

TOWN OF BASALT, COLORADO

Ordinance No. 27

Series of 2015

**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO APPROVING
A PUBLIC FINANCING AGREEMENT WITH WILLITS TOWN CENTER, LLC,
REGARDING THE FINANCING OF PUBLIC IMPROVEMENTS AT WILLITS TOWN
CENTER**

RECITALS

1. The Town Council has determined that it is in the best interests of the Town and its citizens to provide financial assistance to the future development of portions of Willits Town Center in order to facilitate the construction of public improvements, using certain available revenues of the Developer, to provide a catalyst for redevelopment in Willits Town Center to increase sales tax revenues and job opportunities, and to provide other economic and social benefits to the Town and surrounding community; and

2. By Ordinance No. 28 Series of 2015, the Town Council is reviewing a Willits Town Center PUD Amendment, which is the Project associated with this Ordinance; and

3. The Recitals of the Public Financing Agreement are incorporated herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF THE TOWN OF
BASALT, COLORADO, as follows:**

Section 1. Finding of Best Interests and Public Purpose. The Town Council hereby finds and determines, pursuant to the Constitution, the laws of the State, the Charter and the Code of the Town, and in accordance with the foregoing recitals, that adopting this Ordinance, providing the specified assistance for the Willits Town Center, and entering into the Agreement attached hereto as Exhibit A and performing all obligations set forth therein, are necessary, convenient, and in furtherance of the Town's purposes and are in the best interests of the inhabitants of the Town, increasing sales tax revenues and job opportunities, and providing other economic and social benefits to the Town and surrounding community, and the Town Council hereby authorizes and approves the same.

Section 2. Approval of Updated Agreement. The Public Financing Agreement, in substantially the form attached hereto as **Exhibit A**, is in all respects approved, authorized and confirmed.

Section 3. Authorization to Execute. The Mayor of the Town is hereby authorized and directed to execute and deliver the Public Financing Agreement, for and on behalf of the Town, in substantially the form and with substantially the same content as attached, provided that the approval hereby given to the Agreement includes an approval of such additional details therein, deletions therefrom, or additions thereto as the Town Manager, in consultation with the Town Attorney, determines to be necessary and appropriate for its completion, or desirable to protect the interest of the Town. The execution of the Agreement by the Mayor shall be conclusive evidence of the approval by the Town Council of the same in accordance with the terms of this Ordinance and the Agreement.

Section 4. Direction to Act. The Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Town in connection with the matters authorized by this Ordinance and to place the seal of the Town on any document authorized and approved by this Ordinance. The Mayor, the Mayor Pro-Tem of the Town, the Town Manager, the Town Clerk and other appropriate official or employees of the Town are hereby authorized and directed to execute and deliver for and on behalf of the Town and any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance. The execution of any instrument by the aforementioned officers or members of the Town Council shall be conclusive evidence of the approval by the Town of such instrument in accordance with the terms of this Ordinance and the Agreement.

Section 5. Severability. If any section, subsection, paragraph, clause or provision of this Ordinance or the Agreement hereby authorized and approved shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance or the Agreement, the intent being that the same are severable.

Section 6. Recordation. This Ordinance, after being fully executed, shall be recorded in the office of the Clerk and Recorder of Eagle County, Colorado.

READ OF FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON January 12, 2016, by a vote of 4 to 2, on December 8, 2015.

READ ON SECOND READING AND DENIED, by a vote of 2 to 5 opposed on January 12, 2016.

TOWN OF BASALT, COLORADO

By: _____
Jacque R Whitsitt, Mayor

ATTEST:

By: _____
Pamela K. Schilling, Town Clerk

First Publication: December 17, 2015
Final Publication: NA
Effective date: NA

DENIED

Exhibit A to Ordinance No. 27, 2015

PUBLIC FINANCING AGREEMENT

This PUBLIC FINANCING AGREEMENT (the "**Agreement**") dated as of _____, 2016, is made by and among WILLITS TOWN CENTER LLC, a Delaware limited liability company ("**Developer**"), and the TOWN OF BASALT, a Colorado municipal corporation (the "**Town**"). Developer and Town are sometimes collectively called the "**Parties**," and individually, a "**Party**."

RECITALS

All capitalized terms used, but not defined, in these Recitals, have the meanings ascribed to them in this Agreement. The Recitals are incorporated into this Agreement as though fully set forth in the body of this Agreement.

