30 days after receipt of written invoice therefor, together with reasonable evidence supporting the amount set forth in such invoice.

5. Taxes. Company assumes and agrees to pay or cause to be paid: (a) all Real Estate Taxes and Assessments becoming a lien against the Mixed-Use Project and the Mixed-Use Parcel; and (b) all real estate taxes and Assessments first becoming due, or first becoming a lien on the Town Acquisition Land, during the period between the Execution Date and the date on which Company conveys the Town Acquisition Land to MRC; provided that the real estate taxes and Assessments with respect to the Town Acquisition Land shall constitute Approved Costs related to the Infrastructure Project and, accordingly, may be paid (or reimbursed to Company) out of Bond Proceeds of the Infrastructure Bonds.

6. Property Inspections/Due Diligence. Prior to Closing, Company shall cause the Property Inspections to be completed for the Project Site and provide to Town (or its designee), promptly after receipt thereof, true, correct, and complete copies of all results of, and reports received in connection with, the Property Inspections. Town agrees that, in connection with the Property Inspections, it shall review all results and reports received as soon as reasonably is practicable and, together with Company, determine whether the Project Site is suitable for the Infrastructure Project.

7. Conditions to Company Obligations. The obligations of Company with respect to the Closing are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section:

(a) Title. On or prior to the date that is 15 days after the Execution Date, Company shall have ordered the Title Commitment for the Tower Land, the Mt. Comfort Property, and the Town Conveyance Parcel.

(b) Survey. On or prior to the date that is 15 days after the Execution Date, Company shall have ordered the Survey.

(c) Title Conditions. On or before the date that is 60 days after the date on which Company receives the last of the Title Commitment (including the exception documents referenced therein) and the Survey, Company shall have determined that the Title Insurer shall: (i) insure, for its fair market value, marketable, fee simple title to the Project Site in the name of Company subject only to the Permitted Exceptions and, accordingly, free of all Title Defects, other than those Title Defects that Company waives or is deemed to have waived pursuant to the terms and conditions of this Agreement and those that will be “insured over” or removed at the Closing; and (ii) issue such endorsements as Company reasonably deems to be necessary or appropriate. Moreover, Town Bodies shall have provided in writing confirmation that Town Bodies approve the Title Commitment with respect to the Project Site. As of the expiration of the Diligence Period, there shall not have been any material adverse change in the condition of title to the Project Site.

(d) Survey Conditions. On or before the date that is 60 days after the date on which Company receives the last of the Title Commitment (including the exception documents referenced therein) and the Survey, Company shall have determined that the Survey: (i) describes the perimeter of the Project Site as a single parcel without gaps, gores, or overlaps; (ii) shows no material encroachments thereto; (iii) shows no Title Defects thereto, other than those Title Defects that Company waives or is deemed to have waived pursuant to the terms and conditions of this Agreement, and those that will be “insured over” or removed at the Closing; (iv) establishes that no part of the those parcels is located within: (A) a “flood hazard zone”, as shown on the applicable Federal Insurance Rate Map; or (B) a “floodway” or “flood plain”, as shown on the applicable Flood Control District Map; provided that to the extent that a portion of the Project Site is located within a “flood hazard zone”, “floodway” or “flood plain”, such circumstance in and of itself shall not constitute a failure of this condition unless, as a result, there will be material and adverse interference with the construction and/or use of the Projects, or construction of the Projects will be rendered unusually difficult or costly; and (v) otherwise reasonably is acceptable to Company. Prior to Closing, the Survey shall establish the precise legal description of the Project Site for the purposes of the Plat, title insurance, and closing documents; provided that, if a separate survey is not obtained in connection with the conveyance of the Town Conveyance Parcel, then the Survey also shall establish the precise legal description of the Town Conveyance Parcel for purposes of such conveyance. The Plat, once recorded, shall establish the legal description of each parcel within the Project Site (including, without limitation, the Mixed-Use Parcel).

(e) Environmental Condition. On or before the date that is 90 days after the Execution Date, Company shall have determined that there: (i) is no contamination or pollution of the Project Site, or any groundwater thereunder, by any hazardous waste, material, or substance in violation of any Laws; (ii) are no underground storage tanks located on the Project Site; and (iii) are no wetlands on the Project Site. As of the expiration of the Diligence Period, there shall not have been any material adverse change in the environmental condition of the Project Site.

(f) Physical Condition. On or before the date that is 90 days after the Execution Date, Company shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Projects or require unusually costly development techniques, in accordance with the terms and conditions

of this Agreement. As of the expiration of the Diligence Period, there shall not have been any material adverse change in the physical condition of the Project Site.

(g) Zoning. Company acknowledges that, as of the Execution Date, the Project Site is not zoned properly for the development and use of McCord Square Phase I. Company shall pursue the change in the zoning classification (and/or obtaining necessary variances) for such development and use in substantial accordance with the Planning Schedule. The condition to Company's obligation to proceed to the Closing is that Company shall have determined whether the zoning of the Project Site is proper and appropriate for the development of McCord Square Phase I as contemplated by the Master Development Plan and in accordance with the terms and conditions of this Agreement, subject only to zoning-related commitments and restrictions that are acceptable to Company in its reasonable discretion.

(h) Utility Availability. As of the date that is 90 days after the Execution Date, Company shall have determined that gas, electricity, telephone, cable, water, storm and sanitary sewer, and other utility services are or will be: (i) in adjoining public rights-of-way or properly granted utility easements; and (ii) serving, or will serve, the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Projects in accordance with the terms and conditions of this Agreement. As of the expiration of the Due Diligence Period, there shall not have been any material adverse change to the ability of Company to obtain the foregoing services.

(i) Required Permits. As of the expiration of the Diligence Period, Company shall have (i) obtained; or (ii) determined that it shall be able to obtain, all Required Permits.

(j) Financial Ability. As of expiration of the Diligence Period, Company shall have determined that it has adequate funds (Project Loan proceeds, Bond Proceeds, and/or cash on hand) to construct the Projects, and the condition set forth in Subsection 7(f) has been and remains satisfied.

(k) Ancillary Agreements. On or before the Closing Date: (i) Town (or the applicable Town Bodies) and Company, each exercising commercially reasonable discretion, shall have approved and executed (or will execute at the Closing) the Ancillary Agreements, including that Company and Town Bodies have agreed on the final Net Income Projections and the form and substance of the Income Allocation Agreement; and (ii) all other parties to the various Ancillary Agreements have executed (or at Closing will execute) the Ancillary Agreements.

(l) Bond Proceeds. On or before the Closing Date, Town Bodies, using commercially reasonable efforts, shall have: (i) taken all action necessary to authorize the Infrastructure Bonds; (ii) demonstrated that the Bond Proceeds from the Infrastructure Bonds shall be made available to Company in accordance with the Funding Agreement within sixty (60) days of the Closing Date; (iii) issued the Mixed-Use Bonds and make available Bond Proceeds from the Mixed-Use Bonds in accordance with the Funding Agreement.

(m) Financing Documents. On or before the Closing Date, the Project Lender and the applicable Town Bodies shall have approved the form and substance of the Multi-Party Agreement, Project Loan Documents, and any additional documents relating to the Project Loan, as applicable. On the Closing Date, the Project Loan shall be closed, and in connection therewith, the Multi-Party Agreement, the Project Loan Documents, and any additional documents relating thereto shall be fully executed by all parties thereto.

(n) Plat. On or before the expiration of the Diligence Period, the Plat shall have received final approval from the Transfer and Mapping Department of the office of the Auditor of Hancock County,

Indiana, and be recorded. The Plat shall establish the precise legal description of the the parcels depicted in the Master Development Plan.

(o) No Breach. As of the Closing Date: (i) there shall be no breach of this Agreement by Town Bodies that the applicable Town Body has failed to cure within the Cure Period; and (ii) all of the representations in **Section 9(a)** shall be true and accurate in all material respects.

If any of the conditions set forth in this Section are not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, Company either may elect to: (A) waive in writing satisfaction of the conditions and proceed to the Closing; or (B) terminate this Agreement and any executed Ancillary Documents by delivery of written notice to the Town Bodies and, if applicable pursuant to Subsection 4(c), recover its Incurred Costs. Notwithstanding anything to the contrary set forth herein, (1) Company shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if Company fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, then Company shall be deemed to have waived such condition and shall proceed to Closing.

