

BUILD-OPERATE-TRANSFER AGREEMENT
McCordsville Public Safety

This Build-Operate-Transfer Agreement (McCordsville Public Safety) (the "Agreement") is executed this ___ day of _____, 2023, by and among GM Development Companies LLC (the "Developer"), the Town of McCordsville, Indiana (the "Town"), and the McCordsville Municipal Facilities Building Corporation (the "Building Corporation").

1. Definitions.

Acquisition Property shall mean the completed Project, including the Project Site; provided that, if: (a) this Agreement is terminated prior to the expiration of the Term; and (b) the Project has not been completed as of the date of such termination; then the Acquisition Property shall mean: (i) all plans, specifications, information, and reports, and any construction materials, in each case the price of which was included in the Project Costs; (ii) the Project Site and (iii) so much of the Project as has been completed (if any).

BANs shall mean bond anticipation notes to be issued by the Building Corporation, the proceeds of which will fund all or a portion of the Project Costs.

BANs Closing shall mean the closing with respect to the sale and issuance of the BANs.

BANs Lease shall mean a lease to be executed at the BANs Closing pursuant to which the Building Corporation will lease the Acquisition Property, including the Project Site, to the Town.

BANs Net Proceeds shall mean: (a) the proceeds of the BANs; minus (b) the amount of such proceeds used to pay "costs of issuance", including, without limitation, the funding of reserves and/or the capitalization of interest, if any.

Change Order shall mean a change order executed by Developer and reflecting a Permitted Change.

Claims shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, attorneys' fees).

Closing Certificate shall mean a certificate executed by (and in form and substance reasonably acceptable to) each of Developer, Town, and the Building Corporation, which certificate shall include a statement by each party that the representations set forth herein remain true and correct in all material respect.

Construction Schedule shall mean the portion of the Final Plans comprised of the construction schedule.

Conveyance Closing shall mean the closing with respect to the conveyance of the Acquisition Property, including the Project Site, to the Building Corporation.

Disbursement Request shall mean: (a) a request, together with instructions, for disbursement of funds to (or for the account of) Developer, which request shall be substantially in the form attached hereto as Exhibit C; (b) copies of invoices to be paid (or amounts to be reimbursed to Developer) with the disbursed funds; (c) copies of inspection reports, AIA forms, or other reports showing: (i) the total amount disbursed to date; (ii) the percentage of completion of the Project; and (iii) the anticipated cost to complete the Project; and (d) such other information as may be required by the documents evidencing the BANs or as Town or the Building Corporation reasonably may request.

Event of Default shall have the meaning set forth in Section 15.

Final Plans shall have the meaning ascribed to such term in Section 6.

Incurred Costs Statement shall mean a statement from Developer certifying the total amount of Project Costs incurred as of the date of such statement, together with reasonable and customary supporting information.

Laws shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines of or from: (i) governmental agencies, boards, commissions, or departments; and (ii) judicial, administrative, or regulatory bodies; and (c) judicial orders, consents, and/or decrees.

MRC shall mean the Town of McCordsville Redevelopment Commission.

Operating Period shall mean the period: (a) commencing on the Substantial Completion Date; and (b) ending on the date that is 30 days prior to the date on which the first lease rental payment is due under the BANs Lease; provided that Town at any time may deliver notice to Developer setting forth an earlier date on which the Operating Period shall end.

Outside Closing Date shall mean August 31, 2023.

Permitted Change shall mean a change to the Final Plans that: (a) does not result in the Final Plans containing structurally flawed elements; (b) does not result in the total budgeted amount of the Project Costs exceeding the Purchase Price Cap; and (c) does not make it unlikely, impracticable, or impossible for Developer to complete the Project by the applicable date (or within the applicable time period) reflected in the Construction Schedule. In addition to the foregoing, changes required for the Final Plans to comply with the Laws shall be Permitted Changes.

Project shall mean the acquisition of the Project Site and the construction thereon of an approximately 18,000 square foot building that is intended to be operated as the Town's police headquarters, together with related improvements, in accordance with the Final Plans.

Project Budget shall mean the budget for the Project Costs.

Project Costs shall mean the fees, costs, and expenses incurred in connection with the Project, including, without limitation, fees, costs, and expenses: (a) incurred to acquire the Project Site and/or any other real estate rights necessary or deemed to be appropriate in connection with the construction of the Project; (b) attributable to the ownership of the Property, including, without limitation, taxes, assessments, and other governmental charges lawfully imposed upon the Property during the Term; (c) incurred by Developer in connection with drafting and negotiating this Agreement and the other documents with respect to the Transaction that are determined to be necessary or reasonably appropriate; (d) incurred in connection with determining that all of the conditions set forth in Section 5 have been satisfied and/or will be waived by Developer, Town, and/or the Building Corporation; (e) incurred in connection with the development, design, and construction of the Project in accordance with the terms and conditions of this Agreement, including all architect, engineer, and other professional fees (including the fee payable to Developer); and (f) a reasonable and customary amount for contingencies.

Project Site shall mean the real estate commonly known as Lot 4 of the McCord Square Subdivision and depicted generally on Exhibit A, which real estate will be acquired by Developer shortly after the issuance of the BANs as part of the Project.

Property shall mean, collectively, the Project Site, the materials to construct the Project, and, upon completion of the Project, the Acquisition Property.