1. Developer is the owner and developer of the real property described in Exhibit A (the "**Property**") and desires to complete development and construction of the Property by constructing commercial office and retail development, together with related amenities and uses on the Property.

2. Developer has engaged in the Town process for entitlement of the Project as defined herein and the Town is considering a PUD Amendment by Ordinance No. 28, Series of 2015, addressing land use and development of the Property and Project (as hereinafter defined).

3. The Town has agreed to assist Developer for the recovery of costs of certain Eligible Improvements (hereinafter defined) incurred by Developer in connection with Developer's development and construction of the Project.

NOW THEREFORE, in consideration of the mutual covenants and promises of the Parties contained in this Agreement, and other valuable consideration, the receipt and adequacy of which are acknowledged, the Parties hereby agree to the terms and conditions in this Agreement.

AGREEMENT

1. **DEFINITIONS AND QUALIFICATIONS.** In this Agreement, unless a different meaning clearly appears from the context, capitalized terms mean:

"**Add-On PIF**" means the public improvement fee in the amount of not less than one-half percent (.50%) and not more than one percent (1.0%) of the amount of Taxable Transactions occurring within portions of the Project encumbered by the Add-On PIF Covenant, as set forth in such Add-On PIF Covenant, which Add-On PIF will be (i) collected by tenants whose leases are subject to the Add-On PIF and remitted by such tenants to the Town, (ii) in

addition to the Credit PIF, and (iii) accounted for and disbursed by Town to Developer in accordance with this Agreement.

"Add-On PIF Covenant" means a covenant in all future leases by the Developer within Blocks 1-12 of the Project or portions thereof owned or controlled by Developer and renewals of existing leases on such Blocks or portions thereof owned or controlled by Developer and imposing and implementing the Add-On PIF on such Blocks (or portions thereof) within the Project.

"Agreement" means this Public Financing Agreement, as it may be amended or supplemented in writing, from time to time. References to sections or exhibits are to this Agreement unless otherwise qualified. All Exhibits are incorporated to this Agreement.

"Base Year" means the 2015 calendar year.

"BMC" means the Basalt Municipal Code, as the same may be amended or supplemented from time to time.

"Complete Construction" or **"Completion of Construction"** means, for any Eligible Improvement, construction acceptance in accordance with the Town Requirements, applicable laws, ordinances, and regulations of the Town and any other governmental entity or public utility with jurisdiction, subject to any applicable conditions of maintenance and warranty.

"Credit PIF" means the public improvement fee in the amount of the Sales Tax Credit with regard to all Taxable Transactions occurring in Blocks 1-12 of the Project or portions thereof (excluding hotel room nights for any hotels located on Block 12 of the Property or portions thereof but including sales of goods or services by any tenants now or hereafter located in such hotels that would otherwise qualify as Taxable Transactions), which Credit PIF will be (i) collected by tenants in the Project and any hotels located on Block 12 of the Property in accordance with the BMC and Sales Tax Credit Ordinance in lieu of the corresponding Sales Tax otherwise required to be collected by such tenants with regard to such Taxable Transactions; and (ii) remitted by such tenants to the State of Colorado for processing and then remitted by the State of Colorado to the Town and accounted for and disbursed by the Town to Developer in accordance with the terms of this Agreement.

"Default" or **"Event of Default"** means any of the events described in Section 12; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods and periods of enforced delay provided for in this Agreement.

"Developer" means Willits Town Center LLC, a Delaware limited liability company, and any successors and assigns approved in accordance with this Agreement.

"Effective Date" means the first date after the occurrence of all of the following: (a) Ordinance No. 27, 2015 approving this Agreement and Ordinance No. 26, 2015 approving the Sales Tax Credit Ordinance are both effective under law; and (b) the execution of this Agreement by the Town.

"**Eligible Costs**" means, collectively, all reasonable and customary expenditures for design and construction of Eligible Improvements, including necessary and reasonable soft costs, and all reasonable and necessary costs related to the engineering and design work for the Eligible Improvements, provided, however, that, during the term of this Agreement, the cumulative present value amount paid under the Credit PIF to Developer under this Agreement as of any date shall not exceed the cumulative direct costs incurred by or on behalf of Developer for the design, construction and implementation of the Project as of such date.

