

**ECONOMIC DEVELOPMENT PROJECT AGREEMENT**  
**Yorktown Rebar Project**

This Economic Development Project Agreement (Yorktown Rebar Project) (the "Agreement") is executed this \_\_\_ day of September, 2020 (the "Effective Date"), by and between The Town of Yorktown Redevelopment Commission ("YRC"), and Rebar Yorktown, LLC, and Rebar Yorktown, Inc. (jointly and severally, the Company"). The Town of Yorktown, Indiana (the "Town") is executing this Agreement for the limited purposes specified above its signature but, for purposes of clarity, is not a "party" to this Agreement.

**Recitals**

WHEREAS, YRC currently owns (or soon will own) that certain real estate defined more particularly in Section 1 as the "Project Site";

WHEREAS, YRC has determined that the development and construction of a mixed-use project on the Project Site: (a) will be of benefit to the health and general welfare of Town and Delaware County, Indiana; and, accordingly (b) are in the best interests of the citizens of Town and the County; however, YRC does not have funds sufficient to induce a developer to develop and construct a desirable project on the Project Site;

WHEREAS, the Board of Commissioners of Delaware County has made the same determination as YRC with respect to such a project being a benefit to, and in the best interests of the citizens of, Town and the County;

WHEREAS, because: (a) the County's Nebo Road Economic Development Area is contiguous to Town's 2020 Consolidated Economic Development Area; and (b) the increment generated in the County's Nebo Road Economic Development Area exceeds the amount that the County will need for the foreseeable future; the County is in a position to provide the financial aid that YRC needs; accordingly, to facilitate the development and construction of a desirable project on the Project Site, Town and the County have taken the actions necessary under Ind. Code §36-7-25 to allow the joint undertaking of a project on the Project Site;

WHEREAS, Company submitted a proposal for the development and construction of the Project, in connection with which Company intends to make a capital investment of approximately \$6,000,000.00;

WHEREAS, the development and construction of the Project is expected to result in the creation of approximately 24 permanent, full-time-equivalent jobs and 20 permanent part-time jobs, the aggregate annual payroll with respect to which is expected to be approximately \$1,264,000.00;

WHEREAS, YRC, Town, the County, and the County RDC are in agreement that the Project is of a nature that will be of benefit to the health and general welfare of Town and the County, and that it would be in the best interests of the citizens of Town and the County for Company to construct the Project on the Project Site;

WHEREAS, accordingly, YRC, Town, the County, and the County RDC have executed that certain agreement defined in Section 1 as the "Interlocal Agreement" pursuant to which the County and the County RDC have agreed to pledge the County Increment Contribution to YRC to facilitate the development and construction of the Project;

WHEREAS, YRC shall pledge the Pledged Increment to the payment of Bond Debt Service in accordance with the terms and conditions of this Agreement; and

WHEREAS, YRC and Company are executing this Agreement to formalize their agreement with respect to the development and construction of the Project.

## Agreement

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

### 1. Defined Terms.

**Appreciation Allocation Agreement** shall mean an agreement that, at a minimum, includes the terms and conditions set forth on Exhibit H; provided that, if and to the extent that the executed Appreciation Allocation Agreement is inconsistent with the terms and conditions, then the executed Appreciation Allocation Agreement shall control.

**Available Bond Proceeds** shall mean, at any given time, the amount of the proceeds of the Bonds that are available for disbursement to pay (or reimburse Company for) Project Costs. The initial amount of the Available Bond Proceeds: (a) will be equal to the total proceeds of the Bonds, less the amount thereof: (i) deposited into the Inspection Reserve Account at the Closing; and (ii) disbursed in connection with the Closing to pay reasonable, documented, and permitted costs of issuance (including, without limitation, those specified in Subsection 4(b)(i)); and (b) deposited into the Construction Account shall be not less than \$1,950,000.00.

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

**Bond Debt Service** shall mean the regular (non-default) payments of principal and/or interest due and payable pursuant to the Bond Documents.

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

**Catch-Up Plan** shall mean a plan pursuant to which Company will: (a) avoid falling further behind the dates set forth in the then-current Construction Schedule; and (b) complete the construction of the Project in accordance with the Construction Schedule, as updated, revised, and/or amended to reflect such plan.

**Change Order** shall mean a change order executed by YRC and Company finalizing the inclusion into the Project Plans of a change proposed in a request submitted by Company and approved by YRC; provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Company.

**Claims** shall mean all claims, damages, injuries, losses, costs, and expenses (including, without limitation, attorneys' fees), including, without limitation, those arising due to breach of contract, bodily injury or death, or damage to property.

**Closing** shall mean: (a) the issuance and sale of the Bonds; (b) the closing of the Construction Loan; and (c) the conveyance of the Project Site to Company.

**Closing Appraisal** shall mean an "as-stabilized" appraisal of the Property conducted by the Construction Lender's independent certified third-party appraiser in connection with the closing of the Construction Loan, which appraisal is satisfactory to, and has been accepted by, the Construction Lender.

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

**Conceptual/Site Plan** shall mean the conceptual and site plans attached hereto as Exhibit A.

**Construction Account** shall mean the construction account established under the Trust Indenture, into which the Available Bond Proceeds (which, as reflected in the definition thereof, shall not be less than \$1,950,000.00) shall be deposited at the Closing to pay Project Costs.

**Construction Lender** shall mean the bank, institution, corporation, or other entity making the Construction Loan.

**Construction Loan** shall mean a construction loan, the proceeds of which shall be used by Company to acquire the materials to construct, and to construct, the Project, which construction loan will automatically convert to permanent financing without further action (including, without an appraisal) of Lender or Developer.

**Construction Loan Documents** shall mean the documents evidencing and/or securing the Construction Loan.

**Construction Schedule** shall mean the portion of the Project Plans comprised of the construction schedule, which schedule in all cases shall reflect progress and completion that is consistent with the real estate assessment dates used in determining the Projected Property Increment.

**Conveyance Documents** shall mean, with respect to the Project Site: (a) a limited warranty deed, subject only to those exceptions to title reflected in the Title Commitment: (i) that Company does not identify as Title Defects in a written notice (which may be informal and via email) delivered to YRC and the Title Insurer (and, if applicable, the surveyor) within 15 days after receipt of the last of the Title Commitment or the Survey (or any subsequent updates thereto); or (ii) to which Company agrees in writing (which may be informal and via email) to accept; (b) a non-foreign affidavit; (c) a vendor's affidavit; (d) a sales disclosure form; (e) a closing statement; and (f) any other documents or instruments that a party or the Title Insurer reasonably may request.

**County** shall mean, as applicable, Delaware County, Indiana, or the Board of Commissioners of Delaware County.

**County Increment** shall mean the allocated property tax proceeds that are: (a) generated from ad valorem real property taxes levied or imposed by the applicable taxing authorities on, against, for, or with respect to real property within the area commonly known as the Nebo Road Economic development Area; and (b) attributable to the assessment of such real property 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).

**County Increment Contribution** shall mean an annual contribution of County Increment in the amount of \$300,000.00.

**County RDC** shall mean the Delaware County Redevelopment Commission.

**Disbursement Approval Agreement** shall mean an agreement by and among YRC, Company, and the Construction Lender pursuant to which: (a) all supporting materials required to be submitted in connection with a request for a disbursement of Available Bond Proceeds are identified; and (b) Company is obligated to provide each Disbursement Request (which by definition includes the foregoing required supporting materials) to YRC and Construction Lender for its review and approval; which agreement shall include, at a minimum, the terms and conditions set forth on Exhibit E; provided that, if and to the extent that the executed Disbursement Approval Agreement is inconsistent with the terms and conditions set forth on Exhibit E, then the executed Disbursement Approval Agreement shall control.

**Disbursement Request** shall mean a written request by Company for a disbursement of Available Bond Proceeds, which request shall: (a) specify the total amount of Available Bond Proceeds being requested; (b) include all supporting materials required pursuant to the Disbursement Approval Agreement.

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

**E-Verify Program** shall mean: (a) the program currently operated by the U.S. Department of Homeland Security that electronically confirms an individual's eligibility to work in the United States, authority for which is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, 110 Stat. 3009 (8 U.S.C. §1324a), as amended; or (b) any successor work authorization program designated by the U.S. Department of Homeland Security or such other federal agency as may be authorized to verify the work authorization status of newly-hired employees. The E-Verify Program is the "E-Verify Program" defined in Ind. Code. §22-5-1.7-3.

**Final Inspection** shall mean an inspection of the Project following the Substantial Completion Date.

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

**Guarantor** shall mean Rebar Companies, LLC.

**Income Allocation Agreement** shall mean an agreement, the term of which commences upon the Substantial Completion Date and ends on the date that is 13 years thereafter, executed by and between YRC pursuant to which: (a) if, for any given calendar year during the term thereof, the actual net operating income exceeds the Net Income Projections by a factor of 1.15, then Company shall be obligated to remit to YRC a pro-rata share of such excess, based upon ratio of the total value of the economic incentives provided to Company pursuant to this Agreement to the total Project Costs; (b) Company is obligated to keep true and accurate books and records of its operating income and expenses; and (c) Company is obligated to provide regular reports to YRC detailing its operating income and expenses.

