

## **ECONOMIC DEVELOPMENT AGREEMENT Yorktown Residential**

This Economic Development Agreement (Yorktown Residential) (the "Agreement") is executed this 3<sup>rd</sup> day of September, 2020, by and between Yorktown Real Equities Inc. (the "Developer"), and the Town of Yorktown Redevelopment Commission ("YRC"). The Town of Yorktown, Indiana (the "Town") is executing this Agreement for the limited purpose specified above its signature but, for purposes of clarity, is not a "party" to this Agreement.

### **Recitals**

WHEREAS, YRC and the Town, which collectively are the "Local Governmental Bodies", desire to facilitate economic development and redevelopment within the Town;

WHEREAS, Developer owns that certain real estate defined more particularly in Section 1 as the "Project Site";

WHEREAS, Developer has approached the Local Governmental Bodies regarding a proposed project it seeks to develop and construct on the Project Site (which project is defined more particularly in Section 1 as the "Project"), in connection with which Developer intends to make a capital investment of approximately \$38,500,000.00;

WHEREAS, it is expected that the development and construction of the Project will result in the creation of approximately: (a) 110 – 140 construction jobs, with an annual payroll of approximately \$9,700,000.00; and (b) 4 permanent, full-time-equivalent jobs, with an annual payroll of approximately \$200,000.00 to \$230,000.000.

WHEREAS, the Local Governmental Bodies, having determined that the development and construction of the Project: (a) are in the best interests of the citizens of the Town; and (b) will be of benefit to the health and general welfare of the Town; have agreed to provide economic development assistance subject to, and in accordance with, the terms and conditions of this Agreement.

### **Agreement**

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Developer and YRC agree to the terms and conditions set forth in this Agreement.

#### **1. Defined Terms**

**Bonds** shall have the meaning ascribed to such term in Subsection 3(b).

**Bond Documents** shall have the meaning ascribed to such term in Subsection 3(d).

**Catch-Up Plan** shall mean a plan pursuant to which Developer will: (a) avoid falling further behind the dates set forth in the applicable Construction Schedule; and (b) complete the construction of the Project in accordance with the Construction Schedule, as modified to reflect the catch-up plan.

**Change Order** shall mean, in the case of a change to the Project Plans, a change order executed: (a) by Developer, in the case of a Permitted Change; or (b) by Developer and YRC, in the case of a change: (i) that is not a Permitted Change; but (ii) has been approved by YRC.

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

**Closing** shall mean the closing with respect to the issuance and sale of the Bonds by the Town and the

purchase of the Bonds by Developer, an affiliated entity, or a financial institution designated by Developer.

**Construction Inspection** shall mean: (a) an inspection of any item or element of the Project during construction thereof; and (b) a final inspection of the Project upon substantial completion thereof.

**Construction Schedule** shall mean that portion of the Project Plans comprised of the approved schedule for construction of the Project.

**Event of Default** shall have the meaning set forth in Subsection 10(a).

**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).

**Fundamental Flaw** shall mean a flaw in the design or construction of the Project that must be addressed to avoid, correct, rectify, or reverse: (a) a material violation of any Law; (b) an actual: (i) inability to obtain a Required Permit; or (ii) attempt by a governmental authority to cancel or revoke a Required Permit; and/or (c) a design or construction issue that materially affects: (i) the structural integrity of the Project; or (ii) the safe construction, maintenance, operation, and/or use of the Project.

**Laws** shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental rules, regulations, guidelines, resolutions, orders, and/or decrees.

**Local Governmental Bodies** shall have the meaning ascribed to such term in the Recitals.

**Net Bond Proceeds** shall mean the amount of the proceeds of the Bonds, less the amount thereof disbursed in connection with the Closing to pay permitted costs of issuance.

**Non-Compliance Notice** shall mean a written notice from YRC identifying a Fundamental Flaw.

**Permitted Change** shall mean any change proposed by Developer to that portion of the Project Plans consisting of the final construction drawings, so long as such change: (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 Developer to complete the Project, or any component thereof, by the applicable date set forth in the Construction Schedule. In addition to the foregoing, any change required by the Laws shall constitute a Permitted Change.