"**Eligible Improvements**" means, as applicable to the Credit PIF, those public improvements for the Project that remain to be completed by the Developer as required by Exhibit PP of the Willits PUD Control Document or a Subdivision Improvement Agreement for a future plat filing within the Project, including public roads, publicly available parking, water and wastewater improvements, utilities, drainage improvements, transportation facilities, parks, open space, trails, landscaping, irrigation systems and related future land dedications to the Town for same. Eligible Improvements also include 50% of the cost of public improvements in the WTC PUD included in Exhibit PP or a prior Subdivision Improvement Agreement and previously constructed by Developer (exclusive of any public improvements that are currently the subject of any other cost sharing or reimbursement agreement with the Town), and other public improvements required by Ordinance 28, Series 2015 to be constructed adjacent to the Project, including public roads, publicly available parking, water and wastewater improvements, utilities, drainage improvements, transportation facilities, parks, open space, trails, landscaping, and irrigation systems.

"**Exhibits**" The following Exhibits are a part of this Agreement:

- Exhibit A:** Legal Description of the Property
- Exhibit B:** Procedure for Documenting, Certifying and Paying Eligible Costs
- Exhibit C:** Sales Tax Credit Ordinance
- Exhibit D:** PUD Amendment Ordinance

"**Force Majeure Event**" means any one or more of the following events or circumstances that, alone or in combination, directly or indirectly adversely affects the Project: fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions; war, rebellion, riots, acts of terrorism, or other civil unrest; acts of God or of any government (except that, as to any obligation of the Town, any acts of the Town itself shall not be considered Force Majeure Events); disruption to local, national or international transport services; shortages of materials, epidemics, or changes in general economic or other conditions affecting the Project, or any other event beyond the Parties' reasonable control.

"**Legal Requirements**" means all laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directions and requirements of all government and governmental authorities applicable to the Project.

"Party" or "Parties" means one or all of the parties to this Agreement.

"Permit Fees" means any Town fee applicable to the Project, including any fee imposed as a condition to the issuance of a Town permit for Eligible Improvements, but excluding any tax.

"PIF Covenants" means, collectively, Add-On PIF Covenant and the obligation of tenants in the Project and portions of any hotels located on Block 12 of the Property to collect Sales Tax (including Credit PIF) in accordance with the BMC.

"PIF Revenue" means, collectively, the revenue derived from the imposition of the Add-On PIF and the Credit PIF in accordance with the PIF Covenants and this Agreement.

"Property" means the real property described in Exhibit A. Such Property is either owned by Developer or Developer otherwise has the right or will have the right to develop the Property.

"Project" means the development of the Property in accordance with the PUD Amendment.

"PUD Amendment" means Ordinance No. 28, Series 2015.

"Sales Tax" means the municipal sales tax of the Town on sales of goods and services that are subject to municipal sales taxes at such rate and on such terms as conditions as prescribed in the BMC.

"Sales Tax Credit" means a credit, if any, against the Town's Sales Tax collected in any year subsequent to the Base Year, determined as follows: take the positive difference, if any, in the amount of Taxable Transactions occurring in any year subsequent to the Base Year over the amount of Taxable Transactions occurring in the Base Year, and multiply such result by 1.50%. Such Sales Tax Credit, if any, shall be implemented pursuant to the Sales Tax Credit Ordinance.

"Sales Tax Credit Ordinance" means Ordinance No. 26 Series 2015 approving the Sales Tax Credit.

"Taxable Transactions" means the sale or provision of goods or services within the Project that are subject to the Town's Sales Tax, as amended from time to time, and also includes the sale or provision of goods or services by any existing or future tenant leasing space in any hotel located on Block 12 of the Property that is not affiliated with the owner or operator of such hotel. Taxable Transactions does not, include, however, the sale of hotel night rooms or incidental goods or services associated with the operation of any hotel now or hereafter located on Block 12 of the Property.

"Town" means the Town of Basalt, Colorado, a home rule municipal corporation.

“**Town Costs**” means the Town’s reasonable and necessary third-party out of pocket fees, costs and expenses incurred in drafting, reviewing, negotiating, implementing, and administering this Agreement, the Add-On PIF, the Credit PIF, the Sales Tax Ordinance, and all other related documents, certificates or agreements, including, without limitation, legal fees and consultant fees.