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

**Inspection** shall mean a monthly inspection pursuant to Subsection 12(a), an inspection of a Sample Work Installation pursuant to Subsection 12(b), an inspection permitted pursuant to Subsection 12(c), and/or the Final Inspection, as applicable.

**Inspection Reserve Account** shall mean an account into which shall be deposited, at the Closing, proceeds of the Bonds in an amount reasonably determined by YRC to be necessary or appropriate to pay

the costs that will be incurred by it in connection with any Inspections made by it in accordance with Section 12.

**Interlocal Agreement** shall mean that certain Interlocal Agreement executed by and among YRC, Town, the County, and the County RDC and dated [REDACTED], 2020.

**Laws** shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines; and (c) judicial orders, consents, and/or decrees.

**Multi-Party Agreement** shall mean an agreement by and among YRC, Company, and the Construction Lender pursuant to which the Construction Lender: (a) agrees to give to YRC: (i) notices of defaults by Company under the Construction Loan Documents; (ii) the right (but not obligation) to cure defaults by Company under the Construction Loan Documents; and (iii) the right to purchase the Construction Loan if there is: (A) an Event of Default by Company; and/or (B) a default by Company under the Construction Loan Documents, which default continues beyond applicable cure periods; and (b) recognizes and agrees to the rights of YRC under Sections 16-18. The Multi-Party Agreement shall provide that the provisions of the Construction Loan Documents with respect to the use of the proceeds of casualty insurance shall not be amended without the prior consent of YRC.

**Net Income Projections** shall mean projections of the annual net operating income to be generated by the Property following completion of the Project, which projections are set forth in the pro-forma attached hereto as Exhibit G; provided that if, prior to the Closing, the parties agree to changes to the pro-forma, then, at the Closing, the parties shall execute an amendment to this Agreement pursuant to which a replacement Exhibit G reflecting the final pro-forma is attached (which replacement Exhibit G shall supersede the originally attached Exhibit G).

**Non-Compliance Notice** shall mean a written notice identifying Fundamental Flaws discovered during the course of an Inspection.

**Outside Closing Date** shall mean December 15, 2020, as reflected in Subsection 4(a).

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

**Planning Schedule** shall mean the schedule attached hereto as Exhibit B in accordance with which: (a) Company shall prepare and provide to YRC for its approval schematic, design, and construction drawings, documents, and schedules for the Project; and (b) the parties intend to proceed to the Closing; as such schedule may be modified by the agreement of the parties.

**Pledged Increment** shall mean, collectively: (a) the Property Increment; and (b) the County Increment Contribution, capped, for any given calendar year, at the amount equal to the positive difference (if any) between the Bond Debt Service due and payable minus the amount of the Property Increment.

**Project** shall mean: (a) a three-story, mixed-use building to be known as "The Oliver Building", which building is anticipated to house: (i) 26 market rate loft apartments; (ii) "Class-A" residential amenities, including a lounge area with a kitchen, a fitness room, a pet wash, and bike storage; (iii) approximately 3,270 square feet of commercial space, intended to be operated as a restaurant with outdoor seating; (iv) three 800-square-foot commercial or "live/work" studios; and (v) 1,650 square feet of private and/or co-working office suites and conference rooms; and (b) 44 parking spaces; together with

attendant public improvements, to be constructed on the Project Site, all as generally outlined or depicted on the Conceptual/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 in connection with the development, design, and construction of the Project (including, without limitation, costs of inspection, all fees other than the Town Fees, and all other costs and expenses incurred to obtain the Required Permits), in accordance with the terms and conditions of this Agreement.

**Project Note** shall mean a bond or note issued by Town to the Project Note Purchaser in a principal amount equal to \$390,000.00; which bond or note: (a) shall not bear any interest; (b) shall mature over a period of 13 years; (c) shall require semi-annual payments of debt service beginning on the first payment due date occurring after the Substantial Completion Date; (d) shall be subordinate to the Bonds; and (e) shall reflect that Town is obligated to pay debt service thereunder solely from amounts paid by YRC and/or Company pursuant to the Project Note Transaction Agreement. Pursuant to the terms of the Project Note Transaction Agreement, Town shall make available to Company (through a loan or otherwise) the net proceeds of the sale of the Project Note.

**Project Note Purchaser** shall mean Company or an entity affiliated with Company and reasonably acceptable to YRC.

**Project Note Transaction Agreement** shall mean an agreement pursuant to which: (a) Town shall issue the Project Note, as permitted pursuant to Ind. Code §36-7-12; (b) YRC shall agree to pay the debt service on the Project Note; (c) the Project Note Purchaser shall purchase the Project Note; (d) Town shall loan to Company (or otherwise make available to Company) the net proceeds of the sale of the Project Note (after paying costs of issuance relating to the Project Note) on the same terms as the Project Note; and (e) Company shall receive a credit against debt service owed by it to Town pursuant to the Project Note Transaction Agreement in an amount equal to the debt service on the Project Note paid by YRC to the Project Note Purchaser. The Project Note Transaction Agreement will provide that, until the purchase price for the Project Note has been paid in full and the net proceeds of the sale of the Project Note have been disbursed in full to Company: (a) Company may make requests to Town for disbursements of the net proceeds from the sale of the Project Note during construction of the Project; and (b) upon receipt of such a request, Town shall require the Project Note Purchaser to pay a corresponding portion of the purchase price for the Project Note. For purposes of administering the payment and disbursement provisions of the Project Note Transaction Agreement, YRC may elect to require that a financial institution serve as custodial agent and/or paying agent, as applicable. If the Project Note is in the form of a bond (as opposed to a note), then the "Project Note Transaction Agreement" shall mean the documents evidencing such bond, which documents shall be consistent with the terms set forth above.

**Project Plans** shall have the meaning ascribed to such term in Subsection 10(a).

**Project Site** shall mean that certain real estate in the downtown area of the Town of Yorktown, Indiana, that is delineated as the "Project Site" on the Conceptual/Site Plan.

**Projected Property Increment** shall mean the projected annual amounts of the Property Increment, as set forth on Exhibit I; provided that if, prior to the Closing, the parties agree to changes to the projected annual amounts of the Property Increment, then, at the Closing, the parties shall execute an amendment to this Agreement pursuant to which a replacement Exhibit I reflecting the final projected annual amounts of the Property Increment (which replacement Exhibit I shall supersede the originally attached Exhibit I).

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

**Property 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 Property; and (b) attributable to the

assessment of the Property 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 IC §36-7-14-39(b).

**Purchase Price** shall mean \$125,000.00, which is the price for which YRC shall sell to Company, and Company shall purchase, the Project Site.

**Real Estate Taxes** shall mean all real estate taxes and assessments of any nature levied on, against, or with respect to the Property.

**Redevelopment Tax Credit** shall mean that certain assignable income tax credit established pursuant to Ind. Code §6-3.1-34 to incentivize taxpayers to make qualified investments in the redevelopment or rehabilitation of qualified redevelopment sites.

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

**SBT Back-Up** shall mean, generally (and if applicable), a covenant by YRC and/or Town, as applicable, to levy a “Special Benefits Tax” if and to the extent that the Pledged Increment, together with any payments made by Company pursuant to the Taxpayer Agreement (or by the Guarantor under the Taxpayer Agreement Guaranty), is insufficient to: (a) pay the Bond Debt Service; and (b) replenish any debt service reserve to the level required by the Bond Documents.

**Sample Work Installation** shall mean a representative sample or typical example of a certain specified portion of the Project that, pursuant to the Project Plans, will be replicated.

**Seller Financing Note** shall mean a promissory note, the maximum principal amount of which shall be an amount equal to the Purchase Price, together with such other documents or instruments that YRC deems to be necessary or appropriate in connection with financing the acquisition by Company of the Project Site. The Seller Financing Note shall provide that the full principal balance thereof is due and payable at the closing in which Company sells and assigns the Redevelopment Tax Credit; provided that, if such sale and assignment has not occurred as of the date that is 45 days after the Substantial Completion Date, then the outstanding principal balance shall be payable by Company in accordance with a schedule adopted by YRC and Company prior to the Closing.

**Site Inspections** shall mean tests, inspections, examinations, studies, assessments, and investigations of the Project Site.

**Substantial Completion Date** shall mean the date on which Company delivers to YRC a copy of an architect’s certificate of substantial completion indicating that the Project has been completed substantially in accordance with the Project Plans, subject to “punch-list” items to be identified in connection with the Final Inspection, which “punch-list” items do not materially affect the use of the Project for its intended use.