8. Conditions to Town Bodies' Obligations. Notwithstanding anything to the contrary set forth herein, the obligations of Town Bodies with respect to proceeding to the Closing are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section:

(a) Required Permits. As of the expiration of the Due Diligence Period, Company shall have obtained, or Town Bodies shall have determined that Company shall be able to obtain all Required Permits.

(b) Title Conditions. On or before the date that is 60 days after the date on which Company provides to the Town Bodies the last of the Title Commitment (including all exception documents referenced therein) and the Survey, Town Bodies shall have determined that the Title Insurer shall insure, for its fair market value, marketable, fee simple title to the Project Site in the name of Company subject only to the Permitted Exceptions and, accordingly, free of all Title Defects, other than those Title Defects that Company waives or is deemed to have waived pursuant to the terms and conditions of this Agreement, and those that will be "insured over" or removed at the Closing. As of the expiration of the Diligence Period, there shall not have been any material adverse change in the condition of title to the Project Site.

(c) Financial Ability. As of the Closing Date, Company shall have demonstrated to Town Bodies, exercising commercially reasonable discretion, that Company has adequate funds (e.g., Project Loan Proceeds, Bond Proceeds, and/or cash on hand) to construct the Projects.

(d) Survey Conditions. On or before the date that is 60 days after the Company provides to the Town Bodies the last of the Title Commitment (including the exception documents referenced therein) and the Survey, the Town Bodies shall have determined that the Survey: (i) describes the perimeter of the Project Site as a single parcel without gaps, gores, or overlaps; (ii) shows no material encroachments thereto; (iii) shows no Title Defects thereto, other than those Title Defects that the Town Bodies waive or are deemed to have waived pursuant to the terms and conditions of this Agreement, and those that will be "insured over" or removed at the Closing; (iv) establishes that no part of the those parcels is located within: (A) a "flood hazard zone", as shown on the applicable Federal Insurance Rate Map; or (B) a "floodway" or "flood plain", as shown on the applicable Flood Control District Map; provided that to the extent that a portion of the Project Site is located within a "flood hazard zone", "floodway" or "flood plain", such circumstance in and of itself shall not constitute a failure of this condition unless, as a result, there will be material and adverse interference with the construction and/or use of the Projects, or construction of the Projects will be rendered unusually difficult or costly; and (v) otherwise reasonably is acceptable to the

Town Bodies. Prior to Closing, the Survey shall establish the precise legal description of the Project Site for the purposes of the Plat, title insurance, and closing documents; provided that, if a separate survey is not obtained in connection with conveyance of the Town Conveyance Parcel, then the Survey also shall establish the precise legal description of the Town Conveyance Parcel for purposes of such conveyance. The Plat, once recorded, shall establish the legal description of each parcel within the Project Site (including, without limitation, the Mixed-Use Parcel).

(e) Environmental Condition. On or before the date that is 90 days after the Execution Date, Town Bodies shall have determined that there: (i) is no contamination or pollution of the Project Site or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws; (ii) are no underground storage tanks located on the Project Site; and (iii) are no wetlands on the Project Site. As of the expiration of the Due Diligence Period, there shall not have been any material adverse change in the environmental condition of the Project Site.

(f) Physical Condition. On or before the date that is 90 days after the execution date, Town Bodies shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Projects in accordance with the terms and conditions of this Agreement. As of the expiration of the Due Diligence Period, there shall not have been any material adverse change in the physical condition of the Project Site.

(g) Ancillary Agreements. As of the Closing Date: (i) the Town (or the applicable Town Bodies) and Company, each exercising commercially reasonable discretion, shall have approved and executed (or at Closing will execute) the Ancillary Agreements, including that the Town Bodies and Company have agreed on the final Net Income Projections and the form and substance of the Income Allocation Agreement; and (ii) all other parties to the various Ancillary Agreements have executed (or at Closing will execute) the Ancillary Agreements.

(h) Financing Documents. As of the Closing Date, Project Lender and the applicable Town Bodies shall have approved the form and substance of the Multi-Party Agreement, the Project Loan Documents, and any additional documents relating to the Project Loan. On the Closing Date, the Project Loan shall be closed and, in connection therewith, the Multi-Party Agreement, the Project Loan Documents, and any additional documents relating thereto shall be fully executed by all parties thereto.

(i) Procedure. As of the Closing Date, the parties have agreed on the terms on which the Bonds will be issued, and each of the Town Bodies has completed all procedures required by the Laws in connection with consummating the transaction contemplated herein, including that: (i) all recommendations, approvals, authorizations, resolutions, and/or ordinances required to be completed, obtained, and/or adopted in connection with: (A) the issuance and sale of the Bonds on the terms to which the parties have agreed; (B) the use of the Bond Proceeds of the Infrastructure Bonds and the Mixed-Use Bonds to pay Approved Costs incurred in connection with the Infrastructure Project and the Mixed-Use Project, respectively; (C) the pledging of the Pledged Increment to the payment of debt service on the Mixed-Use Bonds; (D) the pledging of a revenue source to the payment of debt service on the Infrastructure Bonds; (E) the conveyance of the Town Conveyance Parcel to Company; (F) granting the Acquisition Option; and (G) the execution of, and the performance of its obligations under this Agreement, any Ancillary Agreements to which it is a party, and the Bond Documents; in each case have been completed, obtained, and/or adopted; and (ii) the Mixed-Use Allocation Area has been established.

(j) Plat. On or before the expiration of the Diligence Period, the Plat shall have received final approval from the Transfer and Mapping Department of the office of the Auditor of Hancock County,

Indiana and be recorded. The Plat shall establish the precise legal description of the parcels depicted in the Master Development Plan.

(k) Acquisition. As of the Closing Date, Company has acquired (or will acquire in connection with the Closing) the Tower Land and the Mt. Comfort Property.

(l) Project Plans. As of the expiration of the Diligence Period: (i) all drawings, documents, and schedules have been approved through the Plan Refinement Process and, accordingly, there are Project Plans for each of the Infrastructure Project and the Mixed-Use Project, or the Town Bodies are satisfied that such drawings, documents, and schedules will be approved through the Plan Refinement Process in a timely manner; and (ii) Company shall have secured a “GMP” contract for each of the Infrastructure Project and the Mixed-Use Project;

(m) Company Approvals. As of the Closing Date, Company has obtained all consents and approvals, and adopted all resolutions, required to be obtained and/or adopted in connection with the execution of, and the performance of its obligations under, this Agreement, the Ancillary Agreements, and any Bond Documents to which it is a party.

(n) Development Standards. Company and the Town Bodies have agreed on, and established, development standards for the remainder of McCord Square Phase I.

(o) Compliance. As of the Closing Date, this Agreement, and compliance with the terms hereof, are not in violation of any applicable Laws and no claims or causes of action asserting any violation of Laws shall have been asserted or threatened by any third party.

(p) No Breach. As of the Closing Date: (i) there shall be no breach of this Agreement by Company that Company has failed to cure within the Cure Period; and (ii) all of the representations and warranties set forth in **Subsections 9(b) and (c)** shall be true and accurate in all material respects.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as their sole and exclusive remedy, the Town Bodies either may elect to: (i) waive in writing satisfaction of the conditions and proceed to the Closing; or (ii) terminate this Agreement and the Ancillary Agreements by a written notice to Company and, if applicable pursuant to Subsection 4(c), recover its Incurred Costs; provided that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Company, the applicable Town Body shall have all of the rights and remedies set forth in **Section 14**. Notwithstanding anything to the contrary set forth herein, (1) Town shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if the applicable Town Body fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, such Town Body shall be deemed to have waived such condition and shall proceed to Closing.

9. Representations and Warranties

(a) Town Bodies. Each of the Town Bodies represents and warrants to Company that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) Town is a municipal corporation organized and existing under the laws of the State of Indiana; (iii) MRC is the governing body of the Town of McCordsville Redevelopment Department organized and existing under the laws of the State of Indiana; (iv) subject to completion of the applicable proceedings required by Laws, it has the power: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (v) it has been duly authorized by proper action: (A) to execute and deliver this

Agreement; and (B) to perform its obligations hereunder, (vi) this Agreement is the legal, valid, and binding obligation of it; and (vii) it has not engaged or dealt with any real estate broker or agent in connection with the Projects, the Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction by, through, or as a result of, the acts or omissions of a Town Body.