"**Town Requirements**" means, collectively, (i) the BMC, (ii) Town regulations, and (iii) obligations imposed through the WTC PUD, as modified by the PUD Amendment and/or the applicable development agreement to allow for the uses, densities and site plans required for the Project.

“ **Willits Town Center Costs**” means all costs of acquiring, owning, holding, developing, financing, leasing, managing, operating, repairing, maintaining, constructing or reconstructing the Property in accordance with the WTC PUD and/or PUD Amendment and any improvements thereon that are not, in each case, otherwise deemed to be Eligible Costs.

"**WTC PUD**" means Willits Town Center PUD (Planned Unit Development), as amended from time to time prior to the PUD Amendment.

2. PROJECT, LAND USE APPROVALS.

2.1 Project Attributes. *Exhibit D* contains a summary description of the conceptual land plan, architectural and landscaping themes and design aesthetic for the Project. Developer has incorporated these planning and design concepts into the Project applications for Town Approvals as provided in Section 2.2.

2.2 Entitlement. The Town has previously granted all development and other entitlement approvals necessary for the existing development and construction of the Project, including, without limitation, the WTC PUD, replatting and site plan approval, and issuance of building permits for all existing vertical and infrastructure construction currently located at the Project. Developer has submitted an application to the Town for the PUD Amendment to increase development density at the Project and modify other aspects of the WTC PUD. The Town agrees to work cooperatively with the Developer in reviewing and processing such request for the PUD Amendment.

3. DEVELOPER.

3.1 Construction of Eligible Improvements. Developer agrees to use commercially reasonable efforts to construct the Project and, in accordance with the provisions of this Agreement, is responsible for (i) financing and constructing the Project, (ii) compliance in all material respects with the Town Requirements, and (iii) payment of Permit Fees related to development of the Property.

3.2 Compliance with Design and Construction Regulations; Payment of Fees and Costs. The design and construction of all Eligible Improvements will comply in all material

respects with all applicable codes and regulations of entities having jurisdiction, including the Town Requirements.

3.3 Imposition of Add-On PIF. On and after the Effective Date, the Developer shall impose the Add-On PIF pursuant to the Add-On PIF Covenant on all retail sales occurring within portions of the Property that are subject to the Add-On PIF Covenant and Town's Sales Tax. Subject to the following provisions of this Section 3.3, the Add-On PIF shall be imposed only for so long as Willits Town Center Costs for which the Developer is entitled to reimbursement by the Town hereunder remain unpaid. So long as such Willits Town Center Costs remain unreimbursed by the Town, Developer agrees to use commercially reasonable efforts to cause all tenants in the Project subject to the Add-On PIF Covenant to remit such Add-On PIF directly to the Town. The Developer agrees that it shall be responsible for enforcing the placard requirements and for the implementation of the Add-On PIF with all retailers leasing space within portions of the Project encumbered by the Add-On PIF Covenant. The Add-On PIF shall terminate upon the earlier to occur of the following: (i) twenty (20) years following the first collection and remittance to the Town of Add-On PIF by tenants in the Project subject to the Add-On PIF Covenant; or (ii) reimbursement by the Town to Developer of an amount equal to the sum of \$10,500,000.00 in present value at a discount rate of six percent (6.0%) from the Effective Date (net of any administrative or processing fees charged by Town with regard to Sales Tax), minus the actual present value of Credit PIF remitted by the Town to Developer (the "Add-On PIF Cap") (the earlier to occur of clauses (i) and (ii) of this Section 3.3 being the "Add-On PIF Termination Date").

3.4 Credit PIF. The Credit PIF shall commence on January 1, 2016 (the "Credit PIF Commencement Date"), and shall terminate upon the earlier to occur of the following: (i) December 31, 2030 (i.e., the expiration of fifteen (15) years following the Credit PIF Commencement Date); or (ii) payment and reimbursement by the Town to Developer of Eligible Costs for Eligible Improvements whose maximum present value, calculated on the basis of and utilizing a six percent (6.0%) present value discount rate from the Effective Date (net of any administrative or processing fees charged by the State of Colorado with regard to Sales Tax), equals an amount not to exceed \$5,000,000.00 (the "Credit PIF Cap") (the earlier to occur of clauses (i) and (ii) of this Section 3.4 being the "Credit PIF Termination date").