**Project** shall mean a residential development to be constructed on the Project Site, which development will include a mix of market-rate rental single-family homes, townhomes, and multi-unit apartments, together with a senior-living complex, all as generally outlined or depicted on the Site Plan. In the event of any discrepancy between the foregoing definition and the project reflected in the Project Plans, "Project" shall mean the project reflected in the Project Plans.

**Project Costs** shall mean the costs and expenses incurred by Developer to develop, design, acquire the materials to construct, and/or construct the Project.

**Project Increment** shall mean the allocated property tax proceeds that are: (a) generated from ad valorem real property taxes levied or imposed on or against the Project Site and the Project; and (b) attributable to the assessment of the Project Site and the Project above a base assessed value ("increment"), including such taxes attributable to an increased assessed value resulting from the construction of the Project; which allocated property tax proceeds (increment) are to be on deposit in an allocation fund pursuant to Ind. Code §36-7-14-39(b).

**Project Plans** shall have the meaning ascribed to such term in Subsection 6(a).

**Project Site** shall mean that certain approximately 62-acre real estate referenced in the Recitals and located in proximity to Town's downtown, which real estate is depicted generally on the Site Plan.

**Required Permits** shall mean all permits, licenses, approvals, and consents required by the Laws for the construction of the Project, including, without limitation, all of the foregoing required by Town's architectural review board.

**Site Plan** shall mean the site plan attached hereto as Exhibit A.

**2. Project.** Subject to the terms and conditions of this Agreement, Developer shall: (a) purchase (or cause an affiliated entity or a financial institution to purchase) the Bonds; and (b) design and construct the Project. Though the dates set forth in the Construction Schedule will control, the current intent is that Developer will: (a) commence construction of the Project on or before **October 1**, 2020; and (b) complete construction of the Project on or before **December 31**, 2021.

**3. Economic Assistance.** The obligations set forth in this Section are subject to the terms and conditions of this Agreement and the requirements of the Laws (including proceedings required by the Laws to be undertaken by the Governmental Bodies).

(a) Allocation Area. So that the Project Increment may be captured, the Local Governmental Bodies shall establish a discrete allocation area comprised solely of the Project Site.

(b) Bonds. YRC shall exercise commercially reasonable, good faith efforts to cause Town to issue, and Town agrees that it shall issue, pursuant to Ind. Code §36-7-12, the Town of Yorktown, Indiana, Economic Development Revenue Bonds, Series 2020 (Bison Project) in an aggregate principal amount not to exceed \$5,500,000.00, which bonds: (i) shall: (A) bear interest at an annual rate that does not exceed 6.5%; and (B) mature over a period not to exceed 25 years; and (ii) may be issued as tax-exempt obligations at the election of the Town; provided that Town will not elect to issue the bonds as tax-exempt obligations absent: (A) satisfaction of the requirements of all Laws in connection therewith; and (B) an opinion from its bond counsel that is satisfactory to Town in all respects. The foregoing are the "Bonds".

(c) Pledge. YRC shall pledge the Project Increment to the payment of debt service on the Bonds, with the Project Increment being the sole source of funds for the payment of such debt service. Developer, an affiliated entity, or a financial institution designated by Developer shall purchase the Bonds for face value.

(d) Documents. The Bonds will be issued pursuant to a trust indenture executed by and between Town and a trustee selected by Developer and reasonably approved by Town. Net Bond Proceeds will be disbursed to Developer as and when necessary to pay (or reimburse Developer for) Project Costs pursuant to such trust indenture and the terms and conditions of a financing agreement or loan agreement, as applicable, executed by and between Developer and Town. The foregoing instruments, together with such other documents and instruments that are required to be executed (or customarily are executed) in connection with the issuance, sale, and purchase of the Bonds, collectively, are the "Bond Documents".

**4. Closing.**

(a) Closing Obligation. Subject to the terms and conditions of this Agreement, Developer and YRC expect to proceed to the Closing in substantial accordance with the schedule attached hereto as Exhibit B; provided that, if the Closing has not occurred on or before December 31, 2020, then, absent an agreement to extend the foregoing “outside” Closing date, either Developer or YRC may elect to terminate this Agreement by delivery of written notice to the other party. The Closing date shall be established mutually by Developer and YRC, and the Closing may be conducted via electronic means.