(b) Company. Company represents and warrants to each Town Body that: (i) Owner is an Indiana corporation, and Developer is a limited liability company, each of which is duly existing and validly formed under the laws of the State of Indiana; (ii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) it has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (iv) it duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; (v) this Agreement is the legal, valid, and binding obligation of Company; (vi) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Projects, the Project Site, or or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction by, through, or as a result of, the acts or omissions of Company or any party affiliated with Company; (vii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual identification, sexual orientation, or national origin. Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and Company will state, in all solicitations or advertisements for employees placed by or on behalf of Company, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual identification, sexual orientation, or national origin.

(c) E-Verify. All terms defined in IND. CODE § 22-5-1.7 et seq. are adopted and incorporated into this Section. Pursuant to IND. CODE § 22-5-1.7 et seq., Company covenants to enroll in and verify the work eligibility status of all of its employees using the E-Verify program, if it has not already done so as of the Execution Date. Within ten (10) days after the Execution Date, Company shall execute an affidavit affirming that: (a) it is enrolled and is participating in the E-Verify program; and (b) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Company shall provide Town with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by Company and delivered to Town's authorized representative.

10. Mixed-Use Allocation Area and Pledged Increment.

(a) Mixed-Use Allocation Area. Subject to all procedures required by the Laws, and to the terms and conditions of this Agreement, the Town Bodies shall establish the Mixed-Use Allocation Area, and MRC shall pledge the Pledged Increment to the repayment of the Mixed-Use Bonds for the Bond Term. Pledged Increment will be utilized first to make current payments of interest and principal on the Mixed-Use Bonds and, second to remedy any prior shortfalls with respect to payments of interest and principal on the Mixed-Use Bonds. The Town Bodies shall not pledge to the repayment of the Mixed-Bonds any tax revenues or other funds of the Town, except the Pledged Increment. Any amounts due and owing on the Mixed-Use Bonds at the expiration of the Bond Term shall be forgiven.

(b) TIF Revenue Shortfalls. In the event Pledged Increment is, in any given period, insufficient to make payment on the Mixed-Use Bonds, such shortfall shall accrue and be payable from future Pledged Increment during the Bond Term.

(c) Excess Pledged TIF Revenue. To the extent Pledged Increment is available in amounts in excess of those required to make the payments then due on the Mixed-Use Bonds, such excess Pledged Increment shall belong solely to MRC, for use as MRC deems to be appropriate; provided that MRC may

elect (but is not obligated to elect) to redeem the Mixed-Use Bonds prior to their maturity.

(d) Interest During Construction. At the option and discretion of Company, the Mixed-Use Bonds may bear interest at (i) zero percent from their date of issuance until Substantial Completion (and, thereafter, at the Bond Interest Rate (as hereinafter defined)); or (ii) at the Bond Interest Rate from their date of issuance throughout the Bond Term. After the Mixed-Use Project has been assessed and is generating increment, the Mixed-Use Bonds will (i) bear interest at the Bond Interest Rate and (ii) be in accordance with the town authorizations relating to the Mixed-Use Bonds. For purposes of this Agreement, the “Bond Interest Rate” shall mean a rate intended to be equal to or less than six and one half percent (6.5%) (except for the potential of a zero percent (0%) rate until Substantial Completion), as determined jointly by the parties, each in the exercise of its reasonable discretion.

(e) Costs of Issuance. Company shall be solely liable for all bond issuance costs, including bond and other counsel fees for both the Town Bodies and Company, which amounts shall be paid from Bond proceeds.

11. Design and Construction of Mixed-Use Project

(a) Plan Refinement. Company and Town acknowledge and agree that: (i) Town has approved the Master Development Plan and (ii) the parties shall proceed through this Plan Refinement process using the Master Development Plan as the starting point; provided that, to the extent that the Project Plans differ from, or otherwise are inconsistent with, the Master Development Plan, the Project Plans shall control.

(b) Approvals. In accordance with the Planning Schedule, Company shall submit to each Town Body for its review and approval schematic, design, and construction drawings, documents, and schedules for each Project. Within 30 days after receipt of any drawing, document, or schedule, the Town Bodies shall deliver to Company written notice of approval or rejection; provided that, in the case of a rejection, such notice shall: (i) specify the portion that Town Bodies are rejecting; and (ii) include the specific basis for such rejection. As soon as reasonably is practicable after receipt of a rejection notice, Company shall revise and resubmit the rejected drawing, document, or schedule to each Town Body for its review and approval. Once a drawing, document, or schedule is complete, it shall be “final”, and subject to modification only by Change Order. The process set forth in this Subsection shall continue until such time as all drawings, documents, and schedules are complete and, accordingly, constitute the “Project Plans” for each of the Infrastructure Project and the Mixed-Use Project. For purposes of clarity: (A) Town’s approval of the Master Development Plan together with the approval rights granted to Town Bodies pursuant to this Section, are in addition to, and not in lieu of, the obligation of Company to obtain all Required Permits; and (B) Company shall remain obligated to obtain all Required Permits, notwithstanding that drawings, documents, or schedules may be deemed final- for purposes of this Agreement.

(c) Changes. Company, without the prior approval of Town Bodies, may make any Permitted Change; accordingly, Change Orders for a Permitted Change shall be effective if executed only by Company. Company shall provide to Town Bodies a copy of each Change Order for a Permitted Change promptly after execution thereof. Any proposed change to the Project Plans that is not a Permitted Change shall be subject to the commercially reasonable approval of Town Bodies and, if Town Bodies approve a proposed change, then Town Bodies and Company shall execute a Change Order, which shall be effective only after executed by all parties.

(d) Project Budget. Each drawing, document, schedule, or Change Order Request submitted by Company shall maintain the budget for the Projects “in balance”, and each drawing, document, schedule, or Change Order Request submitted by Company shall be accompanied by a copy of the then-current budget for the applicable Project reflecting compliance with such “balance” requirement.

(e) Review Panel. Each Town Body, at its option, may delegate all or any part of its review and approval or rejection rights and obligations pursuant to this Section to a plan review panel.

(f) Design Responsibility. Notwithstanding that Town Bodies: (i) have review and approval rights in connection with the finalization of the Project Plans; and (ii) otherwise may participate in the process set forth in this Section (including that Town Bodies may hire consultants or other professionals in connection therewith), Company shall be responsible for the design and engineering of the Projects, and, as between Town Bodies and Company, Company assumes responsibility for defects and deficiencies in the design and engineering of the Projects (including, without limitation, defects in the Project Plans); provided that, nothing in this Subsection shall be deemed to prohibit Company from proceeding against any of its engineers, architects, or other consultants in the event of any design or engineering defects or deficiencies.

12. Construction & Inspections.

(a) Construction. Prior to commencing construction of a Project, Company shall provide to Town: (i) evidence that Company has obtained the Required Permits; and (ii) a copy of the construction contract for each of the Mixed-Use Project and the Infrastructure Project, which, in the case of the construction contract for the Infrastructure Project, shall be subject to the reasonable approval of the Town Bodies.

(b) Available Proceeds. Bond Proceeds shall be disbursed in accordance with the Funding Agreement and the Trust Indenture to pay (or reimburse Company for) Approved Costs. For purposes of clarity, the Bond Proceeds: (i) of the Infrastructure Bonds shall be used to pay only Approved Costs incurred in connection with the Infrastructure Project; and (ii) of the Mixed-Use Bonds shall be used only to pay only Approved Costs incurred in connection with the Mixed-Use Project.

(c) Monthly Inspections/Reports. Each month during construction of the Projects, either Town Body shall be entitled to conduct a monthly inspection; provided that the applicable Town Body shall provide reasonable written notice to Company prior to each such inspection. Commencing with the first of the second month following the month in which the Closing occurs, and continuing for each month thereafter until Substantial Completion of each of the Mixed-Use Project and the Infrastructure Project, Company shall provide to the Town Bodies detailed monthly construction reports, which reports shall contain such information as the Town Bodies reasonably may request.