**Survey** shall mean an ALTA/NSPS land title survey of the Project Site.

**Taxpayer Agreement** shall mean an agreement pursuant to which Company, as the owner of the Property, agrees to make payments in addition to real estate taxes, which payments shall be in an amount determined jointly by YRC and Company as a condition to the obligation of either party to proceed to the Closing. At a minimum, the Taxpayer Agreement shall contain the terms and conditions set forth on Exhibit D.

**Taxpayer Agreement Guaranty** shall mean a guaranty pursuant to which the Guarantor guarantees payment and performance by Company, as the owner of the Property, under the Taxpayer Agreement, which guaranty shall require the Guarantor to provide such financial information as YRC reasonably may

request. The Taxpayer Agreement Guaranty shall be coterminous with the Taxpayer Agreement (the term of which is specified on Exhibit D).

**Title Commitment** shall mean a commitment for an owner's policy of title insurance with respect to the Project Site that: (a) is issued by the Title Insurer; and (b) commits to insure marketable, indefeasible fee simple title to the Project Site in the name of Company.

**Title Defects** shall mean conditions or defects disclosed in the Title Commitment or by the Survey that, in the reasonable determination of Company: (a) materially and adversely will interfere with the construction and/or use of the Project; or (b) will render construction of the Project unusually difficult or costly. For purposes of clarity, Title Defects shall include any environmental condition with respect to the Project Site that falls into one or both of the foregoing categories.

**Title Insurer** shall mean a title insurance company selected by Company and reasonably approved by YRC.

**Town Fees** shall mean all local fees assessed by Town in connection with Company's development and construction of the Project on the Project Site, including but not limited to, impact fees, improvement location fees, building permit fees, sign permit fees, sewer and stormwater fees (such as capacity, connection, impact, and tap fees associated with initial construction, but not including post-occupancy monthly user fees, variance requests, and inspection fees). For purposes of clarity, Town Fees shall not include any fees that are assessed by the County, the County RDC, or the State of Indiana.

**Trust Indenture** shall mean a trust indenture executed by and between Town and a trustee selected by Town and reasonably approved by Company.

**Unauthorized Alien** shall have the meaning set forth in 8 U.S.C. §1324a(h)(3).

**2. Project/Site.** The obligations set forth in this Section are subject to the terms and conditions of this Agreement and to satisfaction of the requirements of all Laws (including, without limitation, the conducting of all proceedings required by the Laws).

(a) **Project Site.** YRC shall sell the Project Site to Company, and Company shall purchase the Project Site from YRC, for the Purchase Price. Company intends to apply the proceeds of its sale and assignment of the Redevelopment Tax Credit to the payment of the Purchase Price; provided that, if such sale and assignment does not occur prior to or contemporaneously with the Closing, then YRC shall "finance" the acquisition by Company of the Project Site, in connection with which Company shall execute the Seller Financing Note at the Closing.

(b) **Project.** Company shall design and construct the Project on the Project Site. Though the dates set forth in the Construction Schedule will control, the current intent is that Company will: (i) commence construction of the Project on or before the Outside Closing Date; and (ii) complete construction of the Project on or before December 31, 2021.

(c) **Site Information.** Company acknowledges that YRC has provided to Company copies of all existing title policies, surveys, and inspection results and reports of any nature with respect to the Project Site, to the extent that the foregoing are in the possession of YRC. YRC agrees that Company and its agents, employees, and contractors may enter upon the Project Site at reasonable times, and upon reasonable advance notice, to conduct Site Inspections; provided that Company shall cause to be repaired promptly any damage to the Project Site resulting from the Site Inspections so that the Project Site is restored to substantially the same condition as existed prior to the Site Inspections.



**3. Economic Incentives.** The obligations set forth in this Section are subject to the terms and conditions of this Agreement and to satisfaction of the requirements of all Laws (including, without limitation, the conducting of all proceedings required by the Laws).

(a) Allocation Area. So that the Property Increment may be captured, YRC and/or Town 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, one or more series of economic development revenue bonds in an aggregate principal amount that shall not exceed \$2,300,000, which bonds: (i) shall: (A) bear interest at an annual rate that does not exceed 6%; and (B) mature over a period of 25 years; and (ii) at the election of Town, may be issued as tax-exempt obligations; 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) Project Note. YRC, Company, Town, and the Project Note Purchaser shall execute the Project Note Transaction Agreement at the Closing; provided that, if the initial Available Bond Proceeds are at least \$2,340,000.00, then YRC and Town shall not be obligated to execute the Project Note Transaction Agreement.

(d) County Increment. Pursuant to the Interlocal Agreement, the County has committed to pledge the County Increment Contribution to YRC. If the County or the County RDC has not taken such actions as are necessary to effect such pledge (including, without limitation, adopting a resolution that includes such pledge), then YRC shall exercise commercially reasonable, good faith efforts to cause the County or the County RDC, as applicable, to take all such actions.

(e) Increment Pledge. YRC shall pledge the Pledged Increment to the payment of Bond Debt Service. Company acknowledges and agrees that: (i) any Property Increment in excess of the Projected Property Increment; and (ii) any amount of the County Increment Contribution remaining after application of the Pledged Increment to the payment of Bond Debt Service; shall belong solely to YRC, for use as YRC deems to be appropriate.

(f) SBT Back-up. YRC and Town may elect (but are not obligated) to establish the SBT Back-Up; provided that this Agreement does not obligate YRC and Town to make such election.

(g) Town Fees. Town shall waive all Town Fees. Notwithstanding the foregoing, absent a specific written agreement by Town to the contrary, Town shall not be obligated to waive Town Fees on any development on the Project Site (or any other site) other than the Project.

(h) Documents. The Bonds will be issued pursuant to: (i) the Trust Indenture; (ii) a financing agreement or loan agreement, as applicable, executed by and between Company and Town; and (iii) 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, the "Bond Documents"). At the election of YRC, the Bond Documents shall require the establishment and funding (out of proceeds of the Bonds) of a debt service reserve, the minimum amount of which on deposit therein shall equal the aggregate amount of Bond Debt Service for one year.

(i) Company Contribution. Company acknowledges and agrees that: (i) the economic

incentives set forth in this Section are being provided to fill a financing “gap”; (ii) Company would not be able to develop, design, and construct the Project but for the provision of such economic incentives; (iii) YRC and Town agreed to provide the economic incentives in part because Company intends to retain (or for an affiliated entity to accept and retain) ownership of the completed Project; (iv) the economic incentives are not intended to result in receipt by Company of a “windfall”; and (v) the Net Income Projections reflect sufficient net income to allow Company to realize a reasonable and satisfactory return on its investment. Accordingly, in connection with the Closing, Company shall execute each of the Income Allocation Agreement and the Appreciation Allocation Agreement.

(j) Complete Agreement. Absent a written agreement executed by YRC or Town, as applicable, in no event shall YRC or Town be obligated to perform any work, incur any expenses, or provide any incentives (whether with respect to the Property or any site or improvements adjacent to, or in the vicinity of, the Property) other than as specifically set forth in this Agreement. For purposes of clarity, no agreements made orally or via email (nor any oral or email discussions that contemplate agreements) shall be binding upon YRC or Town.

#### **4. Closing.**

(a) Closing Obligation. Subject to the terms and conditions of this Agreement, YRC and Company expect to proceed to the Closing in substantial accordance with the Planning Schedule; provided that, if the Closing does not occur on or before the “Outside Closing Date” of December 15, 2020, then, absent an agreement to extend the Outside Closing Date, either YRC or Company may elect to terminate this Agreement by delivery of written notice to the other party. The Closing date shall be established mutually by YRC and Company, and the Closing may be conducted via electronic means.

(b) Expenses.

(i) In connection with the Closing, proceeds of the Bonds shall be used to: (A) pay all reasonable costs and expenses incurred in connection with Site Inspections and the acquisition of the Project Site; (B) pay all reasonable costs incurred in connection with the issuance of the Bonds; (C) fund the Inspection Reserve Account; and (D) 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).

(ii) Each of YRC and Company (and Town, for the specified limited purposes) is entering into this Agreement, and incurring significant expense, under the good-faith assumption that the other party will proceed to the Closing prior to the Outside Closing Date (as the same may be extended by the agreement of the parties). Accordingly, if this Agreement is terminated in accordance with its terms prior to the Closing:

(A) due to a continuing Event of Default by a party, then the defaulting party shall reimburse the non-defaulting party for all of the non-defaulting party’s Incurred Costs;

(B) due to the failure of any of the conditions to Closing set forth in Subsection 6(b) if the Project Plans substantially deviate from the Conceptual/Site Plan (relating to Required Permits), Subsection 6(f) (relating to resolutions and consents), Subsection 6(i) (relating to adequate funds), Subsection 6(j) (relating to closing the Construction Loan), Subsection 7(a) (relating to execution by the Guarantor), and/or Subsection 7(c) (relating to the E-Verify Program), then Company shall reimburse YRC for all of YRC's Incurred Costs; or

(C) due to the failure of any of the conditions to Closing set forth in Subsection 6(d) (relating to County/County RDC authorizations), Subsection 6(e) (relating to YRC/Town authorization), Subsection 6(h) (relating to bond issuance), Subsection 6(m) (relating to Interlocal Agreement), and/or Subsection 7(b) (if SBT is elected), then YRC shall reimburse Company for all of Company's Incurred Costs.