3.5 Access to Property. Developer will permit representatives of the Town access to the Property and the Project at reasonable times during regular business hours and with prior notice as necessary for the purpose of carrying out or determining compliance with the Agreement or Town Requirements, including, without limitation, inspection of any work being conducted. No compensation will be payable for such access. The Town agrees to restore the Property and any component of the Project to its condition prior to any tests or inspections made by the Town and further agrees that it shall be responsible for any damage that results from the Town accessing the Property pursuant to its rights under this Agreement, to the extent permitted by law, subject to annual appropriation of funds by the Town, in its sole discretion.

3.6 Calculation of Sales Tax. For purposes of calculating Sales Tax, sales occurring in the year of 2015 and in all subsequent years during which this Agreement remains

in effect shall be calculated on an as-collected, cash basis unless such circumstances arise whereby an apparent administrative issue can reasonably be shown to have delayed receipt or collection of such Sales Tax beyond the normal collection period, particularly around the end of each calendar year during the term hereof.

4. THE TOWN.

4.1 Cooperation. The Town agrees to cooperate with Developer in reviewing, scheduling hearings for, and approving the PUD Amendment. Approval of the PUD Amendment and amendment to the plat will not be unreasonably withheld.

4.2 Sales Tax Credit Ordinance. In order to implement the Sales Tax Credit, and as a condition precedent to the effectiveness of this Agreement, the Town shall adopt an ordinance granting the Sales Tax Credit against the collection of Sales Tax on Taxable Transactions, in an amount equal to one and one-half percent (1.50%) in substantially the form set forth as Exhibit C attached hereto (the "Sales Tax Credit Ordinance"). Upon adoption of the Sales Tax Credit Ordinance and provided this Agreement is in effect, the Town will authorize, grant and implement the Sales Tax Credit pursuant to the Sales Tax Credit Ordinance in order for the Credit PIF to be collected for the Town's payment and reimbursement to Developer of Eligible Costs incurred by Developer in connection with Developer's construction of Eligible Improvements, and Town hereby agrees to utilize such Credit PIF for such purposes, in each case in accordance with the Sales Tax Credit Ordinance and this Agreement and subject to the Credit PIF Cap. In adopting the Sales Tax Credit Ordinance, the Town is agreeing that it will grant a credit against the Town's Sales Tax collected on Taxable Transactions within the Project only to the extent that the Credit PIF is collected from each retailer within the Project. Except as hereinafter provided, the Sales Tax Credit shall terminate upon the Credit PIF Termination Date.

4.3 Credit PIF Collection and Disbursement. Developer and Town acknowledge and agree that Sales Tax on Taxable Transactions will be collected by tenants in the Project and remitted to the Colorado Department of Revenue as required by such agency's rules and regulations, and that such Sales Tax revenue, less an administrative fee charged by the State of Colorado for processing such Sales Tax remittances, will then be remitted by the State of Colorado to the Town in accordance with such rules and regulations. The Town expects to receive such Sales Tax disbursements from the State no later than the 15th day of each month. No later than the 15th day following the end of each calendar quarter during the term of this Agreement, Town will conduct an examination and accounting of such Sales Tax proceeds received from the State of Colorado for the preceding calendar quarter to determine whether the Project has produced Taxable Transactions, net of any administrative or processing fee charged by the State of Colorado, sufficient to trigger a Sales Tax Credit and thus the Credit PIF. At such time each year during the term hereof as Town has begun collecting Credit PIF, Town will thereafter (and in no event later than 30 days following the 3rd, 6th, 9th, and 12th sales tax disbursements of each calendar year, or by April 15th, July 15th, October 15th and the following January 15th) commence remitting to Developer an amount equal to the Credit PIF then and thereafter payable with regard to such Taxable Transactions in such year. Such Credit PIF payments will thereafter continue during such year until the examination and accounting related to the first quarter of the following year, at which time such Credit PIF payments shall cease until such time as the Town has again

collected Credit PIF revenues on Taxable Transactions in such subsequent year. Such Sales Tax collection and Credit PIF payment process shall continue each year during the term hereof, subject to the Credit PIF Cap and Credit PIF Termination Date. Town agrees not to charge any fee or exact any retainage from the Credit PIF.