(d) Permitted Inspection. In addition to the inspections permitted pursuant to section, the Town may perform an inspection whenever it deems such inspection to be necessary or reasonably appropriate.

(e) Final Inspection. Company shall deliver to Town Bodies a written request for a Final Inspection at least five business days prior to the anticipated date of Substantial Completion of each of the Mixed-Use Project and the Infrastructure Project. The applicable Town Body shall conduct the Final Inspection (or waive the right to conduct the Final Inspection) on or before the later of the date that is ten (10) business days after: (i) receipt of such request; or (ii) the date of Substantial Completion; Town shall: (1) conduct the Final Inspection; and (2) deliver a Non-Compliance Notice (if applicable) to Company; provided that: (y) upon receipt of a Non-Compliance Notice, Company shall correct, or cause to be corrected, as soon as is practicable, all Fundamental Flaws identified in the Non-Compliance Notice; and (z) all then-completed items or components of the Mixed-Use Project or the Infrastructure Project, as applicable, with respect to which no Fundamental Flaws are identified in a timely Non-Compliance Notice shall be deemed to be accepted by Town, subject to latent defects and the completion of any punchlist items

jointly determined by the parties following completion of the Final Inspection. All Fundamental Flaws and punchlist items shall be promptly completed; and, upon correction of all Fundamental Flaws identified in the Non-Compliance Notice and punchlist items jointly determined by the parties, the applicable work shall be deemed completed. Upon: (i) correction of all Fundamental Flaws identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to this Subsection; Town shall have no further inspection rights with respect to the Mixed-Use Project, except to ensure compliance by Company with the Required Permits and as permitted by the Laws.

(f) **Non-Compliance.** Town shall have a period of five (5) business days after conducting any inspection within which to deliver a Non-Compliance Notice to Company. If Town delivers a timely Non-Compliance Notice to Company, then Company shall correct, as soon as reasonably is practicable, all Fundamental Flaws identified in the Non-Compliance Notice. All items or components of a Project with respect to which: (i) an inspection is conducted; and (ii) no Fundamental Flaws are identified in a timely Non-Compliance Notice; shall be deemed to have been accepted by Town.

(g) **General.** In connection with any inspection, Town shall: (i) comply with all health and safety rules that have been established for personnel present on the construction site (including, without limitation and if applicable, any requirement that a mask be worn to protect against the spread of the current COVID-19 virus); and (ii) coordinate such inspection so that it does not interfere unreasonably with the performance of construction. Company shall have the right to accompany Town during any inspection. An acceptance, or deemed acceptance, by Town pursuant to this Section shall not mean that Town has accepted, or Company has been relieved of, responsibility for: (A) compliance with the Laws; (B) the proper application of construction means or methods; (C) correcting any portion of a Project if it later is determined that such portion is inconsistent with the proper completion of a subsequent portion of the Project; or (D) any Fundamental Flaws that are latent and, accordingly: (1) were not discovered; and (2) reasonably were not discoverable; by Town during an inspection. An acceptance, or deemed acceptance, by Town pursuant to this Section shall not be binding on any other governmental authority, and any inspections performed by Town pursuant to this Section shall not preclude, or be deemed to be in substitution of, inspections required or permitted to be performed by other governmental authorities.

(h) **Insurance.** During construction of the Projects, Company shall maintain the policies of insurance described on **Exhibit F**. All policies maintained by Company shall be written by a company reasonably acceptable to MRC, and no such policy shall be modified or canceled without written notice to MRC at least 30 days in advance. The policy of general liability insurance required to be maintained by Company shall name MRC and Town as additional insureds. Company shall deliver to MRC and Town certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies.

13. Taxpayer Agreement. Company agrees to enter into a Taxpayer Agreement mutually acceptable to the Town Bodies that (i) states that beginning the calendar year following the first January 1 after Substantial Completion of the Mixed-Use Project and continuing through each calendar year of the Bond Term, Company agrees (i) to annually (in semi-annual payments on the dates that are five days prior to the next-due payment of debt service on the Mixed-Use Bonds) pay MRC the positive difference, if any, between \$430,800.00 and the Pledged Increment distributable to MRC for the applicable year; (ii) provide that the payments due by Company thereunder are secured by an annually renewable lien against the Mixed-Use Parcel that is the same in nature and priority to (but different from and in addition to) the lien of Real Estate Taxes and, accordingly, shall: (A) be prior to any mortgage or other lien or encumbrance on the Property other than the lien of Real Estate Taxes; and (B) renew automatically every January 1 during the Bond Term in its same priority; (iii) shall be recorded and run with the Mixed-Use Parcel; (iv) sets forth the policies of insurance required to be maintained by the Owner during the Bond Term, and the obligations of the Owner if there is casualty damage to, or destruction of, the Mixed-Use Project; and (v) prohibits the

Owner from challenging or appealing: (A) the assessed value of the Mixed-Use Parcel and the Mixed-Use Parcel; (B) the applicable tax rate; or (C) the application of the tax rate to the assessed value; to the extent that the foregoing likely would result in the applicable tax rate to be lower than the projected applicable tax rate, or the applicable assessed value being less than 100% of the projected assessed value. Town Bodies and Company shall execute and record the Taxpayer Agreement (or a memorandum thereof) at the Closing. Nothing in this Agreement or the Taxpayer Agreement shall be deemed to release Company from any obligation to pay Real Estate Taxes or Assessments on the Mixed-Use Parcel regardless of when payable or assessed.

14. Default.

(a) Events of Default. It shall be an “**Event of Default**” if either party: (i) fails to perform or observe any term or condition of this Agreement to be performed or observed by it, if such default or failure is not cured within the applicable Cure Period; or (ii) is in default under any Ancillary Agreement beyond any applicable cure period.

(b) General Remedies. During the continuance of an Event of Default, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then, within 30 days after receipt of a written invoice, the defaulting party shall reimburse the non-defaulting party for all such costs and expenses, together with interest at the rate of 4% above the applicable per annum prime rate of interest as set forth in the *Wall Street Journal*. Notwithstanding anything to the contrary set forth herein, the parties shall exercise its rights under this Subsection subject to the terms of the Multi-Party Agreement.

(c) No Remedy Exclusive; Limitation. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Agreement or by the Laws. In no event shall any party hereunder be liable to the other for punitive or consequential damages as a consequence of an Event of Default by such party. In the event either party hereto employs an attorney in connection with Claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys’ fees, incurred in connection with such Claims. The term “prevailing party” as used in this Agreement shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other’s breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

15. Special Remedies

(a) Commencement Failure. If, after the Closing, Company has not commenced construction

of a Project within ninety (90) days after the applicable date (or after the expiration of the applicable period within which construction is to commence) set forth in the Construction Schedule, then, at any time until Company commences construction of a Project, the Town Bodies may elect to require Company to convey all or any portion of the Project Site to the specified Town Body, together with the Project Plans and all assignable Professional Contracts. In connection with its acquisition of the all or such portion of the Project Site, Town Bodies shall pay to Company an amount equal to the positive difference between:

(i) the sum of: (A) the actual principal amount of the aggregate purchase price paid by Company for the Tower Land and the Mt. Comfort Property, to the extent not paid or reimbursed with proceeds of the Mixed-Use Bonds; plus (B) the cost to Company of the material and improvements in place on the Project Site (excluding costs paid with Bond Proceeds); minus

(ii) the sum of: (A) the reasonable and documented costs and expenses incurred by the Town Bodies in connection with exercising the remedy available pursuant to this **Section 15(a)**; plus (B) the reasonable and documented cost to the Town Bodies to re-mobilize contractors and subcontractors; plus (C) all amounts paid out of the proceeds of the Bonds at the Closing; (D) any amounts paid out of Bond Proceeds disbursed between the Closing and the date of determination in accordance with the terms and conditions of the Funding Agreement and the trust indenture.

Notwithstanding the foregoing, if the Town Bodies elect not to acquire the entirety of the Project Site, then: (A) the amount payable by the Town Bodies shall be reduced by: (1) the portion of the purchase price reasonably allocable to the portion of the Project Site not acquired by the Town Bodies; and (2) the cost to Company of the material and improvements in place for projects to be constructed on such portion; and (B) Company shall not be obligated to repay the amount paid out of the proceeds of the Bonds paid at the Closing, and the Bond Proceeds disbursed between the Closing and the date of determination in accordance with the terms and conditions of the Funding Agreement, to the extent allocable to the portion of the Project Site not acquired by the Town Bodies.