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

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

(c) Real Estate Taxes. It is unlikely that Real Estate Taxes will be payable prior to the May installment that becomes due and payable in the calendar year immediately following that in which, on January 1, Company is the record owner of the Project Site. However, if Real Estate Taxes first become payable prior to such time, then: (i) YRC shall pay all such Real Estate Taxes first payable prior to or during the calendar year in which the Closing occurs; and (ii) the Real Estate Taxes assessed in the calendar year in which the Closing occurs shall be prorated between YRC and Company in the manner customary for real estate transactions in the area. Company shall be responsible for all Real Estate Taxes first levied against the Property after Company becomes the owner thereof. Any Real Estate Taxes that are the responsibility of YRC but are not yet due and payable at the time of the Closing shall be a credit against the Purchase Price at the Closing, the result of which shall be that YRC no longer has any obligations in connection with the payment of such Real Estate Taxes.

**5. Closing Documents.** In connection with the Closing, YRC, Company, and/or Town as applicable, shall execute and/or deliver (or cause to be executed and/or delivered) the following:

- (a) the Conveyance Documents and, if applicable, Seller Financing Note;
- (b) the Bond Documents;
- (c) if applicable, the Project Note, the Project Note Transaction Agreement, and any documents required to be executed pursuant to the Project Note Transaction Agreement (including, in the case of Company, a promissory note);

- (d) the Construction Loan Documents;
- (e) the Disbursement Approval Agreement;
- (f) the Completion Guaranty and the Taxpayer Agreement Guaranty;
- (g) the Taxpayer Agreement;
- (h) the Income Allocation Agreement;
- (i) the Appreciation Allocation Agreement;
- (j) if applicable, an amendment to this Agreement attaching a replacement Exhibit G and/or Exhibit I superseding the currently attached Exhibit G and/or Exhibit I;
- (k) the Multi-Party Agreement;
- (l) the Closing Appraisal;
- (m) an affidavit affirming that Company: (i) is enrolled in the E-Verify Program; (ii) is participating in the E-Verify Program; and (iii) does not knowingly employ, or contract with, any Unauthorized Aliens; and
- (n) copies of such resolutions, consents, authorizations, and other evidence as either party or the Title Insurer reasonably may request in connection with the Closing.

YRC may elect to require Company to execute and deliver its documents up to two business days in advance of the scheduled Closing date, which documents shall be held in escrow by YRC's counsel pending the Closing.

**6. Conditions-Mutual.** Except to the extent waived by proceeding to the Closing, the obligation of each of YRC and Company to proceed to the Closing is subject to the satisfaction, on or before the Outside Closing Date, of the conditions set forth in this Subsection.

- (a) The Project Plans have been completed, or YRC and Company are satisfied that the Project Plans will be completed in substantial accordance with the Planning Schedule.
- (b) Company has obtained (or each of YRC and Company has determined that Company will be able to obtain) all Required Permits, to the extent available by their terms prior to commencement of construction.
- (c) The Projected Property Increment has been determined and is acceptable to YRC and Company, each acting in good faith.
- (d) Each of the County RDC and the County has obtained all authorizations, and adopted all resolutions or ordinances, required to be obtained and/or adopted in connection with the execution of, and the performance of its obligations under, the Interlocal Agreement, including that the County RDC has adopted a resolution pursuant to which it has pledged the County Increment Contribution to YRC;
- (e) Each of YRC and Town has obtained all recommendations and authorizations, and adopted all resolutions or ordinances, required to be obtained and/or adopted in connection with the execution of, and the performance of its obligations under, this Agreement, the

Interlocal 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; (ii) the County RDC has adopted a resolution pursuant to which it has pledged the County Increment Contribution to YRC; and (iii) YRC has adopted a resolution pursuant to which it has pledged the Pledged Increment to the payment of Bond Debt Service.

(f) Company has obtained all consents and approvals, and adopted all resolutions, required to be obtained and/or adopted in connection with the execution of, and the performance of its obligations under, this Agreement and the Construction Loan Documents.

(g) If the parties have elected to execute the Project Note Transaction Agreement, then: (i) YRC and Company have agreed to the form and substance of the Project Note; and (ii) Each of YRC, Company, and a purchaser reasonably acceptable to YRC have agreed to the form and substance of: (A) the Project Note Transaction Agreement; and (B) any documents required to be executed by it pursuant to the Project Note Transaction Agreement (including, in the case of Company, a promissory note).

(h) Town is prepared to issue the Bonds (including, without limitation, that, if YRC and Town have elected to establish the SBT Back-Up, then all necessary action with respect thereto either has been taken, or will be taken in connection with the Closing), and each of YRC and Company, in the exercise of its reasonable discretion, has determined that: (i) the face value of the Bonds is sufficient to generate initial Available Bond Proceeds in an amount not less than \$1,950,000.00; (ii) the Bonds will be purchased for face value at the Closing; and (iii) upon the issuance and purchase of the Bonds, the Available Bond Proceeds will be deposited into the Construction Account.

(i) Each of YRC and Company, in the exercise of its reasonable judgment, has determined that Company will have adequate funds (Available Bond Proceeds, proceeds of the Construction Loan, equity investments, and/or cash on hand) to construct the Project.

(j) YRC, Company, and the Construction Lender have agreed on the form and substance of the Multi-Party Agreement and the Disbursement Approval Agreement, and Company and the Construction Lender are prepared to close the Construction Loan.

(k) YRC and Company have agreed on the form and substance of the Conveyance Documents, the Taxpayer Agreement, and, if applicable, the Seller Financing Note. The foregoing shall include, in the case of the Seller Financing Note, that YRC and Company have agreed on a schedule pursuant to which, if the sale and assignment of the Redevelopment Tax Credit has not occurred as of the date that is 45 days after the Substantial Completion Date, Company shall repay the outstanding principal balance thereof.

(l) YRC and Company have agreed on the final Net Income Projections and the form and substance of each of the Income Allocation Agreement and the Appreciation Allocation Agreement.

(m) There is no default by any party to the Interlocal Agreement that: (i) is continuing beyond any applicable cure period; and (ii) would have a materially adverse effect on the ability of YRC (or Town, for the specified limited purposes) to satisfy its obligations under this Agreement or the Bond Documents; and

(n) 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.

**7. Conditions-YRC.** In addition to the conditions set forth in Section 6, and except to the extent waived by YRC proceeding to the Closing, the obligation of YRC to proceed to the Closing is subject to the satisfaction, on or before the Outside Closing Date, of the conditions set forth in this Section.

(a) YRC and the Guarantor have agreed on the form and substance of the Completion Guaranty and the Taxpayer Agreement Guaranty, and the Guarantor is prepared to execute the foregoing at the Closing.

(b) If YRC and Town have elected to establish the SBT Back-Up, then Bond counsel for YRC has concluded that: (i) the SBT Back-Up is being established merely to secure more favorable interest rates; and (ii) it is unlikely that the SBT-Back-Up will ever be triggered such that a "Special Benefits Tax" has to be levied; provided that the foregoing shall be inapplicable if YRC and Town do not elect to establish the SBT Back-Up.

(c) Company is enrolled in the E-Verify Program.

**8. Conditions-Company.** In addition to the conditions set forth in Section 6, and except to the extent waived by Company proceeding to the Closing, the obligation of Company to proceed to the Closing is subject to Company, on or before the Outside Closing Date, having: (a) determined that no Title Defects were discovered during the Site Inspections, other than those that will be remedied prior to or at the Closing; (b) obtained the Title Commitment and the Survey; and (c) determined that, as of the Closing date, neither the marked-up Title Commitment (or, if applicable, the proforma title policy) nor the Survey will reflect any Title Defects, other than those that will be "insured over" or removed at the Closing. Company shall be responsible, at its cost, for obtaining the owner's policy of title insurance contemplated pursuant to the Title Commitment, together with any endorsements that it deems to be necessary or appropriate

**9. Condition Failure.** If one or more of such conditions set forth in any of Sections 6, 7, or 8 is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, YRC or Company, as applicable, may elect to: (a) waive satisfaction of such conditions and proceed to Closing; or (b) terminate this Agreement by a written notice to the other party; provided that the foregoing limitation shall not be deemed to affect: (a) the rights of the applicable party with respect to reimbursement of Incurred Costs pursuant to Subsection 4(b); or (b) the right of a non-defaulting party to exercise its rights under Section 15 during the continuance of an Event of Default.