Purchase Price shall mean the total amount of the Project Costs, not to exceed the Purchase Price Cap.

Purchase Price Cap shall mean the sum of the Town Contributed Funds plus the BAN Net Proceeds; as

such amount may be increased by Town in writing.

Rebar Entities shall mean, collectively, Rebar McCordsville, LLC, Rebar McCordsville, Inc., Pride Rebar McCord Square Apartments, LLC, and Pride Rebar McCord Square, LLC.

Rebar Site Acknowledgement shall mean an acknowledgement executed by Town, MRC, and the Rebar Entities providing that: (a) pursuant to Section 3 of the First Amendment, Town and MRC consent to the conveyance of the Project Site to Developer or the Building Corporation, as applicable; and (b) the Rebar Entities acknowledge that, from and after the BANs Closing, neither Town nor MRC has any further obligations under the Rebar Project Agreement with respect to the Project Site. For purposes of this Definition: (a) "First Amendment" shall mean that certain First Amendment (Project Agreement) executed by and among Town, MRC, and all Rebar Entities and dated August 26, 2022; and (b) "Rebar Project Agreement" shall mean that certain Project Agreement executed by and among the Town, MRC, and certain of the Rebar Entities and dated September 14, 2021, as amended by the First Amendment.

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

Substantial Completion Date shall mean the date on which Developer delivers to Town a copy of an architect's certificate of substantial completion indicating that the Project has been completed substantially in accordance with the Final Plans, subject to "punch-list" items to be identified in connection with the inspection of the Project by Town, which "punch-list" items will not materially affect the use of the Project for its intended use.

Term shall mean the period: (a) commencing on the date hereof; and (b) ending upon the expiration of the Operating Period.

Town Contributed Funds shall mean funds in the amount of \$1,053,820, to be contributed by Town out of cash-on-hand and/or other funds legally available to Town to pay Project Costs.

Transaction shall mean the build-operate-transfer transaction contemplated in this Agreement.

Transaction Documents shall mean: (a) this Agreement and the Closing Certificate; (b) certified copies of the resolutions, ordinances, and/or approvals enacted, adopted, and/or obtained by a party authorizing the Transaction and the execution of documents necessary or reasonably appropriate to consummate the Transaction, which certification states that such resolutions, ordinances, and/or approvals remain in full force and effect without amendment; and (c) such additional resolutions, consents, authorizations, documents, instruments, and/or other evidence as either party reasonably may request in connection with the BAN Closing.

Transfer shall mean: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of; (b) any encumbrance (other than the lien of current real estate taxes and assessments not delinquent) upon; or (c) the granting of any security interest in; all or any portion of (or any interest in) the Property or the materials to construct the Project; other than any of the foregoing specifically permitted or required, or created as a result of the execution of, the Transaction Documents.

2. General.

(a) **Project.** Subject to the terms and conditions of this Agreement, Developer shall acquire the Project Site and construct the Project thereon. The Developer shall immediately proceed with the acquisition of the Project Site upon notice from the Town that the BANs Closing has occurred.

(b) **Utility Availability.** Unless, and except to the extent that, the Final Plans reflect any

responsibility of Developer with respect to utility services, Town, at its cost and expense, shall ensure that all necessary or reasonably appropriate utility services exist in adjoining public rights-of-way or properly granted and recorded utility easements. In connection with the satisfaction of the foregoing obligation, Town, at its cost and expense, shall make any improvements outside the Project Site that are necessary or reasonably appropriate.

(c) Fee Waiver. Town agrees to waive all local fees that normally would be assessed in connection with the development and construction of the Project, including, without limitation, permitting and inspection fees; provided that reasonable fees to conduct follow-up inspections after any discovery by Town of any material defects or violations of Laws shall not be waived.

(d) No Securities Offering. The parties acknowledge and agree that neither the Transaction, nor the execution of the Transaction Documents, is intended to be a municipal or other securities offering. Town and the Building Corporation acknowledge that this Agreement shall not be: (i) assigned a separate rating by any municipal securities rating agency; (ii) registered with The Depository Trust Company or any other securities depository; (iii) issued pursuant to any type of offering document; or (iv) assigned a CUSIP number by Standard & Poor's CUSIP Service. Section 2(c) shall not apply to any documentation in respect of the BANs.

(e) No Financial Advisor. Each of Town and the Building Corporation acknowledge that: (i) Developer: (A) is acting solely for its own account, and not as a municipal advisor, financial advisor, agent, or fiduciary to Town or the Building Corporation; (B) is not acting as a municipal advisor, underwriter, or placement agent in connection with this Agreement; and (C) has not given "advice" within the meaning of Section 15B of the Securities and Exchange Act of 1934; and (ii) it has discussed the representations set forth herein with such legal, accounting, tax, financial, and other advisors as it has deemed to be appropriate.

3. Pre-Closing Project Costs.

(a) Obligation. Town acknowledges that, to facilitate proceeding through the scoping process and commencing construction in a timely manner, Developer: (i) has incurred Project Costs prior to the date hereof; and (ii) will incur additional Project Costs after the date hereof and until the first to occur of the BANs Closing or the earlier termination of this Agreement in accordance with its terms. Subject to Subsection 3(c), Town agrees that it shall reimburse Developer for (or pay directly) all such incurred Project Costs.