(b) **Delay.**

(i) **Catch-Up Plan.** If, at any time after Company has commenced construction of a Project, Company falls forty-five (45) or more days behind with respect to any construction benchmark date (or the expiration of the period within which such benchmark is to be reached) set forth in the Construction Schedule for such Project, then MRC, by delivery of written notice to Company, may require Company to submit, within 15 days, a Catch-Up Plan for MRC's reasonable approval. Following approval by MRC of a Catch-Up Plan, Company shall implement, and diligently pursue the application of, such Catch-Up Plan.

(ii) **Rejection.** If: (A) Company fails to timely submit a Catch-Up Plan, and, at the time, is not working cooperatively with MRC to complete a Catch-Up Plan; or (B) MRC rejects a Catch-Up Plan submitted by Company; then MRC may develop a commercially reasonable Catch-Up Plan and require Company to implement, and diligently pursue the application of, such Catch-Up Plan.

(iii) **Catch-Up Default.** If, after MRC has approved or developed a Catch-Up Plan in accordance with this Section, Company:

1. fails to implement such Catch-Up Plan;
2. implements such Catch-Up Plan, but fails to diligently pursue the application thereof; or
3. implements such Catch-Up Plan and diligently pursues the application thereof, but,

after completing all the terms and conditions of the Catch-Up Plan, again falls forty-five (45) or more days behind with respect to any construction benchmark date (or the expiration of the period within which such benchmark is to be reached) set forth in the Construction Schedule; then MRC may elect either to: (a) require that the process set forth in this Section be repeated; or (b) purchase the Project Loan in accordance with the terms and conditions of the Multi-Party Agreement and, as a result, “step into the shoes of” the Project Lender.

(c) **Special Remedies-Work Stop.** If, at any time after Company has commenced construction of a Project, all construction work of a material nature ceases for a period of sixty (60) days, then, at any time until construction work of a material nature resumes with respect to such Project, the Town Bodies may elect to require Company to: (i) convey to the applicable Town Body all or any portion of the Project Site; (ii) convey to the applicable Town Body all improvements and materials in place on the Project Site; and (iii), together with the Project Plans and all assignable Professional Contracts. In connection with its acquisition; and (c) assign to the applicable Town Body the Project Plans and all assignable Professional Contracts, thereby facilitating the ability of the Town Bodies to complete construction of the Projects. In connection with its acquisition of the foregoing, MRC shall pay to Company an amount equal to the positive difference between:

(i) the sum of: (A) the actual principal amount of the aggregated purchase price paid by Company for the Tower Land and the Mt. Comfort Property; plus (B) the cost to Company of the material and improvements in place on the Project Site (excluding costs paid with Bond Proceeds); minus

(ii) the sum of: (i) the reasonable and documented costs and expenses incurred by the Town Bodies in connection with exercising the remedy available pursuant to this Section; plus (ii) the reasonable and documented cost to MRC to re-mobilize contractors and subcontractors; plus (C) all amounts paid out of the proceeds of the Bonds at the Closing; and plus (D) all Bond Proceeds disbursed between the Closing and the date of determination in accordance with the terms and conditions of the Funding Agreement and the trust indenture. If the Town Bodies elect not to acquire the entirety of the Project Site, then: (A) the amount payable by the Town Bodies shall be reduced by: (1) the portion of the purchase price reasonably allocable to the portion of the Project Site not acquired by the Town Bodies; and (2) the cost to Company of the material and improvements in place for projects to be constructed on such portion; and (B) Company shall not be obligated to repay the amount paid out of the proceeds of the Bonds paid at the Closing, or the Bond Proceeds disbursed between the Closing and the date of determination in accordance with the terms and conditions of the Funding Agreement, to the extent allocable to the portion of the Project Site not acquired by the Town Bodies.

Provided that, notwithstanding the foregoing, if the Town Bodies elect to acquire the portion of the Project Site comprised of the Mixed-Use Parcel, then in no event shall the Town Parties pay less than the amount of: (a) the proceeds of the Project Loan disbursed pursuant to the terms and conditions of the Project Loan Documents; plus (b) interest that has accrued on the Project Loan at the regular (non-default) interest rate pursuant to the terms and conditions of the Project Loan Documents but has not yet been paid.

(d) **Payment to Lender.** If, pursuant to this Section, a Town Body acquires the portion of the Project Site comprised of the Mixed-Use Parcel, then all amounts paid by the Town Bodies shall be applied first to amounts overdue and owing to the Project Lender, and the Town Bodies may elect to pay such amounts directly to Project Lender.

(e) **Remedies-Miscellaneous.**

i. **Sole Remedy.** Notwithstanding anything to the contrary set forth in **Section 14**, the rights and remedies set forth in **Section 15** shall be the sole remedies available to the Town Bodies for the failures

specified in such Sections provided that the Town Bodies shall have: (i) the remedy of specific performance to enforce the obligations of Company pursuant to the terms and conditions of such Sections; and (ii) the right to recover from Company all costs and expenses incurred by the either Town Body in connection with exercising its rights and remedies under, or enforcing, such Section, together with interest at the rate of 4% above the applicable per annum prime rate of interest as set forth in the *Wall Street Journal*. For purposes of clarity: (i) the foregoing shall not prohibit the purchase of the Project Loan in accordance with the terms and conditions of the Multi-Party Agreement; and (ii) until a continuing Event of Default has been cured, or a failure under **Section 15** either has been cured or has been addressed, the Town Bodies shall have the right to instruct the trustee to refrain from disbursing Bond Proceeds for any work performed after the date of the occurrence of such continuing Event of Default or failure under **Section 15**; provided, however, the preceding clause (ii) shall not authorize the Town Bodies or trustee to withhold funds to be paid to contractors or sub-contractors for work performed prior to default or failure under **Section 15**, if a disbursement request has been previously submitted for such work.

(ii) **Closing.** In connection with the closing of any reconveyance of the Project Site (and, if applicable, conveyance of the improvements and materials in place on the Project Site), Company shall: (i) execute and deliver to the applicable Town Body closing documents that are substantially the same in form and substance as those by which Company acquired the Town Conveyance Parcel; and (ii) be responsible for any Real Estate Taxes first levied against the Project Site after the (original) Closing. From and after the reconveyance closing: (i) this Agreement automatically shall terminate and be of no further force or effect, except to the extent specifically stated to survive expiration or any such termination of this Agreement or except to the extent applicable to any portion of the Project Site that the Town Bodies elect not to acquire; and (ii) the remaining Bond Proceeds shall be disbursed as determined solely by the Town Bodies. Notwithstanding the foregoing, if the Town Bodies elect to acquire less than the entirety of the Project Site, then this Agreement shall remain in full force and effect to the extent applicable to the portion not acquired by the applicable Town Body.

(iii) **Lender Protections.** MRC agrees that its right to exercise its remedies in accordance with **Sections 14 and 15** shall be subject to lender protection provisions requested by the Project Lender and reasonably approved by MRC; provided that, to the extent that lender protection provisions requested by the Project Lender are: (i) consistent with (or less restrictive than) those set forth in this **Exhibit E**; or (ii) commercially reasonable and customary in commercial loans in the area; MRC shall agree to such provisions.

16. Acquisition Obligation. [Note that obligation and amount remain subject to discussion]

Company and Town Bodies acknowledge and agree that Company is, at the request of Town Bodies, acquiring the Tower Land and the Mt. Comfort Property in advance of completing the Property Inspections. If Company, as permitted pursuant to Section 7, terminates this Agreement due to the failure of the conditions set forth in Subsections 7(c) – 7(g) on or before the expiration of the time period specified for satisfaction of the applicable condition, then, (a) Company shall provide written notice to Town Bodies that it desires to transfer and convey the Tower Land and the Mt. Comfort Property to MRC (the “Transfer Notice”); and (b) closing for the transfer and conveyance of the Tower Land and the Mt. Comfort Property to the applicable Town Body shall be within thirty (30) days of Town Bodies’ receipt of the Transfer Notice. At such closing, the applicable Town Body shall pay to Company Three Million, Six Hundred Thousand and no/100 Dollars (\$3,600,000.00), and Company shall convey the Tower Land and the Mt. Comfort Property subject only to the Permitted Exceptions. This **Section 16** shall survive termination of this Agreement.