(b) Documents. In connection with the Closing, Developer, YRC, and/or Town, as applicable, shall execute and/or deliver: (i) the Bond Documents; (ii) the documents evidencing and/or securing any construction or other loan being obtained by Developer; (iii) copies of such resolutions, consents, authorizations, and other reasonable evidence of authority requested by any party; and (iv) such other customary documents and instruments as any party reasonably may request. YRC may elect to require Developer to execute its documents up to two business days in advance of the scheduled Closing Date, which documents shall be held in escrow pending the Closing.

(c) Expenses. In connection with the Closing, Developer shall: (i) pay all reasonable costs incurred in connection with the issuance of the Bonds; and (ii) reimburse each of YRC and Town for all costs and expenses incurred by it in connection with the transaction contemplated pursuant to this Agreement (including, without limitation, costs to draft, negotiate, and finalize this Agreement and all other documents and instruments executed in connection with the Closing), to the extent that such costs are not paid or reimbursed by Developer as part of the issuance costs; provided that YRC acknowledges that all or any portion of the foregoing costs and expenses may be paid at the Closing out of the proceeds of the Bonds. If the Closing has not occurred as of the date that is 30 days after the “outside” Closing date reflected in Subsection 4(a), then YRC and/or Town may elect to invoice Developer for all costs and expenses incurred to date by YRC and/or Town, respectively, in which case Developer shall pay the amount invoiced within 15 days after receipt of such invoice.

**5. Closing Conditions.** The obligation of each of Developer and YRC to proceed to the Closing is subject to the satisfaction of the conditions set forth in this Section on or before the “outside” Closing date set forth in Section 4.

(a) A discrete allocation area comprised solely of the Project Site has been established.

(b) The Project Plans have been completed, or Developer and YRC are satisfied that the Project Plans will be completed in accordance with a jointly approved schedule.

(c) Each of Developer and YRC, in the exercise of its reasonable judgment, has determined that Developer will have adequate funds (Net Bond Proceeds, proceeds of construction and any other loans, equity investments, and/or cash on hand) to construct the Project.

(d) Each of Developer, YRC, and Town has obtained all recommendations and authorizations, 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 and the Bond Documents, including, without limitation, that: (i) Town has received a resolution of the Yorktown Economic Development Commission adopted pursuant to Ind. Code §36-7-12-24 and recommending the issuance of the Bonds;

(e) YRC has adopted a resolution pursuant to which it has pledged the Project Increment to the payment of debt service on the bonds.

- (f) Town is prepared to issue the Bonds, and Developer, an affiliated entity, or a financial institution designated by Developer is prepared to purchase the Bonds for face value.
- (g) Developer has obtained (or Developer and YRC have determined that Developer will be able to obtain) all Required Permits.
- (h) There is no continuing Event of Default by either party, and all of the representations and warranties of the parties set forth in this Agreement are true and accurate in all respects.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, either Developer or YRC may elect to: (a) waive satisfaction of such conditions and proceed to Closing; or (b) terminate this Agreement by delivery of written notice to the other party; provided that, with respect to Events of Default, the non-defaulting party shall have the rights and remedies set forth in Section 10.

## **6. Plans/Construction.**

- (a) Plans.
  - (i) Within 30 days after the date hereof, Developer shall submit to YRC for its review and approval construction drawings, documents, and schedules for the Project, which may reflect a phased period of construction. Within ten days after receipt of any drawing, document, or schedule, YRC shall deliver to Developer written notice of approval or rejection; provided that, in the case of a rejection, such notice shall: (A) specify the portion that YRC is rejecting; and (B) include the specific basis for such rejection. As soon as reasonably is practicable after receipt of a rejection notice, Developer shall revise and resubmit the rejected drawing, document, or schedule to YRC for its review and approval. 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".
  - (ii) For purposes of clarity: (A) the approval rights granted to YRC pursuant to this Section are in addition to, and not in lieu of, the obligation of Developer to obtain all Required Permits, including, without limitation, those required to be obtained from Town's architectural review board; and (B) Developer shall remain obligated to obtain all Required Permits.
- (b) Changes. Developer, without the prior approval of YRC, may make Permitted Changes; accordingly, Change Orders for Permitted Changes shall be effective if executed by Developer, though Developer shall provide to YRC copies of any such Change Orders. Any proposed change to the Project Plans that is not a Permitted Change shall be subject to the reasonable approval of YRC. YRC shall have a period of ten days after receipt of a written request for approval of a Change Order within which to deliver to Developer written notice of approval or rejection. If YRC approves the proposed change, then the Change Order shall be effective only if executed by Developer and YRC.
- (c) Construction. Prior to commencing construction of the Project, Developer shall obtain the Required Permits. Developer shall construct the Project: (i) in a good and workmanlike manner; (ii) in substantial accordance with the Project Plans (as modified by any Change Orders); and (iii) in compliance with the Required Permits and the Laws.
- (d) No Discrimination. Developer shall not discriminate against any employee, applicant