(b) BANs Closing. If this Agreement is not terminated prior to the BANs Closing, then: (i) the amount to be reimbursed to Developer (or paid directly) shall be the amount reflected in an Incurred Costs Statement provided by Developer in connection with the BANs Closing; and (ii) such amount shall be applied against (reduce the outstanding amount of) the Purchase Price on a dollar-for-dollar basis.

(c) Termination. If this Agreement is terminated prior to the BANs Closing, then, following such termination: (i) Developer shall deliver an Incurred Costs Statement to Town; (ii) Town shall reimburse Developer for (or pay directly) the amount reflected in the Incurred Costs Statement in the ordinary course of its business, but in all events within 45 days after receipt of the Incurred Costs Statement; (iii) upon reimbursement (or direct payment) of the incurred Project Costs, the outstanding Purchase Price shall be deemed to have been reduced to \$0.00; and (iv) at such time as the outstanding Purchase Price is deemed to be reduced to \$0.00, the parties shall proceed to the Conveyance Closing. Notwithstanding the foregoing, Town's obligation under this Subsection shall be capped at

\$1,053,820 in the aggregate, which amount shall be deemed to be sufficient to reduce the outstanding Purchase Price to \$0.00.

(d) **Work Product.** All work product obtained by, for, or on behalf of Developer, the cost of which is reimbursed (or paid directly) by Town pursuant to this Section, shall be the property of Town; provided that Developer shall retain a license to retain and use such work product in connection with satisfying its obligations under this Agreement.

(e) **Survival.** The obligations of Town under this Section shall survive the BANs Closing (if not reimbursed or paid in full on the date thereof) or the earlier termination of this Agreement, as applicable.

4. BANs Closing. Town and the Building Corporation shall exercise commercially reasonable, good faith efforts, to proceed to the BANs Closing on or before the Outside Closing Date, with the actual date thereof being established mutually by Developer, Town, and the Building Corporation. At or in connection with the BANs Closing, each party shall execute and/or deliver the Transaction Documents to which it is a party or for which it is responsible. As set forth in Section 2(a), the Developer shall immediately proceed with the acquisition of the Project Site upon notice from the Town that the BANs Closing has occurred.

5. Conditions. Subject to the terms and conditions of this Agreement, the obligation of the parties to continue under the terms and conditions of this Agreement is subject to the satisfaction or waiver in writing of the conditions set forth below as of the first occur of the BANs Closing or the Outside Closing Date.

(a) **Conditions.**

(i) Developer has determined that it will be able to acquire the Project Site contemporaneously with or immediately following the BANs Closing.

(ii) Town, MRC, and the Rebar Entities have agreed on the form and substance of the Rebar Site Acknowledgement, and Town, MRC, and the Rebar Entities are prepared to execute the Rebar Site Acknowledgement in connection with the Bans Closing.

(iii) Developer has obtained, or Developer and Town are satisfied that Developer will be able to obtain, all Required Permits.

(iv) None of Developer, Town, or the Building Corporation has identified any conditions with respect to the Project Site that would interfere with, or prohibit, acquisition of the Project Site by Developer or the construction of the Project in accordance with the terms and conditions of this Agreement.

(v) The Project Budget has been finalized, there are Final Plans (including a Construction Schedule), and either: (A) the budgeted Project Costs do not exceed the Purchase Price Cap; or (B) the budgeted Project Costs do exceed the Purchase Price Cap, and Town has agreed in writing to an increase in the Purchase Price Cap at least equal to the amount of such excess.

(vi) The form and substance of the documents evidencing and securing the BANs have been approved by the parties thereto, and the Town and the Building Corporation are prepared to proceed to the BANs Closing.

(vii) The form and substance of the Transaction Documents have been approved by Developer, Town, and the Building Corporation, each in the exercise of its reasonable discretion.

(viii) Counsel to Town has provided an opinion addressed to Developer and Developer's counsel in form and substance reasonably acceptable to Developer.

(ix) Counsel to Developer has provided an opinion addressed to Town and Town's counsel in form and substance reasonably acceptable to Town; provided that, if Developer is not represented by counsel, then Town's counsel shall provide a third-party opinion with respect to Developer in form and substance reasonably acceptable to Town.

(x) Each of Developer, Town, and the Building Corporation has adopted all resolutions and ordinances necessary to authorize the execution of, and the performance of its obligations under, this Agreement and the Transaction Documents to be executed by it in connection with the Transaction, and such resolutions and ordinances remain in full force and effect.

(xi) With respect to each party: (A) there is no continuing Event of Default by the other parties; and (B) all of the representations, warranties, and covenants made in this Agreement by the other parties are true and accurate in all material respects

(b) **Condition Failure.** Developer, Town, and the Building Corporation shall work diligently and in good faith to satisfy the conditions set forth in this Section. If any of the conditions set forth in this Section are not, or cannot be, timely satisfied, then, as its sole and exclusive remedy, the applicable party either may elect to: (i) waive satisfaction of such conditions and proceed to the BANs Closing; or (ii) terminate this Agreement by delivery of written notice to the other parties; provided that, with respect to Events of Default, the non-defaulting parties shall have the rights and remedies set forth in Section 16.