17. Mutual Indemnification.

(a) **Town and MRC.** To the extent permitted by applicable Laws, Town and MRC shall

indemnify and hold harmless Company from and against any and all Claims arising from or connected with the breach by Town or MRC of any term or condition of this Agreement.

(b) **Company.** Company shall indemnify and hold harmless Town Bodies from and against any and all Claims arising from or connected with: (i) breaches by Company under contracts to which Company is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Company or any party acting by, under, through, or on behalf of Company; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Company or any party acting by, under, through, or on behalf of Company; (iii) the negligence or willful misconduct of Company or any party acting by, under, through, or on behalf of Company; (iv) Company suffering or causing the filing of any mechanic's or materialmen's lien against the Project Site, Projects, or any adjacent property owned by Town Bodies; (v) Property Inspections conducted by Company; or (vi) the breach by Company of any term or condition of this Agreement or any Ancillary Agreement.

Notwithstanding anything to the contrary set forth herein, Town's and Company's obligations under this Section shall survive the termination of this Agreement.

18. Assignment. Upon Closing, this Agreement shall run with the Project Site and shall be binding on successors in title to the Project Site. No party hereto shall assign this Agreement without the prior written approval of the other parties; provided that: (a) without the prior written approval of Company, Town Bodies may assign this Agreement to another agency or instrumentality of Town that legally is able to perform the respective obligations hereunder; and (b) without the prior written approval of Town Bodies, Company may: (i) assign, partially or in its entirety, this Agreement to a third party controlled by or under common control with Company and/or any subsidiary or affiliate of Company that has full power, authority, and capability to accept such assignment and perform the obligations of Company hereunder, so long as Shelby M. Bowen has day-to-day control of such subsidiary or affiliate; and (ii) execute and deliver the Project Loan Documents, including, without limitation, a collateral assignment of this Agreement.

Notwithstanding the foregoing, during the period between Closing and Substantial Completion of both the Infrastructure Project and the Mixed-Use Project, Company shall not assign this Agreement, or sell any portion of the Project Site, without the prior written approval of the Town Bodies, which approval may be: (i) conditioned on the proposed assignee or purchaser assuming in writing the obligations of Company that remain with respect to the Project; (ii) withheld if either Town Body, in the exercise of its commercially reasonable judgment: (A) is not satisfied that the proposed assignee or purchaser has the financial wherewithal and professional qualifications to satisfy the obligations of Company under this Agreement and the Ancillary Agreements; or (B) determines that the reputation and/or prior business practices of the proposed assignee or purchaser is not satisfactory; and/or (iii) conditioned upon the execution of a Completion Guaranty by a replacement guarantor, which replacement guarantor has a net worth and liquid assets at least equal to those of the Guarantor on the date hereof.

Notwithstanding any assignment permitted under this Section, the applicable Town Bodies or Company, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release any Town Bodies or Company, as the case may be, from such performance; provided that, if any Town Body assigns this Agreement to another agency or instrumentality of Town that: (a) has full power and authority to accept an assignment of this Agreement and carry out the respective obligations hereunder; and (b) expressly assumes all such obligations in writing; then the applicable Town Bodies shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption.

19. Notice. Any notice required or permitted to be given by any party to this Agreement shall be in

writing, and shall be given (and deemed to have been given) when: (a) delivered in person to the other party; (b) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to the Town Bodies at **[6280 W. 800 N.]**, McCordsville, Indiana 46055, Attn: **[REDACTED]** with copies to: Jerimi J. Ullom, Esq., Hall, Render, Killian, Heath & Lyman, P.C., 500 North Meridian Street, Indianapolis, Indiana 46204 (or via email at jullom@hallrender.com); and to Company at 8700 North Street, Suite 120, Fishers, Indiana 46038, Attn: Shelby Bowen with a copy to Jennifer C. Messer (via email) at jennifermesserlaw@gmail.com. Each of the parties may change its address for notice from time to time by delivering notice to the other party as provided above.

20. Authority. Each undersigned person executing this Agreement on behalf of Town, MRC and Company represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of Town, MRC, or Company, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement duly have been authorized by Town, MRC and Company, respectively; provided, however, each of Town's and MRC's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which Town and MRC agree to undertake with diligence and in good faith.

21. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations (other than the obligation to pay money, including any payment required pursuant to the Taxpayer Agreement) under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period. The parties acknowledge the ongoing COVID-19 pandemic, and agree: (a) to exercise commercially reasonable, good-faith efforts to: (i) consider all then-current information with respect to; and (ii) adjust for shortages that reasonably can be anticipated with respect to materials, equipment, services, and/or labor that reasonably are likely to occur as a result of; the COVID-19 pandemic; and (b) that, notwithstanding that the COVID-19 pandemic falls within the definition of "Force Majeure", the protections of this Section shall not apply to a claim of Force Majeure based on COVID-19 if the applicable party fails to comply with the foregoing requirement.

22. Merger. All prior agreements, understandings, and commitments with respect to the transaction contemplated herein are hereby superseded, terminated, and merged herein, and shall be of no further force or effect. Absent an amendment to, or modification of, this Agreement in accordance with this section, in no event shall the Town Bodies be obligated to perform any work, incur any expenses, or provide any incentives (whether with respect to the Projects Sit, the Projects, or any site or improvements adjacent to, or in the vicinity of, the Project Site) other than as specifically set forth in this Agreement. This Agreement may be amended or modify only by written instrument executed by the Town Bodies and Company and, absent written agreement to the contrary delivered by the Town Bodies to Company in accordance with Section 19, no agreements made orally or via email (nor any oral or email discussions that contemplate agreements) shall be binding upon the Town Bodies.

23. Miscellaneous. Subject to **Section 18**, this Agreement shall inure to the benefit of, and be binding upon, Town Bodies and Company, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hancock County, Indiana, or the federal courts with venue that includes Hancock County, Indiana.

Company waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Company may have to: (i) assert the doctrine of “forum non conveniens”; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by Town, MRC, and Company. **[covered below]** All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between Company, Town, and MRC or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in McCordsville, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

[signatures on following pages]

IN WITNESS WHEREOF, Town, MRC and Company have executed this Project Agreement as of the day and year first written above.

“TOWN”

TOWN OF MCCORDSVILLE, INDIANA

By: _____
Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF HANCOCK)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me to be the _____ of the **Town of McCordsville, Indiana**, and acknowledged the execution of the foregoing Project Agreement for and on behalf of said Town.

WITNESS my hand and notarial seal this ____day of September 2021.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

“MRC”

**MCCORDSVILLE REDEVELOPMENT
COMMISSION**

By: _____
_____, President

ATTEST:

By: _____
_____, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF HANCOCK)

Before me, a Notary Public in and for said County and State, personally appeared _____ and _____, the President and Secretary, respectively, of McCordsville Redevelopment Commission, who having been duly sworn acknowledged the execution of the foregoing Project Agreement for and on behalf of said commission.

Witness my hand and Notarial Seal this _____ day of September 2021.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

“DEVELOPER”

Rebar McCordsville, LLC

By: _____
Shelby Bowen, Manager

STATE OF INDIANA)
) SS:
COUNTY OF HANCOCK)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Shelby Bowen personally known to me to be the Manager of Rebar McCordsville, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Project Agreement for and on behalf of said company.

WITNESS my hand and notarial seal this ____ day of September, 2021.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

“OWNER”

Rebar McCordsville, Inc.

By: _____
Shelby Bowen, President

STATE OF INDIANA)
) SS:
COUNTY OF HANCOCK)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Shelby Bowen personally known to me to be the President of Rebar McCordsville, Inc., an Indiana corporation, and acknowledged the execution of the foregoing Project Agreement for and on behalf of said corporation.