for employment, contractor, or material supplier because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States Military service veteran status. The foregoing shall apply notwithstanding any Law that may allow, or be interpreted to allow, discrimination on the basis of religious freedom, gender identity, or otherwise.

**7. Construction Inspection.**

(a) Right. During construction of the Project, and following delivery of reasonable advance written notice to Developer, YRC, at its expense, may conduct Construction Inspections; provided that: (i) in conducting a Construction Inspection, YRC shall comply with all health and safety rules that have been established for personnel present on the Project 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); (ii) YRC shall schedule and conduct Construction Inspections in such a manner as to minimize interference with the ongoing construction of the Project; and (iii) Developer shall have the right to accompany, and/or have its construction manager accompany, YRC during any Construction Inspection. No inspection by YRC hereunder shall preclude, or be deemed to be in substitution of, inspections required or permitted to be performed by Town or any other governmental body or authority.

(b) Fundamental Flaws. If, in connection with any Construction Inspection, YRC discovers: (i) a Fundamental Flaw; or (ii) that any exterior item or element of the Project deviates materially and adversely from that reflected in the Project Plans; then, within five business days after such Construction Inspection, YRC may deliver a Non-Compliance Notice to Developer. If YRC does not deliver a timely Non-Compliance Notice, then all items or elements of the Project constructed subsequent to the date of the immediately previous Construction Inspection shall be deemed to have been accepted by YRC (excluding those previously identified in a timely Non-Compliance Notice, the correction of which has not yet been completed). If YRC delivers a timely Non-Compliance Notice to Developer, then Developer shall correct the item or element identified in such Non-Compliance Notice, except to the extent that such item or element previously has been accepted (or has been deemed to have been accepted) by YRC.

**8. Mutual Assistance.** Each of Developer, YRC, and Town shall comply with all Laws in connection with the satisfaction of its obligations under this Agreement. Subject to the foregoing requirement, each of Developer, YRC, and Town agrees to be cooperative, and to act in good faith, in connection with: (a) the implementation of the terms and conditions, and the satisfaction of the intent, of this Agreement; and (b) the satisfaction of the conditions to the obligation to proceed to the Closing (including, without limitation, exercising commercially reasonable, good faith efforts to obtain all recommendations and authorizations, and to adopt all resolutions, required to proceed to the Closing).

**9. Insurance.** During construction of the Project, Developer shall maintain policies of insurance with coverages not less than those reflected in the certificates of insurance attached hereto as Exhibit C. All policies maintained by Developer shall be written by a company reasonably acceptable to YRC, and no such policy shall be modified or canceled without written notice to YRC at least 30 days in advance. The policy of general liability insurance required to be maintained by Developer shall name YRC and Town as additional insureds.

**10. Defaults/Remedies.**

(a) Events of Default. It shall be an "Event of Default" if any party fails to perform or observe any term or condition of this Agreement to be performed or observed by it, if such failure is not cured within 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: (i) commences to remedy the failure within the 30-day period; and (ii) diligently pursues such remedy to completion; which extension shall not exceed six months.

(b) Remedies.

(i) During the continuance of an Event of Default, a non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (A) protect the rights granted to it under this Agreement; (B) 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 (C) cure, for the account of the defaulting party, the underlying circumstance that resulted in the Event of Default.

(ii) If the underlying circumstance of a continuing Event of Default by Developer is that Developer has failed to commence construction within 30 days after the date set forth for construction commencement in the Construction Schedule, then, if Developer has not commenced construction within an additional 30 days, YRC may elect to terminate this Agreement by delivery of written notice to Developer at any time prior to the commencement of construction.