**10. Plan Refinement.** Company and YRC acknowledge and agree that: (a) YRC has approved the Conceptual/Site Plan; and (b) the parties shall proceed through the Plan Refinement process using the Conceptual/Site Plan as the starting point; provided that, to the extent that the Project Plans differ from, or otherwise are inconsistent with, the Conceptual/Site Plan, the Project Plans shall control.

(a) Approvals.

(i) In accordance with the Planning Schedule, Company shall submit to YRC for its review and approval schematic, design, and construction drawings, documents, and schedules for the Project. Within ten days after receipt of any drawing, document, or schedule, YRC shall deliver to Company 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, Company shall revise and resubmit the rejected drawing, document, or schedule to YRC

for its review and approval. Once a drawing, document, or schedule is complete, it shall be “final”, and subject to modification only by Change Order. The process set forth in this Subsection shall continue until such time as all drawings, documents, and schedules are complete and, accordingly, constitute the “Project Plans”.

(ii) For purposes of clarity: (A) YRC’s approval of the Conceptual/Site Plan, together with the approval rights granted to YRC pursuant to this Section, are in addition to, and not in lieu of, the obligation of Company to obtain all Required Permits, including, without limitation, those required to be obtained from Town’s architectural review board; and (B) Company shall remain obligated to obtain all Required Permits, notwithstanding that drawings, documents, or schedules may be “final” for purposes of Subsection 10(a)(i).

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

(c) Project Budget. Each drawing, document, schedule, or Change Order request submitted by Company shall maintain the budget for the Project “in balance” as specifically required by the Construction Lender, and each drawing, document, schedule, or Change Order request submitted by Company shall be accompanied by a copy of the then-current budget for the Project reflecting compliance with such “balance” requirements.

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

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

(f) Retail Space. The parties acknowledge and agree that it is the intent that the ground floor of the Project will house commercial (as opposed to residential), but that the current market for such space is unsettled; accordingly, it may be the case that Company will elect to design the ground level in such a manner as to permit residential use. Company agrees: (i) to use reasonable, good faith efforts to lease the ground level space to commercial tenants (as opposed to residential tenants); and (ii) that, at such time as the market becomes more favorable for attracting commercial tenants on commercially reasonable terms, the ground level space initially designed to permit residential use will be converted to commercial use.

## **11. Construction.**

(a) Construction. Prior to commencing construction of the Project, Company shall provide to YRC: (i) evidence that Company has obtained the Required Permits; and (ii) a copy of the construction contract for its review and approval, which approval shall not be withheld unreasonably.

(b) Available Proceeds. Available Bond Proceeds shall be disbursed in accordance with the Disbursement Approval Agreement and the Trust Indenture to pay (or reimburse Company for) Project Costs.

(c) Reporting. Commencing with the first Thursday of the second full month following the month in which the Closing occurs, and continuing for each month thereafter until substantial completion of the Project, Company shall provide to YRC detailed monthly construction reports, which reports shall contain such information as YRC reasonably may request.

(d) E-Verify. Company: (i) shall verify the work eligibility status of all newly-hired employees through the E-Verify Program; and (ii) shall not: (A) knowingly employ, or contract with, an Unauthorized Alien; or (B) retain an employee, or contract with a person, that Company learns is an Unauthorized Alien. To the extent required by IC §§22-5-1.7, Company shall require its contractor and each subcontractor to certify to Company that, at the time of certification, the contractor or such subcontractor: (i) does not knowingly employ, or contract with, any Unauthorized Aliens; and (ii) has enrolled, and is participating, in the E-Verify Program. Company shall maintain such certifications on file until the construction contract or the applicable subcontract expires or is terminated.

(e) No Discrimination. Company shall not discriminate against any employee or applicant for employment because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States Military service veteran status. Company agrees to: (i) post in conspicuous places, visible to employees and applicants for employment; and (ii) state, in all solicitations or advertisements for employees placed or published by or on behalf of Company; that all qualified applicants will receive consideration for employment without regard to 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.

## **12. Inspection.**

(a) Monthly Inspections. Each month during construction of the Project, YRC shall be entitled to conduct a monthly inspection; provided that: (i) YRC shall provide reasonable written notice to Company prior to each such inspection; and (ii) at Company's election, YRC shall schedule its monthly inspections to coordinate with draw requests submitted by Company to the Construction Lender. At its election, YRC may waive its right to conduct a monthly inspection, conditioned upon Company providing to YRC copies of all reports and results of inspections conducted by or on behalf of the Construction Lender.

(b) Sample Work Inspection. If Company delivers written notice to YRC requesting an inspection of a Sample Work Installation, then, within the period set forth in such request (which in all events shall be at least five business days), YRC shall conduct an inspection of the identified Sample Work Installation. Subject to the Laws, if YRC approves (or is deemed pursuant to Subsection 12(e) to have approved) a Sample Work Installation, then subsequent replications of such Sample Work Installation shall be deemed to be accepted by YRC.



(c) Permitted Inspection. In addition to the Inspections permitted pursuant to Subsections 12(a) and 12(b), YRC, at its cost and expense, may perform an Inspection whenever it deems such Inspection to be necessary or reasonably appropriate; provided that YRC shall provide reasonable advance notice of its intent to conduct the Inspection, which notice shall specify the portion of the construction to be inspected.

(d) Final Inspection. Company shall deliver to YRC a written request for the Final Inspection at least five business days prior to the anticipated Substantial Completion Date. YRC shall conduct the Final Inspection on or before the later of the date that is five business days after: (i) receipt by YRC of such request; or (ii) the Substantial Completion Date. If YRC does not deliver a timely Non-Compliance Notice to Company, then, on or before the date that is ten business days after YRC conducts the Final Inspection, YRC and Company shall identify the "punch-list" items. If YRC does deliver a timely Non-Compliance Notice, then such "punch-list" items shall be identified within five business days after Company corrects all Fundamental Flaws identified in the Non-Compliance Notice. Company shall complete all "punch-list" items within 60 days after identification thereof.

(e) Non-Compliance. YRC shall have a period of five business days after conducting any Inspection (or, if applicable, five business days after it receives reports and results of an inspection conducted by or on behalf of the Construction Lender) within which to deliver a Non-Compliance Notice to Company. If YRC delivers a timely Non-Compliance Notice to Company, then Company shall correct, as soon as reasonably is practicable, all Fundamental Flaws identified in the Non-Compliance Notice. All items or components of the Project with respect to which: (i) an Inspection is conducted; and (ii) no Fundamental Flaws are identified in a timely Non-Compliance Notice; shall be deemed to have been accepted by YRC.

(f) General.

(i) In connection with any Inspection, YRC shall: (A) comply with all health and safety rules that have been established for personnel present on the construction site (including, without limitation and if applicable, any requirement that a mask be worn to protect against the spread of the current COVID-19 virus); and (B) coordinate such Inspection so that it does not interfere unreasonably with the performance of construction. Company shall have the right to accompany YRC during any Inspection.

(ii) An acceptance, or deemed acceptance, by YRC pursuant to this Section shall not mean that YRC has accepted, or Company has been relieved of, responsibility for: (A) compliance with the Laws; (B) the proper application of construction means or methods; (C) correcting any portion of the Project if it later is determined that such portion is inconsistent with the proper completion of a subsequent portion of the Project; or (D) any Fundamental Flaws that are latent and, accordingly: (1) were not discovered; and (2) reasonably were not discoverable; by YRC during an Inspection.

(iii) An acceptance, or deemed acceptance, by YRC pursuant to this Section shall not be binding on any other governmental authority, and any inspections performed by YRC pursuant to this Section shall not preclude, or be deemed to be in substitution of, inspections required or permitted to be performed by other governmental authorities.

(iv) Upon completion of any Inspection, YRC shall be entitled to

withdraw from the Inspection Reserve Account the full amount of the costs incurred by YRC in connection with such Inspection. Notwithstanding the foregoing, or anything to the contrary set forth elsewhere in this Agreement, because an Inspection of a Sample Work Installation: (A) will be performed only if requested by Company; and (B) is for the sole benefit of Company; Company shall be obligated to pay all costs and expenses incurred by YRC in connection therewith, which amount shall be due from Company within 30 days after receipt of written invoice therefor.

**13. Insurance.** During construction of the Project, Company shall maintain the policies of insurance described on Exhibit D. All policies maintained by Company 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 Company shall name YRC and Town as additional insureds. Company shall deliver to YRC certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies.

**14. 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: (a) with respect to the obligation to pay money, if such failure is not cured within ten days after the date on which such payment is due; or (b) with respect to any other obligation, if such failure is not cured within 30 days after the defaulting party receives notice specifying the nature of the failure. If a non-monetary 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; provided that such extension shall not exceed six months.

**15. General Remedies.**

(a) Remedies. During the continuance of an Event of Default, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce such term or condition); or (iv) cure, for the account of the defaulting party, the underlying circumstance that resulted in the Event of Default.

(b) No Remedy Exclusive. Except as provided to the contrary in Subsection 19(a), 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; 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 during the continuance of 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.