WITNESS my hand and notarial seal this ____ day of September, 2021.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

INDEX OF EXHIBITS

EXHIBIT A-1: Master Development Plan

EXHIBIT A-2 Depiction of Project Site (McCord Square Phase I) and general location of McCord Square Phase II

EXHIBIT A-3 Depiction of Tower Land and Mt. Comfort Property

EXHIBIT A-4 Depiction of Town Conveyance Parcel

EXHIBIT A-5 Depiction of Mixed-Use Parcel

EXHIBIT A-6 Depiction of Future Development Parcels (within the Project Site)

EXHIBIT A-7 Depiction of Commercial Building Parcel (within Future Development Parcels)

EXHIBIT A-8 Depiction of Additional Land

EXHIBIT B: Planning Schedule

EXHIBIT C: Required Provisions for Funding Agreement

EXHIBIT D: Net Income Projections

EXHIBIT E: Lender Protections

EXHIBIT F: Insurance

~~EXHIBIT G: Information and/or Requirements for Infrastructure Project (if applicable)~~

EXHIBIT C

Required Provisions for Funding Agreement

Provisions consistent with those set forth in this Exhibit shall be included in the Funding Agreement. All capitalized terms used but not defined in this Exhibit shall have the meanings ascribed to such terms in that certain Project Agreement executed by and among the Town Bodies and Company, to which this Exhibit is attached (the “Agreement”).

For purposes of clarity, the provisions set forth herein are intended to be applicable to each of the Infrastructure Bonds and the Mixed-Use Bonds separately (meaning, for example, the requirement set forth in Subsection 1(i) will apply to the first disbursement of each of the Infrastructure Bonds and the Mixed-Use Bonds) .

2. Information. In connection with each request for disbursement of Bond Proceeds, Company shall provide the following to the Town Bodies and the Disbursement Agent:

- i. in the case of the first request for disbursement only, a certification by Company that the Town Bodies have approved the construction contract for the applicable Project;
- ii. copies of invoices, together with a certification by Company that: (A) all such invoices are for the payment of Approved Costs with Bond Proceeds from the applicable Bond; and (B) the Approved Costs being paid pursuant to such invoices have not been paid previously with a disbursement of Bond Proceeds;
- iii. a certification by Company or the general contractor for the applicable Project that: (A) it has obtained lien waivers from subcontractors with contracts for work in an aggregate amount of at least \$20,000.00 that otherwise would have the right to claim valid mechanics’ or similar liens against all or a portion of the Project Site for: (1) work or services performed; or (2) supplies, material, or equipment provided; with respect to the applicable Project through the date of the immediately previous request for disbursement; and (B) upon receipt of the requested disbursement: (A) full payment will be made to the parties (and only to the parties) named in such invoices; and (B) after such payments, all invoices submitted as part of Disbursement Requests prior to and including the current Disbursement Request will have been paid in full;
- iv. reasonably satisfactory evidence that: (A) no mechanics' liens have been filed against all or any portion of the Project Site for: (1) work or services performed; or (2) supplies, material, or equipment provided; with respect to the applicable Project; and (B) no other liens or encumbrances have been recorded against all or any portion of the Project Site in connection with the construction of the applicable Project; since the date of the immediately previous Disbursement Request, other than: (1) the lien of real estate taxes not delinquent; and (2) grants of easements reasonably determined by the Town Bodies and Company to be necessary or appropriate in connection with the construction and/or use of the applicable Project; and
- v. an architect’s certification: (A) stating that the portion of the applicable Project completed to date: (A) has been constructed in substantial accordance with the Project Plans therefor and the Laws; and (B) does not encroach upon any easements or rights-of-way, or across any building set-back lines or utility lines (except to the extent that such encroachment is permitted); and (B) certifying: (1) the estimated values of work in place on the Project Site; and (2) the percentage of completion of the applicable Project.

3. Funds In Balance.

- i. Review. As part of its review of a Disbursement Request, and based upon the architect’s certification to be delivered pursuant to Subsection 1(v) of this Exhibit, the Disbursement Agent, in the exercise of its reasonable judgment, will determine whether the total of: (A) the remaining Bond Proceeds of the applicable Bonds; plus (B) any additional funds committed to construction of the applicable Project, as established to the reasonable satisfaction of the Disbursement Agent; is sufficient to complete the

applicable Project in accordance with the Project Plans therefor. If the Disbursement Agent determines that there is a funds imbalance, then the Disbursement Agent will deliver written notice of the imbalance to Company and the Town Bodies.

- ii. **Re-Balance Plan.** Upon receipt of written notice of a funds imbalance, Company will submit to the Disbursement Agent for its review and reasonable approval a plan pursuant to which, over a specified period of time, Company will cure the imbalance. Absent written consent by the Town Bodies, the Disbursement Agent will be required to reject a re-balance plan if: (A) the period of time for implementation extends beyond the scheduled date for Substantial Completion; and/or (B) such plan fails to provide for the timely payment of the remaining Approved Costs of the applicable Project. Following the approval of a re-balance plan, all subsequent determinations with respect to whether the funds are in balance will take into account the approved re-balance plan and the compliance by Company therewith. The Town Bodies will not be obligated to authorize disbursements until a re-balance plan has been approved by the Disbursement Agent.

4. Disbursement.

- i. **Satisfaction** At such time as the Disbursement Agent has: (A) received a complete Disbursement Request; (B) determined that the information included as part of the Disbursement Request satisfies the requirements that would apply were the request for a disbursement of proceeds of a construction loan (other than those with respect to equity or the updating of any lender's policy of title insurance); and (C) determined either that: (1) the funds are in balance; or (2) the funds are not in balance, but there is an approved re-balance plan; the Disbursement Agent shall deliver to the Town Bodies a statement to such effect.
- ii. **Disbursement Approval.** Within five business days after receipt of the above-referenced statement, the applicable Town Body will submit to the trustee a statement authorizing disbursement in accordance with the Disbursement Request; provided that, if: (A) the Town Bodies have delivered to Company and the Disbursement Agent written notice of any questions or concerns with respect to the materials included as part of the Disbursement Request; or (B) there is a continuing Event of Default by Company hereunder, or a default by Company under the Project Loan Documents continuing beyond any applicable cure periods; then the Town Bodies will not be obligated to authorize the disbursement until such time that its questions or concerns have been addressed to its reasonable satisfaction or Company's Event of Default or default has been cured, as applicable.
- iii. **Frequency/Retainage.** Disbursements of Bond Proceeds for the Infrastructure Project or the Mixed-Use Project, as applicable, shall not be made more frequently than monthly, and, notwithstanding anything to the contrary set forth herein, retainage of 10% shall be withheld from each disbursement of Bond Proceeds, which retainage shall be paid with the final disbursement of Bond Proceeds for the applicable Project.

5. Bypass Authority. This Exhibit shall not be construed as prohibiting the Town Bodies from authorizing a disbursement of Bond Proceeds without proceeding through the process set forth herein, so long as: (a) such authorization is not prohibited by the terms and conditions of the Trust Indenture; and (b) the Town Bodies have been authorized by proper action to authorize such a disbursement.

EXHIBIT E
Lender Protection Provisions

1. Definitions. All capitalized terms used but not defined in this Exhibit shall have the meanings ascribed to such terms in that certain Project Agreement executed by and among the Town Bodies and Company to which this Exhibit is attached (the “Agreement”).

Collateral shall mean the portions of the Mixed-Use Property, together with the fixtures and other items of personal property in or on such portions of the Mixed-Use Property, that are subject to a Mortgage.

Curable Default shall mean any Event of Default that is not an Incurable Default.

Incurable Default shall mean an Event of Default that cannot be cured by the payment of money or through the exercise of reasonable diligence.

Mixed-Use Property shall mean, collectively, the Mixed-Use Parcel and the Mixed-Use Project.

Mixed-Use Provisions shall mean those terms and conditions of the Agreement that directly apply, or reasonably are interpreted by the Town Bodies to apply indirectly, to the Collateral (including provisions of general application to the entirety of the Project Site and/or the Project).

Mortgage shall mean: (a) a mortgage, pledge, or grant of security interest granted by Company in all or any part of the Collateral; and/or (b) a collateral assignment of the Agreement and/or the interests of Company therein; for the purpose of securing a loan to Company.

Mortgagee shall mean a holder of a Mortgage, and all successors and assigns of such holder.