(c) **Termination Election.** If this Agreement is terminated pursuant to this Section, then this Agreement shall be of no further force or effect, except as to: (i) Town's obligation to reimburse Developer for (or pay directly) all incurred Project Costs in accordance with Section 3; (ii) Developer's obligation to convey the Acquisition Property to Town or the Building Corporation, as applicable, at such time as the incurred Project Costs have been reimbursed (or paid directly) and the outstanding Purchase Price is deemed to have been reduced to \$0.00; and (iii) those provisions that, by the express terms hereof, survive termination.

6. Plans. Developer is solely responsible for producing and providing to Town all schematic design drawings, design development documents, and construction drawings for the Project including, without limitation, the technical specifications. Town acknowledges that, as of the date hereof, all schematic design drawings and design development documents have been completed by Developer and approved by Town, and Developer anticipates completion of construction drawings by May 31, 2023. As Developer completes the construction drawings, Developer shall submit such construction drawings to Town for its review and approval, which shall not be withheld unreasonably. As Developer proceeds through the process of completing the construction drawing: (a) the parties will make any refinements to the plans and specifications that, jointly, they determine to be necessary or appropriate; (b) the parties will agree on the schedule for acquisition of the Project Site and construction, which currently is anticipated to commence in July, 2023, and be substantially complete by September, 2024; (c) the parties shall finalize the Project

Budget; provided that Developer shall not be obligated to agree to a Project Budget that reflects Project Costs in excess of the Purchase Price Cap unless Town agrees in writing to increase the Purchase Price Cap to include the amount of such excess; and (d) Developer shall undertake such actions as may be necessary to complete the "standard" approval process for obtaining the Required Permits. At such time as the approval process has been completed, the approved plans, specifications, and schedules (including all schematic design drawings, design development documents, construction drawings, and construction schedules) shall constitute the "Final Plans", subject to modification only by Change Orders.

7. Change Orders. Without the prior approval of Town or the Building Corporation, Developer may execute Change Orders, which, by definition, apply only with respect to Permitted Changes; provided that Developer shall provide Town a copy of such Change Order within five business days after execution thereof.

8. Construction.

(a) **Project Site and Permits.** Prior to commencing construction of the Project, Developer, at its cost and expense, shall obtain and submit to Town for its review evidence of ownership of the Project Site by Developer and all Required Permits that are obtainable by Law prior to commencement of construction.

(b) **Sales Tax.**

(i) Promptly after the execution of this Agreement, Town shall deliver to Developer Indiana Department of Revenue Form ST-105 (General Sales Tax Exemption Certificate), pursuant to which Town shall represent that the acquisition of the materials to construct the Project is exempt from Indiana sales and use tax.

(ii) Upon any assessment, or threatened assessment, of Indiana sales and/or use tax in connection with the purchase of any materials to construct, install, and/or complete the Project, Developer promptly shall notify Town in writing. From and after receipt of the foregoing notice, Town shall provide such cooperation, information, and assistance as Developer reasonably may request.

(iii) To the extent permitted by the Laws, Town shall indemnify and hold harmless Developer, and the members, directors, officers, and employees of Developer, from and against any and all Claims arising from, or connected with: (A) the charging of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; and/or (B) any interest and penalties assessed by the Indiana Department of Revenue with respect to the non-payment or late payment of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; including, without limitation, reasonable attorneys' fees and court costs. The obligations of Town under this clause shall survive the expiration of the Term or the earlier termination of this Agreement.

(c) **Construction.** Developer shall construct the Project: (i) in a good and workmanlike manner; (ii) in accordance with the Final Plans (as modified by any Change Orders) and the terms and conditions of this Agreement; and (iii) in compliance with the Laws and the Required Permits. On or before the date that is 15 days after the Substantial Completion Date, Developer and Town shall execute a statement confirming the Substantial

Completion Date, which statement shall be substantially in the form attached hereto as Exhibit D.

(d) Bonds. As required pursuant to Ind. Code §§5-23-3-2(a)(8) and 5-23-3-2(b), Developer shall obtain: (i) a payment bond in an amount not less than 100% of the portion of the Project Costs comprised of design and construction costs; and (ii) a performance bond in an amount not less than 50% of the Project Costs comprised of design and construction costs.

9. Construction Disbursements.

(a) Disbursement Request. To receive a disbursement to pay (or be reimbursed) for Project Costs, including costs of acquiring the Project Site, after the BANs Closing, Developer shall submit a Disbursement Request to Town. Town shall have a period of five days within which either: (i) to deliver to Developer written notice identifying, in good faith, an issue with respect to the Disbursement Request; or (ii) unless Town intends to apply Town Contributed Funds to pay (or reimburse) the parties identified in the Disbursement Request, to submit the Disbursement Request to Building Corporation. If Town intends to apply Town Contributed Funds, then, in the ordinary course of its business, it shall disburse the amounts reflected in the Disbursement Request to such parties (including, if applicable, to Developer in reimbursement for Project Costs paid directly by Developer). If, instead, Town submits the Disbursement Request to Building Corporation, then, within 15 days after receipt of such Disbursement Request, Building Corporation shall disburse, or direct the BANs trustee to disburse, the amounts reflected in the Disbursement Request to the parties identified therein (including, if applicable, to Developer in reimbursement for Project Costs paid directly by Developer). Notwithstanding anything to the contrary set forth herein: (i) as required pursuant to Ind. Code §5-23-3-2(a)(8), payments made to contractors and subcontractors shall comply with the payment provisions of Ind. Code §36-1-12; and (ii) neither Town nor Building Corporation shall be obligated to make disbursements more frequently than monthly. The amount of funds disbursed pursuant to a Disbursement Request shall be applied against (reduce the outstanding amount of) the Purchase Price on a dollar-for-dollar basis.