(c) Costs. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then, within 30 days after written invoice therefor, the defaulting party shall reimburse the non-defaulting party for all such costs and expenses, together with interest at the rate of 12% per annum.

**16. Special Remedies-Commencement Failure.** If, after the Closing, Company has not commenced construction of the Project within 90 days after the applicable date (or after the expiration of the applicable period within which construction is to commence) set forth in the Construction Schedule, then, at any time until Company commences construction of the Project, YRC may elect to require Company to reconvey the Project Site to YRC.

**17. Special Remedies-Delay.**

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

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

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

(i) fails to implement such Catch-Up Plan;

(ii) implements such Catch-Up Plan, but fails to diligently pursue the application thereof; or

(iii) implements such Catch-Up Plan and diligently pursues the application thereof, but, after completing all of the terms and conditions of the Catch-Up Plan, again falls 45 or more days behind with respect to any construction benchmark date (or the expiration of the period within which such benchmark is to be reached) set forth in the Construction Schedule;

then YRC may elect either to: (i) require that the process set forth in this Section be repeated; or (ii) purchase the Construction Loan in accordance with the terms and conditions of the Multi-Party Agreement and, as a result, "step into the shoes of" the Construction Lender.

**18. Special Remedies-Work Stop.** If, at any time after Company has commenced construction of the Project, all construction work of a material nature ceases for a period of 60 days, then, at any time until construction work of a material nature resumes, YRC may elect to require Company to: (a) reconvey the Project Site to YRC; (b) convey to YRC all improvements and materials in place on the Project Site; and (c) assign to YRC the Project Plans, together with all assignable outstanding architectural, engineering, and design contracts for the Project, thereby facilitating the ability of YRC to complete construction of the Project. In connection with its acquisition of the foregoing, YRC shall pay to Company an amount equal to the positive difference between:

(a) the sum of: (i) the actual principal amount of the Purchase Price paid by Company; plus (ii) the cost to Company of the material and improvements in place on the Project Site (excluding costs paid with Available Bond Proceeds); minus

- (b) the sum of: (i) the reasonable and documented costs and expenses incurred by YRC in connection with exercising the remedy available to it pursuant to this Section; plus
- (ii) the reasonable and documented cost to YRC to re-mobilize contractors and subcontractors.

provided that, notwithstanding the foregoing, in no event shall YRC pay less than the amount of: (a) the proceeds of the Construction Loan disbursed pursuant to the terms and conditions of the Construction Loan Documents; plus (b) interest that has accrued at the regular (non-default) interest rate pursuant to the terms and conditions of the Construction Loan Documents, but has not yet been paid. All amounts paid by YRC pursuant to this Section shall be applied first to amounts overdue and owing to the Construction Lender pursuant to the Construction Loan Documents, and YRC may elect to pay such amounts directly to the Construction Lender.

#### **19. Remedies-Miscellaneous.**

(a) Sole Remedy. Notwithstanding anything to the contrary set forth in Section 15, the rights and remedies set forth in Sections 16, 17, and 18 shall be the sole remedies available to YRC for the failures specified in such Sections; provided that YRC shall have: (i) the remedy of specific performance to enforce the obligations of Company pursuant to the terms and conditions of such Sections; and (ii) the right to recover from Company all costs and expenses incurred by YRC in connection with exercising its rights and remedies under, or enforcing, such Sections, together with interest at the rate of 4% above the applicable per annum prime rate of interest as set forth in the *Wall Street Journal*. For purposes of clarity: (i) the foregoing shall not prohibit the purchase of the Construction Loan in accordance with the terms and conditions of the Multi-Party Agreement; and (ii) until a continuing Event of Default has been cured, or a failure under Section 16, 17, or 18 either has been cured or has been addressed in accordance with the applicable Section, YRC shall have the right to instruct the trustee to refrain from disbursing Available Bond Proceeds for any work performed after the date of the occurrence of such continuing Event of Default or failure under Section 16, 17 or 18.

(b) Closing. In connection with the closing of any reconveyance of the Project Site (and, if applicable, conveyance of the improvements and materials in place on the Project Site), Company shall: (i) execute and deliver to YRC closing documents that are substantially the same in form and substance as the Conveyance Documents; and (ii) be responsible for any Real Estate Taxes first levied against the Property after the (original) Closing. From and after the closing: (i) this Agreement automatically shall terminate and be of no further force or effect, except to the extent specifically stated to survive expiration or any such termination of this Agreement; (ii) the Completion Guaranty, the Taxpayer Agreement, and the Taxpayer Agreement Guaranty automatically shall terminate; and (iii) the Available Bond Proceeds shall be disbursed as determined by YRC, in the exercise of its sole discretion; provided that, in the case of a termination pursuant to Subsection 16 due to a construction commencement failure, Company also shall repay: (i) all amounts paid out of the proceeds of the Bonds at the Closing; and (ii) all Available Bond Proceeds disbursed to date in accordance with the terms and conditions of the Disbursement Approval Agreement and the Trust Indenture.

(c) Lender Protections. YRC agrees that its right to exercise its remedies in accordance with Sections 15, 16, 17, and 18 shall be subject to lender protection provisions requested by the Construction Lender and reasonably approved by YRC; provided that, to the extent that lender protection provisions requested by the Construction Lender are: (i) consistent with (or less restrictive than) those set forth in this Exhibit F; or (ii) commercially reasonable and customary in commercial loans in the area; YRC shall agree to such provisions.

**20. Mutual Assistance.** Each of YRC, Company, 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 YRC, Company 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).

**21. Indemnification.**

(a) Mutual. Each of YRC and Company 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) Company 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 Company from and against any and all Claims arising from, or in connection with, Inspections conducted by YRC.

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

**22. Assignment.**

(a) General Rule. Neither YRC nor Company shall assign this Agreement without the prior written consent of the other party; provided that, without the written consent of the other party: (i) YRC may assign this Agreement to another municipal entity that has full power, authority, and capability to accept such assignment and perform the obligations of YRC hereunder; and (ii) Company may assign this agreement to an affiliated entity that has full power, authority, and capability to accept such assignment and perform the obligations of Company hereunder, so long as Shelby M. Bowen has day-to-day control of such affiliated entity.

(b) Construction. Subject to Subsection 22(a), during the period between the Closing and the Substantial Completion Date, Company shall not assign this Agreement, or sell any portion of the Property, without the prior written approval of YRC, which approval may be: (i) conditioned on the proposed assignee or purchaser assuming in writing the obligations of Company that remain with respect to the Project; (ii) withheld if YRC, in the exercise of its commercially reasonable judgment: (A) is not satisfied that the proposed assignee or purchaser has the financial wherewithal and professional qualifications to satisfy the obligations of Company under this Agreement and all other agreements executed (or contemplated by this Agreement to be executed) with respect to the Property; or (B) determines that the reputation and/or prior business practices of the proposed assignee or purchaser is not satisfactory; and/or (iii) conditioned upon the execution of a Completion Guaranty and/or a Taxpayer Agreement Guaranty by a replacement guarantor,

which replacement guarantor has a net worth and liquid assets at least equal to those of Guarantor on the date hereof.

(c) No Release. Notwithstanding any assignment permitted under this Section, YRC or Company, as the case may, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release YRC or Company, respectively, from such performance; provided that:

(i) if YRC assigns this Agreement to another municipal entity in accordance with Subsection 22(a) that expressly assumes in writing all obligations of YRC hereunder, then YRC shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption; and

(ii) if Company, after Substantial Completion, assigns this Agreement to an entity approved by YRC and Town that expressly assumes in writing all obligations of Company hereunder pursuant to an assignment and assumption agreement approved by YRC and Town, each in the exercise of its commercially reasonable discretion, then Company shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption.

**23. 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 YRC at 9312 West Smith Street, Yorktown, Indiana 47396, Attn: President, with a copy to Jerimi J. Ullom, Esq., Hall, Render, Killian, Heath & Lyman, P.C., 500 North Meridian Street, Suite 400, Indianapolis, Indiana 46204; and to Company at 8700 North Street, Suite 120, Fishers, IN 46038, Attn: Shelby M. Bowen, with an electronic copy via email transmission to Jennifer Messer at jennifermesserlaw@gmail.com. Either party may change its address for notice by written notice delivered to the other party in accordance with this Section.

**24. Representations.** Each of YRC, Company, 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 Company, 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 YRC, Company, 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.

**25. 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, including any payment required pursuant to the Taxpayer Agreement) under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period (including, without limitation and as applicable, the deadlines set forth in Sections 16, 17, and 18). The parties acknowledge the ongoing COVID-19 pandemic, and agree: (a) to exercise commercially reasonable, good-faith efforts to: (i) consider all then-current information with respect to; and (ii) adjust for shortages that reasonably can be anticipated with respect to materials, equipment, services, and/or labor that reasonably are likely to occur as a result of; the COVID-19 pandemic; and (b) that, notwithstanding that

the COVID-19 pandemic falls within the definition of "Force Majeure", the protections of this Section shall not apply to a claim of Force Majeure based on COVID-19 if the applicable party fails to comply with the foregoing requirement.