Mortgagee Cure Period shall mean the period that: (a) commences upon a failure that, with the passage of time, will become an Event of Default; and (b) expires on the date that is 60 days after the later of: (i) the expiration of the applicable notice and/or cure period (or, stated alternatively, the date on which the failure becomes an Event of Default); or (ii) receipt of the Mortgagee Notice.

Mortgage Notice shall mean a copy of any notice or demand required or permitted to be made or delivered to Company by a Town Body pursuant to the Agreement, which notice shall: (a) state any failure by Company with specificity; (b) reference the date on which such failure will become (or became, if no grace or cure period is applicable) an Event of Default; and (c) identify whether such failure, if it becomes an Event of Default (or already is an Event of Default), constitutes a Curable Default or an Incurable Default.

Mortgage Remedies shall mean: (a) obtaining possession of all or any part of the Collateral; (b) obtaining a receiver for all or any part of the Collateral; (c) foreclosing a Mortgage and effecting a foreclosure sale of the Collateral and the interest of Company in the Agreement; (d) enforcing a Mortgage and effecting an assignment of the Agreement to a Replacement Company; or (e) otherwise acquiring all or any part of the Collateral and/or the interests of Company in the Agreement, as applicable to the Collateral.

Replacement Company shall mean a qualified party that commits to complete the Mixed-Use Project in accordance with the terms and conditions of the Agreement.

2. Mortgages. Contemporaneously with the execution of a Mortgage, Company or the Mortgagee shall deliver written notice of such Mortgage to the Town Bodies, which notice shall set forth: (a) the effective date of such Mortgage; (b) the identity of the Mortgagee; and (c) the notice address of the Mortgagee.

3. Mortgagee Notice. Until the Town Bodies have received, from a Mortgagee of which it has been made aware pursuant to Section 2 of this Exhibit, written notice that such Mortgagee’s Mortgage has been satisfied or otherwise released, the applicable Town Body shall deliver a Mortgagee Notice to such Mortgagee contemporarily with each notice or demand delivered to Company. No notice or demand delivered by a Town Body shall be effective unless and until a Mortgagee

Notice is delivered in accordance with the terms and conditions of this Section.

4. Mortgagee Cure Right. The terms and conditions of this Section shall apply at all times when a Mortgage is outstanding.

- i. **Monetary Failure.** If there is a failure with respect to the obligation of Company to pay money, then the Mortgagee shall have the right to remedy the failure until the date that is 30 days after the later of: (A) the expiration of the applicable notice and/or cure period under the Agreement; or (B) receipt of the Mortgagee Notice.
- ii. **Non-Monetary Failure.** If there is a failure with respect to any obligation of Company other than the obligation to pay money, then the Mortgagee shall have the right to remedy the failure until the expiration of the Mortgagee Cure Period. To the extent reasonably necessary to effect a cure of a non-monetary failure, the Mortgagee shall be entitled to enter upon the Mixed-Use Property and exercise the rights of Company under the Agreement.
- iii. **Acceptance.** If the Mortgagee cures a failure of Company in accordance with the terms and conditions of this Section, then the Town Bodies shall accept such cure as a cure by Company.

5. Standstill. The terms and conditions of this Section shall apply at all times when a Mortgage is outstanding.

- i. **Standstill.** Notwithstanding any other term or condition of the Agreement or this Exhibit, the Town Bodies shall not exercise any of its rights and remedies under the Agreement with respect to a Curable Default if:

(A) within the first 60 days after receipt of a Mortgagee Notice, the Mortgagee notifies the Town Bodies of its intention either to: (A) cure the Curable Default; or (B) exercise one or more of the Mortgagee Remedies, after which it then will cure the Curable Default;

(B) within 15 days after delivery of the notification contemplated in Subsection 5(a)(i) of this Exhibit, the Mortgagee commences either:

1. to cure the Curable Default, which cure the Mortgagee diligently pursues to completion; or
2. the exercise of one or more of the Mortgagee Remedies and, thereafter, diligently pursues completion of the applicable Mortgagee Remedies; provided that, after obtaining such Mortgagee Remedies, the Mortgagee shall commence, and diligently pursue to completion, a cure of the Curable Default.

- ii. **Reasonable Extension.** If the nature of any Curable Default is such that the Mortgagee Cure Period is insufficient for the Mortgagee to complete a cure thereof, despite the exercise of reasonably diligent efforts, then, so long as the Mortgagee continues to exercise commercially reasonably, diligent efforts to complete the cure of the Curable Default, the Mortgagee Cure Period shall be extended as reasonably is necessary for such Mortgagee to complete the cure of the Curable Default.
- iii. **Mortgagee.** If Company is in default under a Mortgage beyond any applicable grace or cure period, then the Mortgagee may exercise with respect to the Mixed-Use Property any right, power, or remedy available to it under the Mortgage that is not in conflict with the terms and conditions of the Agreement.

6. Incurable Defaults. If the Town Bodies exercise the right to terminate the the Mixed-Use Provisions due to an Incurable Default, then: (a) for a period of 60 days after receipt of the Mortgagee Notice, the Mortgagee shall have the right to identify a Replacement Company to acquire the Collateral and become the “Company” under the Mixed-Use Provisions; and (b) if a Replacement Company is identified within such 60-day period, then the Mixed-Use Provisions, shall be deemed

to be reinstated with the Replacement Company as the “Company” thereunder.

7. Replacement Company. If a Replacement Company acquires the Collateral and becomes the “Company” under the Mixed-Use Provisions, then, for a period of 60 days thereafter, the Town Bodies or the Replacement Company may request the execution of a “replacement” agreement superseding the Mixed-Use Provisions, which replacement agreement is on the terms and conditions set forth in the Mixed-Use Provisions, revised only as: (a) necessary or appropriate to reflect the identity of the Replacement Company; and (b) the Town Bodies and the Replacement Company otherwise agree. If either party requests execution of such an agreement, then the “replacement” agreement shall be executed within 30 days after such request is made.

8. Cure Obligations. No term or condition of the Agreement or this Exhibit shall be deemed: (a) to require a Mortgagee to: (i) satisfy any obligation of Company under the Agreement; or (ii) cure any failure by Company to satisfy its obligations under the Agreement; or (b) make a Mortgagee liable for any such failure; provided that, if a Mortgagee completes a Mortgagee Remedy, then such Mortgagee or the Replacement Company, as applicable, promptly shall: (a) pay (or cause to be paid) to the Town Bodies any and all amounts owed by Company to the Town Bodies under the Agreement; and (b) commence, and diligently pursue to completion, a cure of any other existing Curable Defaults. Notwithstanding the foregoing, neither the Mortgagee nor the Replacement Company shall be: (a) required to cure any Incurable Defaults; (b) liable for, or with respect to, any Incurable Defaults; or (c) liable for any damages, losses, or expenses (including, without limitation, attorneys’ fees), incurred by the Town Bodies in connection with any uncured Events of Default that existed before, or on, the date on which the Mortgagee or the Replacement Company, as applicable, acquired the Collateral.

9. Amendments.

- i. **Consent.** During all such times as there is a Mortgage outstanding, no amendment, modification, supplement, surrender, cancellation, or termination of the Mixed-Use Provisions shall be effective without the written consent of the Mortgagee; provided that such consent shall not be required in connection with: (i) amendments, modifications, and/or supplements that do not have a material and adverse effect on a Mortgagee’s security in the Collateral; or (ii) any surrender, cancellation, or termination of the Mixed-Use Provisions after the rights under Sections 4 and 5 of this Exhibit have expired or have been waived by all Mortgagees, so long as such surrender, cancellation, or termination otherwise is permitted under the Agreement. Any amendment, modification, supplement, surrender, cancellation, or termination of the Mixed-Use Provisions in violation of this Section shall be void and unenforceable and shall have no force or effect.
- ii. **Requested Modifications.** If a prospective mortgagee requires reasonable amendments, modifications, or supplements of or to the Mixed-Use Provisions as a condition to making a loan to Company, then the Town Bodies shall execute an agreement amending, modifying, or supplementing the Mixed-Use Provisions as required by the prospective mortgagee; provided that the foregoing shall apply only so long as: (i) there will be no material adverse effect on the Town Bodies, or the rights of the Town Bodies under the Mixed-Use Provisions; and (ii) the obligations of Company under the Agreement will not be reduced in any material respect.