(iii) If a non-defaulting party incurs any costs or expenses (including reasonable attorneys' fees) in connection with exercising its rights and remedies under this Section, then the defaulting party shall reimburse such non-defaulting party for all such costs and expenses, together with interest at the rate of 12% per annum.

(c) Construction Delay.

(i) If, after Developer has commenced construction of the Project, Developer falls 90 or more days behind any material date set forth in the Construction Schedule, then YRC, by delivery of written notice to Developer, may require Developer to submit, within 15 days, a Catch-Up Plan for YRC's approval, which approval shall not be withheld unreasonably. At such time as YRC has approved a Catch-Up Plan, Developer shall implement, and diligently pursue the application of, such Catch-Up Plan.

(ii) If: (A) Developer fails to submit a timely Catch-Up Plan; or (B) YRC rejects a Catch-Up Plan submitted by Developer; then YRC may develop a reasonable Catch-Up Plan and require Developer to implement, and diligently pursue the application of, such Catch-Up Plan. W

(iii) Developer shall be responsible for all costs and expenses to prepare and implement a Catch-Up Plan (including costs and expenses incurred by YRC to develop a reasonable Catch-Up Plan pursuant to this Subsection).

(iv) YRC may elect to instruct the trustee to refrain from disbursing any further Net Bond Proceeds during the period: (A) commencing on the 91<sup>st</sup>

day after the applicable date in the Construction Schedule; and (B) ending on the date on which a Catch-Up Plan has been approved (or developed) by YRC and is being implemented by Developer.

Notwithstanding anything to the contrary set forth in Subsection 10(b), the remedies set forth in this Subsection shall be the sole remedy available to YRC for the delay specified in this Subsection; provided that YRC shall have: (i) the remedy of specific performance to enforce the obligations of Developer under this Subsection; and (ii) the right to recover from Developer all costs and expenses incurred by YRC in connection with exercising its rights and remedies under, or enforcing, the terms and conditions of this Subsection, together with interest at the rate of 12% per annum.

(d) **Non-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. No delay or omission by a non-defaulting party to exercise any right or remedy upon an 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 the non-defaulting party to exercise any of its rights or remedies, it is not necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Section or by the Laws.

(e) **Lender Protections.** Notwithstanding anything to the contrary set forth in this Section, YRC's right to exercise its remedies during the continuance of an Event of Default shall be subject to lender protection provisions requested by Developer's lender and reasonably approved by YRC; provided that, to the extent that lender protection provisions requested by such lender are: (i) consistent with (or less restrictive than) those set forth in this Exhibit D; or (ii) commercially reasonable and customary in commercial loans in the area; YRC shall agree to such provisions.

## **11. Indemnification.**

(a) **Mutual.** Each of Developer and YRC shall indemnify and hold harmless the other from and against any and all Claims arising from, or connected with: (i) its 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 it under this Agreement.

(b) **Individual.**

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

(ii) YRC shall indemnify and hold harmless Developer from and against any and all Claims arising from, or in connection with, Construction Inspections.

(c) **Exception/Survival.** The indemnification obligations of Developer and YRC in this Section: (i) shall not apply to the extent that a Claim arises due to the negligence or willful misconduct of YRC or Developer, respectively; and (ii) shall survive for a period of three years after the first to occur of substantial completion of the Project or the termination of this Agreement

**12. Assignment.** Until the Project is completed, there shall be no assignment of this Agreement by Developer or YRC absent the consent of the other party; provided that: (a) notwithstanding the foregoing: (i) Developer may assign this Agreement to an entity controlling, controlled by, or under common control with Developer; and (ii) YRC may assign this Agreement to another governmental body; in either case without the prior written approval of the other party; and (b) no assignment permitted hereunder shall release the assigning party from its obligations under this Agreement absent a written assumption of such obligations by the assignee. YRC acknowledges that a collateral assignment of this Agreement to a lender shall not constitute a violation of this Section.

**13. Notice.** Any notice required or permitted to be given by either party 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 \_\_\_\_\_  
10410 Trillium Ct., Noblesville, IN 46060, Attn: Arden Johnson \_\_\_\_\_, with a copy to \_\_\_\_\_  
\_\_\_\_\_; and to YRC at 9312 West Smith Street, Yorktown, Indiana 47396, Attn: Pete Olson, Town Manager, with a copy to Jerimi J. Ullom, Esq., Hall, Render, Killian, Heath & Lyman, P.C., 500 North Meridian Street, Suite 400, Indianapolis, Indiana 46204. Either party may change its address for notice by written notice delivered to the other party in accordance with this Section.