**26. Miscellaneous.** Subject to Section 22, this Agreement shall inure to the benefit of, and be binding upon, YRC, Company, Town (as applicable), 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 YRC, Company, and Town (as applicable) with respect to the subject matter hereof; (b) may be modified only by a written agreement signed by each of YRC, Company, 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 referenced in this Agreement are attached hereto and incorporated herein by reference.

[Signature Page to Follow]

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

TOWN OF YORKTOWN REDEVELOPMENT  
COMMISSION

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

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

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

REBAR YORKTOWN, INC.

By: \_\_\_\_\_  
Shelby Bowen, President

REBAR YORKTOWN, LLC

By: \_\_\_\_\_  
Shelby Bowen, Manager

**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 Incentives), Section 4 (entitled "Closing"), and Section 20 (entitled "Mutual Assistance"); (c) making the representations set forth in Section 24 and agreeing to be bound by Section 26 (entitled "Miscellaneous"); and (d) agreeing that, if Town is in default with respect to any of the foregoing such that, were Town a party to this Agreement, such default would constitute an Event of Default, then the terms and conditions of Section 15 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	Conceptual/Site Plan (Project Site and Project)
Exhibit B	Planning Schedule
Exhibit C	Insurance Requirements (Company)
Exhibit D	Taxpayer Agreement Provisions Schedule I to Taxpayer Agreement Provisions
Schedule I to Exhibit D	Schedule for Supplemental Payments
Exhibit E	Disbursement Approval Agreement Provisions
Exhibit F	Lender Protections
Exhibit G	Net Income Projections
Exhibit H	Appreciation Allocation Agreement Provisions
Exhibit I	Project Increment Projections

**EXHIBIT A**  
**Conceptual/Site Plan**

**EXHIBIT B**  
**Planning Schedule**

**EXHIBIT C**  
**Insurance Requirements**

**EXHIBIT D**  
**Taxpayer Agreement Provisions**

Provisions consistent with the terms and conditions set forth in this Exhibit shall be included in the Taxpayer Agreement. All capitalized terms used but not defined in this Exhibit shall have the meanings ascribed to them in that certain Economic Development Project Agreement (Yorktown Rebar Project) executed by and between YRC and Company to which this Exhibit is attached.

**27. Term.** The term will be coterminous with the term of the Bonds. If the Bonds: (a) are restructured; and/or (b) are repaid, refunded, redeemed, defeased, refinanced, and/or “taken out” in full and replaced with a new financing; and after such restructuring or replacement with a new financing, all or any portion of the Property Increment is pledged to all or any portion of the debt service therefor, then the term of the Taxpayer Agreement will continue until such time as the Property Increment no longer is pledged to the payment of debt service.

**28. Minimum Annual Amounts.** Company acknowledges that, to issue Bonds in an amount that will generate Available Bond Proceeds of not less than \$1,950,000.00, YRC has to receive, at a minimum and from sources other than the County Increment Contribution, the annual amounts set forth on Schedule I to this Exhibit. To induce YRC to “size” the Bonds issuance to generate Available Bond Proceeds of not less than \$1,950,000.00, Company agrees that the Taxpayer Agreement will provide that, to the extent that the Property Increment received by YRC for a given year is less than the minimum annual amount reflected for such year on Schedule I, Company shall pay to YRC a “supplemental payment” in an amount equal to: (a) such minimum annual amount; less (b) the actual amount of the Property Increment received by YRC for such year.

**29. Insurance.** The Property owner will be required to maintain the following with respect to the Property:

(a) casualty insurance on a replacement cost basis, the proceeds of which must be used to pay the costs to repair and/or rebuild the Property after casualty damage (and may not be applied against the outstanding principal balance of any loan);

(b) business interruption insurance with coverage in the amount necessary to pay Real Estate Taxes and any required supplemental payments during the repair and/or rebuilding of the Property following casualty damage, the proceeds of which may not be applied against the outstanding principal balance of any loan.

(c) “additional coverage” insurance separate from, and in addition to, the required casualty insurance and business interruption insurance: (i) under which a claim can be made if, in the event of casualty damage, a lender requires that the proceeds of the casualty insurance be applied to reduce the outstanding principal balance of its loan; (ii) the amount of coverage would be tied to the outstanding principal balance of the bonds; and (iii) the proceeds of which would be payable directly to YRC unless it is sufficient to cover the cost to repair and/or rebuild the Property. If Company is maintaining this insurance, then, notwithstanding the above clause (a), the lender will be entitled to receive the casualty insurance proceeds

**30. Casualty Damage.** If there is casualty damage, then Company, as the owner of the Property, will be required to repair and/or rebuild the Property to substantially the same condition as existed immediately prior to the casualty damage.

**31. Tax Payment Lien.** The Taxpayer Agreement will establish (and Company will acknowledge and agree that the Taxpayer Agreement establishes) an annually renewable lien against the Property in an amount equal to the greater of: (a) the amount of the Property Increment that actually is generated for the applicable calendar year; or (b) the amount of the Projected Property Increment for such calendar year;

together with costs and expenses of foreclosure. The lien will be in addition, but similar in type, to the annually renewing statutory Real Estate Tax lien, including that it will renew automatically every January 1 in its same priority, which priority will be on parity with the statutory Real Estate Tax lien (and, accordingly, prior to the lien of any mortgage, or any other lien or encumbrance on the Property). If, in any year, the Property owner fails to pay all or any portion of an installment of Real Estate Taxes, then YRC may foreclose on that year's tax payment lien.

**32. Supplemental Payment Lien.** The Taxpayer Agreement will provide that, if the Property owner fails to pay any required supplemental payment, then YRC may record a non-payment lien against the Property in the amount of all delinquent Supplemental Payments, together with the interest that has accrued thereon and costs and expenses of enforcement. Like the tax payment lien, the supplemental payment lien will be similar in type to, and on parity with, the statutory lien of Real Estate Taxes such that it will be prior to any mortgage or other lien or encumbrance on the Property.

**33. Letter of Credit/Security.** At all times when a valid letter of credit, or other form security, reasonably satisfactory to YRC has been posted, YRC will not foreclose on the tax payment lien or the supplemental payment lien and, instead, will draw on the posted security.

**34. Appeal Prohibitions.** Company, as the Property owner, will be prohibited from challenging or appealing the assessed value of the Property, the applicable tax rate, or the application of the tax rate to the assessed value to the extent that any of the foregoing likely would cause the Property Increment to be less than the Projected Property Increment; provided, however, the foregoing shall not operate to prohibit an appeal based upon: (a) the application of the incorrect tax rate; or (b) the application of the tax rate (whether correct or incorrect) to the incorrect assessed value.

**35. Binding Effect.** The Taxpayer Agreement shall run with the Property and be binding upon, and enforceable against: (a) Company, as the Property owner; and (b) Company's successors in title or interests to the Property; so long as the Taxpayer Agreement remains in effect.

**SCHEDULE I TO EXHIBIT D**

**Minimum Annual Amounts  
Required from  
Sources other than County Increment Contribution**

<b>Tax Payment Year</b>	<b>Minimum Required Annual Amount</b>
-------------------------	---

**EXHIBIT E**  
**Disbursement Approval Agreement Provisions**

Provisions consistent with the terms and conditions set forth in this Exhibit shall be included in the Disbursement Approval Agreement. All capitalized terms used but not defined in this Exhibit shall have the meanings ascribed to them in that certain Economic Development Project Agreement (Yorktown Rebar Project) executed by and between YRC and Company to which this Exhibit is attached.

**1. Information.** In connection with each request for disbursement of Available Bond Proceeds, Company shall provide the following to YRC and the Construction Lender:

(a) in the case of the first request for disbursement only, a certification by Company that YRC has approved the construction contract for the Project;

(b) copies of invoices, together with a certification by Company that: (i) all such invoices are for the payment of Project Costs; and (ii) the Project Costs being paid pursuant to such invoices have not been paid previously with a disbursement of Available Bond Proceeds;

(c) a certification by Company or the general contractor for the Project that: (i) it has obtained lien waivers from subcontractors with contracts for work in an aggregate amount of at least \$20,000.00 that otherwise would have the right to claim valid mechanics' or similar liens against all or a portion of the Property for: (A) work or services performed; or (B) supplies, material, or equipment provided; with respect to the Project through the date of the immediately previous request for disbursement; and (ii) upon receipt of the requested disbursement: (A) full payment will be made to the parties (and only to the parties) named in such invoices; and (B) after such payments, all invoices submitted as part of Disbursement Requests prior to and including the current Disbursement Request will have been paid in full;

(d) reasonably satisfactory evidence that: (i) no mechanics' liens have been filed against all or any portion of the Property for: (A) work or services performed; or (B) supplies, material, or equipment provided; with respect to the Project; and (ii) no other liens or encumbrances have been recorded against all or any portion of the Property in connection with the construction of the Project; since the date of the immediately previous Disbursement Request, other than: (A) the lien of Real Estate Taxes not delinquent; and (B) grants of easements reasonably determined by Company to be necessary or appropriate in connection with the construction and/or use of the Project; and

(e) an architect's certification: (i) stating that the portion of the Project completed to date: (A) has been constructed in substantial accordance with the Project Plans and the Laws; and (B) does not encroach upon any easements or rights-of-way, or across any building set-back lines or utility lines (except to the extent that such encroachment is permitted); and (ii) certifying: (A) the estimated values of work in place on the Project Site; and (B) the percentage of completion of the Project.