(b) Final Statement. Contemporaneously with the execution by the parties of the confirmation statement required pursuant to Subsection 8(c), Developer shall deliver to Town and Building Corporation a statement certifying that all of the Project Costs have been determined and paid; provided that, if there are outstanding claims for payment that remain subject to dispute, then Developer shall certify as to the amount sufficient to pay all such claims. At such time (or, if applicable, after all outstanding claims are resolved and any amounts due in connection therewith are paid), the outstanding amount of the Purchase Price shall be deemed to have been reduced to \$0.00.

(c) Records. Developer shall keep and maintain true, correct, accurate, and complete books and records pertaining to the materials to construct, and the construction of, the Project in accordance with the terms and conditions of this Agreement. Town, at all reasonable times and following reasonable notice, shall have: (i) free access to, and rights of inspection of, such books and records; and (ii) the right to audit, make extracts from, and receive from Developer accurate copies of, such books and records.

10. Inspection.

(a) Inspection Rights. Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, Town may perform an inspection of any item or element of the Project; provided that, in connection therewith,

Town shall: (i) comply with all health and safety rules of which Town has been informed that have been established for personnel present on the Project Site; and (ii) coordinate the inspection so that it does not interfere with the performance of construction by Developer. Developer shall have the right to accompany, and/or to have its construction manager accompany, Town during any such inspection.

(b) Effect. An inspection performed by or on behalf of Town pursuant to this Section shall not mean that Town has accepted, or Developer has been relieved of, responsibility for: (i) compliance with the Laws; (ii) the proper application of construction means or methods; (iii) correcting any portion of the Project if it later is determined that such portion is inconsistent with the proper completion of a subsequent portion of the Project; or (iv) any material defects in the construction of the Project that are latent and, accordingly: (A) were not discovered; and (B) reasonably were not discoverable; by Town during an inspection.

11. Insurance. During construction of the Project, Developer shall maintain the policies of insurance reflected on the certificate attached hereto as Exhibit B. Each such policy shall be written by a company reasonably acceptable to Town, and Developer shall provide to Town notice of any intended modification to, or cancellation of, such policy at least 30 days in advance. The policy of general liability insurance required by this Section to be maintained by Developer shall name Town and Building Corporation as additional insureds. Developer shall deliver to Town certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies. From and after the Substantial Completion Date, Developer shall have no obligation to maintain any policies of insurance with respect to the Property.

12. Casualty. If, during the Term, there is damage to, or total or partial destruction of, the Property by fire or other casualty, then Town may elect to terminate this Agreement by delivery of written notice to Developer within ten days after the casualty event. If this Agreement is terminated, then the terms and conditions of Section 3 (prior to the BANs Closing) or Section 13 (after the BANs Closing) shall apply. If Town does not terminate this Agreement, then Town and Developer, working jointly and in good faith, shall revise the Project Budget as necessary to allow for the repairs and/or replacements necessary or reasonably appropriate to allow Developer to complete construction of the Project; provided that, in no event shall Developer bear responsibility for Project Costs incurred in excess of the Purchase Price Cap.

13. Operating/Conveyance.

(a) Operating Period.

(i) Subject to the terms and conditions of this Agreement, Developer shall operate the Acquisition Property during the Operating Period. At any time during the Operating Period, Town may deliver written notice to Developer specifying the date on which the Operating Period will end; provided that, consistent with the definition of Operating Period, in no event shall the Operating Period continue beyond the date that is 30 days prior to the date on which the first lease rental payment is due under the BANs Lease.

(ii) Town shall be responsible for payment of all costs and expenses incurred by Developer in connection with its possession, use, operation, maintenance, and/or repair of the Acquisition Property during the Operating Period, including, without limitation: (A) all administrative costs; and (B) other costs and expenses customarily attributed to the ownership of real estate including, without limitation: (1) taxes, assessments, and other governmental charges lawfully imposed upon the Acquisition Property; and (2) all usage and other charges for utility services furnished

to the Acquisition Property. Town shall pay (or reimburse Developer for) such costs and expenses in the ordinary course of its business, but in all event within 45 days after receipt of written invoice.

(b) **Early Termination.** If this Agreement is terminated after the BANs Closing but prior to the expiration of the Term, then, as soon as reasonably is practicable, Developer shall deliver a final Disbursement Request to Town. Town or the Building Corporation, as applicable, shall disburse the amounts specified in such Disbursement Request in accordance with the provisions of Section 9 and, when all identified Project Costs have been paid (or reimbursed to Developer), the outstanding amount of the Purchase Price shall be deemed to have been reduced to \$0.00.

(c) **Conveyance.** Upon the expiration of the Term or the earlier termination of this Agreement, and the payment (or reimbursement) of all incurred Project Costs such that the outstanding amount of the Purchase Price has been reduced to \$0.00, Developer, Town, and the Building Corporation shall proceed to the Conveyance Closing, which shall occur on a date mutually determined by the parties, each acting in a commercially reasonable manner. At the Conveyance Closing, Developer shall convey the Acquisition Property to the Building Corporation (or its designee) pursuant to a limited warranty deed substantially in the form attached hereto as Exhibit E, or pursuant to such other form of transfer instrument that the parties jointly deem to be appropriate.