4.4 Add-On PIF. Town shall make the Add-On PIF collected by the Town from tenants in the Project subject to the Add-On PIF Covenant available to the Developer for reimbursement of Willits Town Center Costs subject, in each case, to the terms and provisions of this Agreement, the Add-On PIF Covenant and the Add-On PIF Cap. The Town expects to receive Add-On PIF remittances directly from the relevant tenants in the Project no later than the 20th day of each month. The Add-On PIF shall be paid quarterly, in arrears, by the Town to Developer no later than the earlier of 30 days following the 3rd, 6th, 9th, and 12th month Add-On PIF collections of each calendar year, or by April 15th, July 15th, October 15th and the following January 15th. Town shall be entitled to withhold 2% of the Add-On PIF collection for each quarter, to cover the costs of administering the Add-On PIF program. The net disbursement to Developer (98%) will be used in the calculation of the present value of the cumulative Add-On PIF. Such 2% retainage shall be accounted for in the financial reporting required pursuant to Section 6 hereof. The Add-On PIF shall terminate on the Add-On PIF Termination Date.

4.5 Post Credit PIF Period. Notwithstanding any language in any agreement to the contrary, if upon payment in full of all Eligible Costs (subject in all cases to the Credit PIF Cap and Add-On PIF Cap), the Town determines that termination of the Sales Tax Credit may be precluded by or require a refund of the Sales Tax under Article X, Section 20 of the Colorado Constitution, the Town may submit a written request to Developer to continue to impose the Credit PIF. Upon receipt of such request, the Credit PIF shall remain in full force and effect and the full amount derived from imposition of the Credit PIF shall be paid to the Town as a substitute for the Sales Tax revenue it is unable to collect.

4.6 Compliance with Law. Nothing set forth in this Agreement is intended or shall be construed to constitute or to require (a) an unlawful delegation of authority by the Town; (b) an unlawful restraint on the legislative discretion of future Town Councils; or (c) the undertaking of any multiple fiscal year obligation by the Town except as permitted by applicable law. Nothing in this Agreement is intended to nor shall be construed to create any multiple-fiscal year direct or indirect debt or financial obligation on the part of the Town within the meaning of the Constitution or laws of the State of Colorado, and any such financial obligation of the Town created by this Agreement is expressly subject to annual appropriation by the Town.

4.6 Town Costs. The Town shall be reimbursed for all Town Costs on a timely basis by the Developer. The Town certifies that through December 1, 2015 such Town Costs total no more than \$xx,000.00. Further, Town estimates Town Costs through February 1, 2016 shall be no more than \$xx,000.00. Town agrees to use commercially reasonable efforts to minimize Town Costs in excess of any costs not covered or paid for by the 2% fee being charged by Town for administering the Add-On PIF, it being understood that any engineering fees or costs charged by the Town Engineer as part of the cost certification process outlined on

Exhibit B hereto shall constitute a legitimate Town Cost. The foregoing notwithstanding, in no event shall any fees charged by a third party consultant or vendor hired by Town to administer the Credit PIF and/or Add-On PIF on behalf of Town be deemed a "Town Cost" reimbursable by Developer.

5. REIMBURSEMENT OF ELIGIBLE COSTS AND WILLITS TOWN CENTER COSTS.

Upon compliance with the requisition process set forth in **Exhibit B**, Developer will be paid or reimbursed for Eligible Costs by the Town in accordance with the terms of this Agreement. Any such payment or reimbursement of Eligible Costs pursuant to this Agreement shall be made from the Credit PIF collected by the Town, subject in all cases to the Credit PIF Cap. All Eligible Costs shall be certified by the Developer in accordance with procedures set forth in **Exhibit B** or as otherwise approved in writing by the Parties. Upon compliance with the requisition process set forth in **Exhibit B**, Developer will be paid or reimbursed for Willits Town Center Costs by the Town in accordance with the terms of this Agreement. Any such payment or reimbursement of Willits Town Center Costs pursuant to this Agreement shall be made from the Add-On PIF collected by the Town, subject in all cases to the Add-On PIF Cap. All Willits Town Center Costs shall be certified by the Developer in accordance with procedures set forth in **Exhibit B** or as otherwise approved in writing by the Parties.