**2. Funds In Balance.**

(a) Review. As part of its review of a Disbursement Request, and based upon the architect's certification to be delivered pursuant to Subsection 1(e) of this Exhibit, the Construction Lender, in the exercise of its reasonable judgment and in accordance with the Construction Loan Documents, will determine whether the total of: (i) the remaining Available Bond Proceeds; plus (ii) any additional funds committed to construction of the Project; is sufficient to complete the Project in accordance with the Project Plans. If the



Construction Lender determines pursuant to the Construction Loan Documents that there is a funds imbalance, then the Construction Lender will deliver written notice of the imbalance to Company and YRC.

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

### **3. Disbursement.**

(a) Satisfaction. At such time as the Construction Lender has: (i) received a complete Disbursement Request; (ii) determined: (A) that the information included as part of the Disbursement Request satisfies the requirements that would apply were the request for a disbursement of Construction Loan proceeds (other than those with respect to Company equity or the updating of any lender's policy of title insurance); and (B) either that: (1) the funds are in balance; or (2) the funds are not in balance, but the Construction Lender has approved a re-balance plan; and so long as Company is not in default under the Construction Loan Documents beyond any applicable cure period, Construction Lender shall deliver to YRC a statement to such effect.

(b) Disbursement Approval. Within five business days after receipt of the above-referenced statement, YRC shall submit to the trustee a statement authorizing disbursement in accordance with the Disbursement Request; provided that, if: (i) YRC has delivered to Company written notice of any questions or concerns with respect to the materials included as part of the Disbursement Request; or (ii) Company is in default under the Construction Loan Documents beyond any applicable cure period; then YRC will not be obligated to authorize the disbursement until such time that its questions or concerns have been addressed to its reasonable satisfaction or Company's default has been cured, as applicable.

(c) Frequency/Retainage. Disbursements of Available Bond Proceeds shall not be made more frequently than monthly, and, notwithstanding anything to the contrary set forth herein, retainage of 10% shall be withheld from each disbursement of Available Bond Proceeds, which retainage shall be paid with the final disbursement of Available Bond Proceeds.

**EXHIBIT F**  
**Lender Protections**

**1. Definitions.** All capitalized terms used but not defined in this Exhibit shall have the meanings ascribed to such terms in that certain Economic Development Project Agreement (Yorktown Rebar Project) executed by and between YRC and Company to which this Exhibit is attached (the "Agreement").

**Collateral** shall mean the portions of the Property, together with the fixtures and other items of personal property in or on such portions of the 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 Company in all or any part of the Collateral; and/or (b) a collateral assignment of the Agreement and/or the interests of Company therein; for the purpose of securing a loan to Company.

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

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

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

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

**Replacement Company** 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, Company 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 contemporarily with each notice or demand delivered to Company. 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 Company to

pay money, then the Mortgagee shall have the right to remedy the failure until the date that is 30 days after the later of: (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 Company other than the obligation to pay money, then the Mortgagee shall have the right to remedy the failure until the expiration of the Mortgagee Cure Period. To the extent reasonably necessary to effect a cure of a non-monetary failure, the Mortgagee shall be entitled to enter upon the Property and exercise the rights of Company under the Agreement.

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

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

(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 Company is in default under a Mortgage beyond any applicable grace or cure period, then the Mortgagee may exercise with respect to the 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 Company to acquire the Collateral and

become the “Company” under the Agreement; and (b) if a Replacement Company is identified within such 60-day period, then the Agreement shall be deemed to be reinstated with the Replacement Company as the “Company” thereunder.

**7. Replacement Company.** If a Replacement Company acquires the Collateral and becomes the “Company” under the Agreement, then, for a period of 60 days thereafter, YRC or the Replacement Company 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 Company; and (b) YRC and the Replacement Company otherwise agree. If either party requests execution of such an agreement, then the “replacement” agreement shall be executed within 30 days after such request is made.

**8. Cure Obligations.** No term or condition of the Agreement or this Exhibit shall be deemed: (a) to require a Mortgagee to: (i) satisfy any obligation of Company under the Agreement; or (ii) cure any failure by Company to satisfy its obligations under the Agreement; or (b) make a Mortgagee liable for any such failure; provided that, if a Mortgagee completes a Mortgagee Remedy, then such Mortgagee or the Replacement Company, as applicable, promptly shall: (a) pay (or cause to be paid) to YRC any and all amounts owed by Company 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 Company shall be: (a) required to cure any Incurable Defaults; (b) liable for, or with respect to, any Incurable Defaults; or (c) liable for any damages, losses, or expenses (including, without limitation, attorneys’ fees), incurred by YRC in connection with any uncured Events of Default that existed before, or on, the date on which the Mortgagee or the Replacement Company, as applicable, acquired the Collateral.

**9. Amendments.**

(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 Company, 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 Company under the Agreement will not be reduced in any material respect.

**EXHIBIT G**  
**Net Income Projections/Pro-forma**

**EXHIBIT H**  
**Appreciation Allocation Agreement**

The Appreciation Allocation Agreement shall include, without limitation, the terms and conditions set forth in this Exhibit. All capitalized terms used but not defined in this Exhibit shall have the meanings ascribed to such terms in that certain Economic Development Project Agreement (Yorktown Rebar Project) executed by and between YRC and Company to which this Exhibit is attached.

**1. Term.** The term of the Appreciation Allocation Agreement shall: (a) commence on the Substantial Completion Date; and (b) end on the date that is five years thereafter; subject to earlier termination as provided in Section 5 of this Exhibit.

**2. Full Trigger Events.** For purposes of the Appreciation Allocation Agreement, a “Full Trigger Event” shall be deemed to have occurred if: (a) Company refinances the Construction Loan; (b) Company sells, conveys, or otherwise transfers the entirety of the Property to a third-party, unaffiliated entity; or (c) the membership interests of Company are changed such that Shelby M. Bowen and/or Jerry Ewing no longer have a controlling interest in Company; provided that any such transfer made for estate planning purposes or as a result of the death of Shelby M. Bowen and/or Jerry Ewing shall not constitute a Full Trigger Event.

**3. Partial Trigger Events.** For purposes of the Appreciation Allocation Agreement, each time Company sells, conveys, or otherwise transfers less than the entirety of the Property to a third-party, unaffiliated entity, a “Partial Trigger Event” shall be deemed to have occurred.

**4. Appreciation Share.** For purposes of the Appreciation Allocation Agreement, YRC’s “Appreciation Share” shall be an amount equal to 25% of the positive difference (if any) between: (a) as applicable: (i) the price for which Property (or the applicable portion thereof) is sold, conveyed, or otherwise transferred to a third-party, unaffiliated entity; or (ii) the amount for which the Construction Loan is refinanced; less (b) the value reflected in the Closing Appraisal.

**5. Allocation Right.** If there is a Full Trigger Event or a Partial Trigger Event at any time during the term of the Appreciation Allocation Agreement, then, in connection therewith, Company shall pay the Appreciation Share to YRC; provided that, with respect to a Partial Trigger Event, the Appreciation Share shall be determined based upon a reasonable allocation of the appraised values to the portion of the Property that is the subject of the Partial Trigger Event. The right of YRC to receive the Appreciation Share is the “Allocation Right”.

**6. Right Termination.** The Allocation Right applies only once in the case of a Full Trigger Event; accordingly, the Allocation Right (and the Appreciation Allocation Agreement) automatically shall terminate at the time that Company pays the Appreciation Share to YRC. In the case of a payment of the Appreciation Share following a Partial Trigger Event: (a) the Allocation Right automatically shall terminate as to the portion of the Property that is the subject of the Partial Trigger Event; (b) the Allocation Right shall remain in effect with respect to the remainder of the Property that has not been the subject of a previous Partial Trigger Event; and (c) the Appreciation Allocation Agreement shall terminate only when, in the aggregate, the entirety of the Property has been the subject of a Partial Trigger Event. For purposes of clarity, if not terminated sooner pursuant to this Section, the Allocation Right automatically shall terminate upon the expiration of the term of the Appreciation Allocation Agreement.

**EXHIBIT I**  
**Property Increment Projections**