**14. Representations.** Each of Developer, YRC, and Town represents and warrants to the others that: (a) it has the power, and has been authorized by proper action, to execute, deliver, and perform its obligations under this Agreement; (b) it has taken all actions necessary to authorize the execution and delivery of this Agreement by the person executing this Agreement on its behalf; (c) this Agreement, once executed, will be its legal, valid, and binding obligation; (d) in the case of Developer, it is an Indiana limited liability company; and (e) in the case of each of YRC and Town, it is a public body organized and existing under the laws of the State of Indiana. Each of Developer, YRC, and Town covenants that it shall not enter into any contracts or agreements, or take any actions, that would limit, conflict with, or constitute a breach of this Agreement.

**15. Force Majeure.**

(a) Force Majeure. Notwithstanding anything to the contrary set forth herein, if any 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: (i) the party asserting Force Majeure shall deliver written notice to the other party; (ii) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (iii) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

(b) COVID-19. Each party agrees that: (i) it shall exercise commercially reasonable, good-faith efforts to take into account the Current CDC Projections in finalizing the Project Plans and determining any dates or time periods applicable hereunder (including that such efforts were undertaken in connection with the preparation of the transaction schedule attached as Exhibit B); and (ii) notwithstanding that the current COVID-19 pandemic falls within the definition of Force Majeure, to the extent that such pandemic “acts” in a manner, or results in effects, materially consistent with (or more favorable than) the applicable Current CDC Projections, no party shall be entitled to the protections of Subsection 15(a) by reason of a Force Majeure claim based upon the COVID-19 pandemic. For purposes of clarity, to the extent that the COVID-19 pandemic “acts” in a manner, or results in effects, materially and adversely inconsistent with the applicable Current CDC Projections, the protections of Subsection 15(a) shall apply.

(c) Definition. For purposes of this Section, “Current CDC Projections” shall mean, at the time when: (i) the transaction schedule attached as Exhibit B was finalized; (ii) the Construction Schedule is finalized; or (iii) a determination is made as to dates by which, or

periods within which, obligations are to be satisfied; the then-current information, forecasts, and projections available to the public from the Centers for Disease Control and Prevention.

**16. Miscellaneous.** Subject to Section 12, this Agreement shall inure to the benefit of, and be binding upon, Developer, YRC, Town, and the respective successors and assigns of each of the foregoing. 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. This Agreement: (a) constitutes the entire agreement between Developer, YRC, and Town with respect to the subject matter hereof; (b) may be modified only by a written agreement signed by each of Developer, YRC, and Town; and (c) 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 Delaware County, Indiana, or the federal courts with venue that includes Delaware County, Indiana. All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

[Signature Page Follows]

IN WITNESS WHEREOF, Developer and YRC have executed this Agreement as of the date set forth in the introductory paragraph of this Agreement.

YORKTOWN REAL EQUITIES INC

By: Arden Johnson  
A4E2D691B11440D...

Printed: Arden Johnson

Title: President

TOWN OF YORKTOWN REDEVELOPMENT COMMISSION

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**Execution for Limited Purposes**

Town is executing this Agreement for the purposes of: (a) consenting to the terms and conditions of this Agreement; (b) agreeing to satisfy its obligations under Section 3 (entitled "Economic Assistance"), Section 4 (entitled "Closing"), and Section 8 (entitled "Mutual Assistance"); (c) making the representations set forth in Section 14 and agreeing to be bound by Section 16 (entitled "Miscellaneous"); and (d) agreeing that, if Town is in default with respect to any of the foregoing obligations such that, were Town a party to this Agreement, such default would constitute an Event of Default, then the terms and conditions of Section 10 may be enforced against Town in connection with such default.

IN WITNESS WHEREOF, Town has executed this Agreement for the limited purposes set forth above.