(d) **Costs.** Town shall be responsible for all costs and expenses in connection with its acquisition of the Acquisition Property, including, without limitation: (i) costs to obtain all surveys, title searches, abstracts, and/or title policies deemed by Town to be necessary or appropriate; and (ii) attorneys' fees and closing costs.

The obligations of the parties under this Section shall survive the expiration of the Term or the earlier termination of this Agreement.

14. No Liens. If any mechanic's, supplier's, or similar lien is filed against all or any portion of the Property for work claimed to have been done for, or materials claimed to have been furnished to, Developer, Town, or the Building Corporation, then such party shall cause such mechanic's, supplier's, or similar lien to be discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.

15. Events of Default. It shall be an "Event of Default" by a party if such party fails to perform or observe any term or condition of this Agreement that is required to be performed or observed by it: (i) with respect to the obligation to pay money, if such failure is not remedied within ten days after such payment is due; and (ii) with respect to any other obligation, if such failure is not cured as of the date that is 30 days after the defaulting party receives notice specifying the nature of the failure; provided that, if the failure is of a nature that it cannot be remedied within 30 days, despite the exercise of reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (A) commences to remedy the failure within the 30-day period; and (B) diligently pursues such remedy to completion.

16. Remedies.

(a) **Remedies.** During the continuance of an Event of Default, each non-defaulting party may take such actions at law or in equity as are necessary or appropriate to: (i) collect any amounts due from the defaulting party 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, through the exercise of the equitable remedies of injunction and/or specific performance); 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 (including, without limitation, procuring on behalf of the defaulting party any required policy of insurance that the defaulting party has failed to maintain); provided that no cure undertaken by a non-defaulting party shall be construed to be a waiver of the Event of Default. Except to the extent provided to the contrary by the Laws, a non-defaulting party is not required to give notice to the defaulting party prior to exercising its remedies during the continuance of an Event of Default.

(b) No Remedy Exclusive. 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.

(c) No Waiver. None of: (i) a waiver by the non-defaulting party of an Event of Default; (ii) a delay in the exercise (or the failure to exercise) by a non-defaulting party of any right or remedy with respect to an Event of Default; or (iii) the acceptance by Developer of disbursements from Town or the Building Corporation during the continuance of an Event of Default by Town; shall be deemed to: (i) constitute a waiver of the current or any subsequent Event of Default; (ii) release or relieve the defaulting party from performing any of its obligations under this Agreement; or (iii) constitute an amendment or modification of this Agreement.

(d) Costs. A non-defaulting party may recover from the defaulting party all costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) that the non-defaulting party incurs: (i) by reason of any Event of Default by the defaulting party; and/or (ii) in connection with exercising its rights and remedies with respect to any Event of Default; together with interest thereon at the rate of 12% per annum. All such amounts shall be due and payable by the defaulting party immediately upon receipt of written demand from the non-defaulting party, and the obligation of the defaulting party to pay such amounts shall survive the expiration of the Term or the earlier termination of this Agreement.

17. Representations.

(a) Mutual. Each of Developer, Town, and the Building Corporation represents and warrants that:

(i) it has: (A) the power and authority to enter into, and perform its obligations under, this Agreement; and (B) complied with the Laws (including all local requirements) in all matters relating to the Transaction;

(ii) it has taken all actions necessary to authorize the execution and delivery, and the performance of its obligations under, this Agreement;

(iii) neither the execution and delivery, nor the performance by it of its obligations hereunder: (A) violates any Law or the terms and conditions of any indenture, material agreement, or other instrument to which it is a party, or by which it or any of its properties or assets is bound; (B) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (C) results in the creation or

imposition of any prohibited lien, charge, or encumbrance of any nature upon any of its properties or assets;

(iv) this Agreement, once executed, will be its legal, valid, and binding obligation, subject to: (A) Laws relating to bankruptcy, insolvency, reorganization, moratorium, or other similar subjects; (B) the exercise of judicial discretion in appropriate cases; and/or (C) general principles of equity;

(v) no litigation is pending or, to its knowledge, threatened: (A) seeking to restrain or enjoin it from executing, and/or satisfying its obligations under, the Transaction Documents; (B) in any way contesting or affecting its existence or powers; or (C) in any way contesting the validity of this Agreement or the Transaction; and

(vi) during the last five years, it has not been in default beyond any applicable cure periods in the payment of amounts due and payable with respect to any obligations issued or guaranteed by it, or with respect to which it is an obligor.

(b) Entities. In addition to the representations set forth in Subsection 17(a):

(i) Developer represents and warrants that it is a limited liability company organized and existing under the laws of the State of Indiana;

(ii) Town represents and warrants that it is a political subdivision organized and existing under the laws of the State of Indiana; and

(iii) Building Corporation represents and warrants that it is a non-profit corporation organized and existing under the laws of the State of Indiana.

18. Notice. Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at 8561 N. 175 E., Springport, Indiana 47386, Attn: Gregory W. Martz; to Town at 6280 W. 800 N., McCordsville, Indiana 46055, Attn: Town Council President; and to the Building Corporation at 6280 W. 800 N., McCordsville, Indiana 46055, Attn: President. Either party may change its address for notice from time to time by delivering notice to the other party as provided in this Section.