TOWN OF YORKTOWN, INDIANA

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

## INDEX TO EXHIBITS

Exhibit A	Site Plan
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**EXHIBIT A**  
**Site Plan**

**EXHIBIT B**  
**Transaction Schedule**

**EXHIBIT C**  
**Certificate of Insurance**

## EXHIBIT D Lender Protection Provisions

**1. Definitions.** All capitalized terms used but not defined in this Exhibit shall have the meanings ascribed to such terms in the Agreement.

**Agreement** shall mean the Economic Development Agreement (Yorktown Residential) executed by and among Developer and YRC to which this Exhibit is attached and incorporated by reference.

**Collateral** shall mean the portions of the Project Property, together with the fixtures and other items of personal property in or on such portions of the Project 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.

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

**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.

**Mortgagee Notice** shall mean a copy of any notice or demand required or permitted to be made or delivered to Developer by YRC or Town pursuant to the Agreement, which notice shall: (a) state any failure by Developer 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.

**Mortgagee 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 Developer in the Agreement; (d) enforcing a Mortgage and effecting an assignment of the Agreement to a Replacement Developer; or (e) otherwise acquiring all or any part of the Collateral and/or the interests of Developer in the Agreement.

**Project Property** shall mean, collectively, the Project Site and the Project.

**Replacement Developer** shall mean a qualified party that commits to complete the Project in accordance with the terms and conditions of the Agreement.

**2. Mortgages.** Contemporaneously with the execution of a Mortgage, Developer or the Mortgagee shall deliver written notice of such Mortgage to YRC, 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 YRC has 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, YRC shall deliver a Mortgagee Notice to such Mortgagee contemporaneously with each notice or demand delivered to Developer. No notice or demand delivered by YRC 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.

(a) **Monetary Failure.** If there is a failure with respect to the obligation of Developer 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: (i) the expiration of the applicable notice and/or cure period under the Agreement; or (ii) receipt of the Mortgagee Notice.

(b) **Non-Monetary Failure.** If there is a failure with respect to any obligation of Developer 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 Project Property and exercise the rights of Developer under the Agreement.

(c) **Acceptance.** If the Mortgagee cures a failure of Developer in accordance with the terms and conditions of this Section, then YRC shall accept such cure as a cure by Developer.

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

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

(i) within the first 60 days after receipt of a Mortgagee Notice, the Mortgagee notifies YRC 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;

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

(A) to cure the Curable Default, which cure the Mortgagee diligently pursues to completion; or

(B) 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.

(b) **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 reasonable, 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.

(c) **Mortgagee.** If Developer is in default under a Mortgage beyond any applicable grace or cure period, then the Mortgagee may exercise with respect to the Project 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 YRC exercises its right to terminate the Agreement, as applicable to the Collateral, 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 Developer to acquire the Collateral and become the "Developer" under the Agreement; and (b) if a Replacement Developer is identified within such 60-day period, then the Agreement shall be deemed to be reinstated with the Replacement Developer as the "Developer" thereunder.

**7. Replacement Developer.** If a Replacement Developer acquires the Collateral and becomes the "Developer" under the Agreement, then, for a period of 60 days thereafter, YRC or the Replacement Developer may request the execution of a "replacement" agreement superseding the Agreement, which replacement agreement is on the terms and conditions set forth in the Agreement, revised only as: (a) necessary or appropriate to reflect the identity of the Replacement Developer; and (b) YRC and the Replacement Developer 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 Developer under the Agreement; or (ii) cure any failure by Developer 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 Developer, as applicable, promptly shall: (a) pay (or cause to be paid) to YRC any and all amounts owed by Developer to YRC 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 Developer 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 YRC in connection with any uncured Events of Default that existed before, or on, the date on which the Mortgagee or the Replacement Developer, as applicable, acquired the Collateral.

**9. Amendments.**

(a) Consent. During all such times as there is a Mortgage outstanding, no amendment, modification, supplement, surrender, cancellation, or termination of the Agreement 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 this Agreement 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 Agreement in violation of this Section shall be void and unenforceable, and shall have no force or effect.

(b) Requested Modifications. If a prospective mortgagee requires reasonable amendments, modifications, or supplements of or to the Agreement as a condition to making a loan to Developer, then YRC shall execute an agreement amending, modifying, or supplementing the Agreement 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 YRC, or the rights of YRC under the Agreement; and (ii) the obligations of Developer under the Agreement will not be reduced in any material respect.