19. Assignment. None of Developer, Town, or the Building Corporation shall assign this Agreement without the prior written consent of the other parties. Notwithstanding any consent granted by the parties, the assigning party shall remain liable to perform all of, and shall not be released from the performance of, its obligations hereunder.

20. Indemnification.

(a) Mutual. Each party shall, to the extent permitted by law, indemnify and hold harmless the other party from and against any and all Claims arising from, or connected with: (i) the indemnifying party's negligence or willful misconduct (or the negligence or willful misconduct of any party acting by, under, through, or on behalf of it); and/or (ii) any default by the indemnifying party under this Agreement.

(b) Individual.

(i) Developer shall indemnify and hold harmless Town and the Building Corporation from and against any and all Claims arising from, or in connection with, construction of the Project.

(ii) Town shall, to the extent permitted by law, indemnify and hold harmless Developer from and against any and all Claims arising from, or in connection with, any inspection of the Project conducted by or on behalf of Town.

The indemnification obligations of the parties under this Subsection shall survive for a period of two years after the expiration of the Term or the earlier termination of this Agreement.

21. Force Majeure. Notwithstanding anything to the contrary set forth in this Agreement, if either party is delayed in, or prevented from, observing or performing any of its obligations (other than the obligation to pay money) 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. For purposes of this Section, "Force Majeure" shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; (iii) epidemics, pandemics, and other public health circumstances resulting in a governmental declaration of a public health emergency; and (iv) utility or energy shortages or acts or omissions of public utility providers.

22. BOT Statute. This Agreement is intended to be a "public-private agreement" authorized by Indiana Code §5-23. If and to the extent this Agreement is not such a "public-private agreement", then this Agreement shall be deemed to: (a) include such terms not otherwise included; and (b) exclude such terms not otherwise excluded; as is necessary to cause this Agreement to be a "public-private agreement".

23. Miscellaneous. Subject to Section 19, this Agreement shall inure to the benefit of, and be binding upon, Developer, Town, the Building Corporation, and the respective successors and assigns of each. This Agreement (a) constitutes the entire agreement among Developer, Town, and the Building Corporation with respect to the subject matter hereof, and may be modified only by a written agreement executed by all parties; (b) shall be governed by, and construed in accordance with, the laws of the State of Indiana; and (c) may be executed in separate counterparts, each of which shall be an original, but all of which together shall constitute a single instrument. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth in the introductory paragraph hereof.

GM DEVELOPMENT COMPANIES LLC

By: _____
Gregory W. Martz, sole Member

TOWN OF MCCORDSVILLE, INDIANA

By: _____

Printed: _____
President, Town Council

MCCORDSVILLE MUNICIPAL FACILITIES
BUILDING CORPORATION

By: _____

Printed: _____

Title: _____

INDEX TO EXHIBITS

Exhibit A	Depiction of Project Site
Exhibit B	Developer Insurance Certificate
Exhibit C	Disbursement Request
Exhibit D	Form Completion Certificate
Exhibit E	Form Limited Warranty Deed

EXHIBIT A Project Site

Description of Project

The Project is the construction of an approximately 18,000 SF building to serve as the Town's police department headquarters, together with associated infrastructure and supporting utilities. The Project is to be located on the platted Lot 4 of the McCord Square Subdivision located in the Town, which is approximately 2.8 Acres. A preliminary floorplan and site plan is attached below.

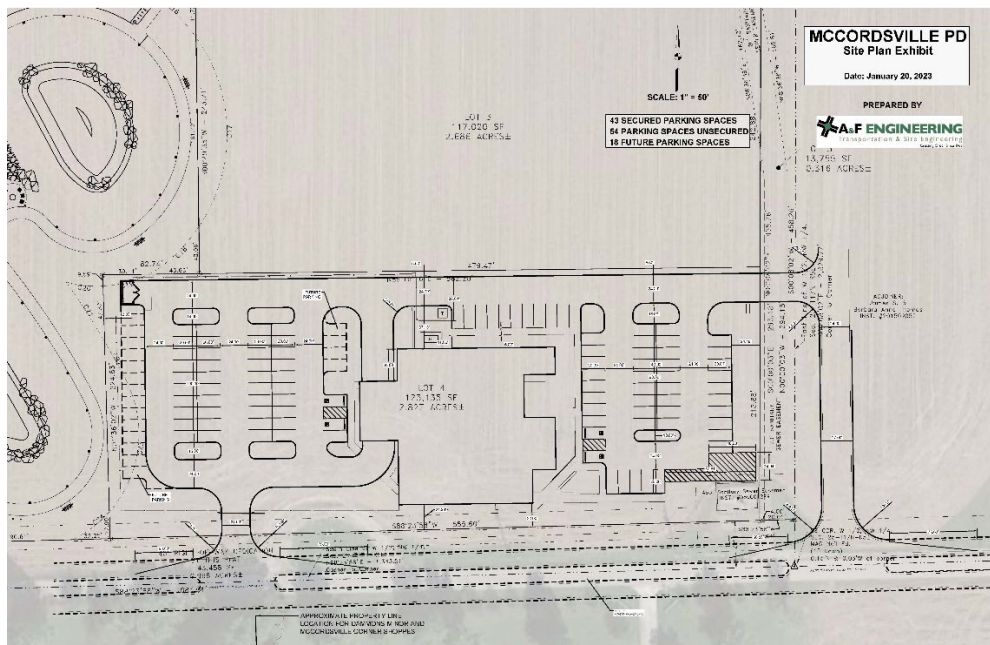


EXHIBIT B
Developer Insurance Certificate

EXHIBIT C
Form of Disbursement Request

Disbursement Request

The undersigned hereby states and certifies that:

- (a) he is the sole Member of GM Development Companies LLC (the "Developer") and, as such, is: (i) familiar with the facts herein certified; and (ii) authorized to make the certifications set forth herein;
- (b) pursuant to Subsection 9(a) of that certain Build-Operate Transfer Agreement (McCordsville Public Safety) executed by and between Developer, the Town of McCordsville, Indiana (the "Town"), and the McCordsville Municipal Facilities Building Corporation (the "Building Corporation") dated _____ (the "BOT Agreement"), the undersigned hereby requests that the Town or the Building Corporation, as applicable, disburse funds to the payees set forth on the attached Schedule 1 the amounts set forth on such Schedule 1 for the purposes set forth on such Schedule 1;
- (c) all of the materials specified in the definition "Disbursement Request" have been provided (or contemporaneously herewith are being provided) to the Town;
- (d) all amounts being paid pursuant to Schedule 1 are Project Costs;
- (e) no Project Costs being paid pursuant to Schedule 1 have previously been paid with a disbursement of funds from the Town or the Building Corporation; and
- (f) he is not aware of any continuing Event of Default by Developer.

All capitalized terms used but not defined in this request shall have the meanings ascribed to such terms in the BOT Agreement.

GM DEVELOPMENT COMPANIES LLC

By: _____
Gregory W. Martz, sole Member

Date:

EXHIBIT D

**Completion Statement
McCordsville Public Safety**

This Completion Statement (McCordsville Public Safety) (the "Certificate") is entered into this ____ day of _____, by and between GM Development Companies LLC (the "Developer"), and the Town of McCordsville, Indiana (the "Town").

Recitals

WHEREAS, Developer, Town, and the McCordsville Municipal Facilities Building Corporation have executed that certain Build-Operate-Transfer Agreement (McCordsville Public Safety) dated _____ (the "Agreement");

WHEREAS, pursuant to the Agreement, Developer is obligated to acquire, construct and/or renovate certain buildings on the real estate more particularly described on Exhibit A;

WHEREAS, the Agreement provides that, subsequent to the Substantial Completion Date (as defined in the Agreement"), Developer and Town shall execute a statement of completion; and

WHEREAS, Developer and Town agree that the Substantial Completion Date has occurred.

Statement

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, each of Developer and Town states and agrees that the Substantial Completion Date occurred on _____.

[Signature Page Follows]

IN WITNESS WHEREOF, Developer and Town have executed this Statement as of the date set forth above.

GM DEVELOPMENT COMPANIES LLC

By: _____
Gregory W. Martz, sole Member

TOWN OF MCCORDSVILLE, INDIANA

By: _____

Printed: _____

Title: _____

EXHIBIT E
Form Limited Warranty Deed

LIMITED WARRANTY DEED

THIS INDENTURE WITNESSETH, That **GM Development Companies LLC**, an Indiana limited liability company (the "Grantor"), CONVEYS to **McCordsville Municipal Facilities Building Corporation** (the "Grantee"), for \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, all of Grantor's right, title, and interest in and to that certain real estate more particularly described on Exhibit A, attached hereto and incorporated by reference (the "Real Estate").

Subject to: (a) the lien of real estate taxes payable in [May][November] 20__, and thereafter; (b) all general and special assessments; and (c) those matters set forth on Exhibit B [Schedule B exceptions on title proforma].

Grantor, as its sole warranty herein, specially warrants to Grantee and its successors and assigns that Grantor will forever defend title to the Real Estate (subject to the matters set forth above to which this conveyance is made subject) against those claims, and only those claims, of all persons who shall claim title to, or assert claims affecting the title to, the Real Estate, or any part thereof, under, by, or through, or based upon the acts of, Grantor, but not otherwise.

The undersigned person executing this deed on behalf of Grantor represents and warrants that he has been duly authorized and fully empowered to execute this deed by all necessary action of Grantor, and has full power and authority to execute and deliver this Limited Warranty Deed.

IN WITNESS WHEREOF, Grantor has executed this Limited Warranty Deed this ____ day of _____, 202__.

GM DEVELOPMENT COMPANIES LLC

By: _____
Gregory W. Martz, sole Member

[Signature Page Follows]

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
TOWN OF _____)

Before me, a Notary Public in and for the State of Indiana, personally appeared Gregory W. Martz, the sole Member of GM Development Companies LLC, who acknowledged the execution of the foregoing Limited Warranty Deed on behalf of such entity.

WITNESS my hand and Notarial Seal this ____ day of _____.

By: _____
Notary Public

Printed Name: _____

I am a resident of _____ Town, Indiana.

My commission expires _____.

Return following recording to Town at 6280 W. 800 N., McCordsville, Indiana 46055, Attn: Town Council President.

This instrument was prepared by Jennifer R. Shoup, Attorney-At-Law, Hall, Render, Killian, Heath & Lyman 500 N. Meridian Street, Suite 400, Indianapolis, Indiana 46204. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Jennifer R. Shoup