6. BOOKS AND ACCOUNTS; FINANCIAL STATEMENTS.

The Town shall keep proper and current itemized records, books, and accounts in which complete and accurate entries will be made of the receipt and use of all amounts of revenue received from any and all sources and such other calculations required by this Agreement and any applicable law or regulation. All books, records and reports (except those allowed or required by applicable law to be kept confidential) in the possession of the Town will at all reasonable times be open to inspection by Developer and its accountants or other agents as Developer may from time to time designate. Town shall provide to Developer on a quarterly basis an analysis of whether Sales Tax from Taxable Transactions for the year in question has exceeded the Sales Tax from Taxable Transactions collected during the Base Year and if so, a calculation of the Credit PIF payable by the Town to Developer on Taxable Transactions occurring during such prior quarter. With each such calculation Town shall provide to Developer, on a block by block or other area basis that will not reveal sales information by tenant the gross amount of Sales Tax revenue received by the Town on a month-by-month basis for the quarter in question (less the State's administration or processing fee) and attributable to the Block or other area in question. Town will also prepare a quarterly accounting of the total Add-On PIF (again without regard to specific tenant or sales revenue) collected by the Town on a month-by-month basis and provide such accounting to Developer concurrently with each quarterly remittance of Add-On PIF from Town to Developer. Developer shall have the right to conduct an annual audit, at Developer's sole cost and expense, of any non-privileged, publicly available Sales Tax information used by Town in calculating the Credit PIF and Add-On PIF paid by Town to Developer pursuant to this Agreement. Any such audit shall be conducted by Developer no later than one hundred twenty (120) days following the end of each calendar year during the term of this Agreement for the prior calendar year.

7. INDEMNIFICATION. For each Eligible Improvement, from commencement of construction through Completion of Construction, Developer agrees to indemnify, defend and

hold harmless the Town, its officers, agents and employees, from and against all liability, claims, demands, and expenses, including fines imposed by any applicable state or federal regulatory agency, court costs and attorneys' fees, on account of any injury, loss or damage, which arise out of or are in any manner connected with any of the work to be performed by Developer, any subcontractor of Developer, or any officer, employee, agent, successor or assign of Developer under this Agreement, if such injury, loss damage is caused in whole or in part by, the negligent act or omission, error, professional error, mistake, accident, or other fault of Developer, any subcontractor of Developer, or any officer, employee, agent, successor or assign of Developer, but excluding any injuries, losses or damages which are due to the negligence, breach of contract or willful misconduct of the Town. Developer's obligation to indemnify the Town pursuant to this Agreement terminates upon Completion of Construction of each Eligible Improvement.

8. REPRESENTATIONS AND WARRANTIES.

7.1 Representations and Warranties by Developer. Developer represents and warrants as follows:

(a) Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and in good standing and authorized to do business in the State of Colorado and has the power and the authority to enter into and perform in a timely manner its obligations under this Agreement.

(b) The execution and delivery of this Agreement have been duly and validly authorized by all necessary action of the Developer.

(c) This Agreement constitutes a valid and binding obligation of the Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

(d) The execution and delivery of this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to Developer or to Developer's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which Developer is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instrument or to accelerate the maturity of any indebtedness or other obligation of Developer.

(e) Developer knows of no litigation, proceeding, initiative, referendum, or investigation or threat or any of the same contesting the powers of Developer or any of its principals or officials with respect to this Agreement that has not been disclosed in writing to the other Parties.

7.2 Representations and Warranties by the Town. The Town represents and warrants as follows:

(a) The Town is a body corporate and politic and a home rule municipality of the State of Colorado, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations under this Agreement.

(b) The Town knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Town or its officials with respect to this Agreement that has not been disclosed in writing to the Parties.

(c) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not: (i) conflict with or contravene any law, order, rule or regulation applicable to the Town or to its governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Town is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Town.

(d) This Agreement constitutes a valid and binding obligation of the Town, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

9. TERM. The term of this Agreement ("Term") is the period commencing on the Effective Date and terminating on the date of full performance of the covenants of this Agreement unless earlier terminated pursuant to Section 14.

10. CONFLICTS OF INTEREST. None of the following will have any personal interest, direct or indirect, in this Agreement: a member of the governing body of the Town or an employee of the Town who exercises responsibility concerning the Town Requirements, or an individual or firm retained by the Town who has performed consulting services to the Town or this Agreement. None of the above persons or entities will participate in any decision relating to the Agreement that affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

11. NOTICES. Any notice required or permitted by this Agreement will be in writing and will be deemed to have been sufficiently given for all purposes if delivered in person, by prepaid overnight express mail or overnight courier service, by certified mail or registered mail, postage prepaid return receipt requested, addressed to the Party to whom such notice is to be given at the address set forth on the signature page below or at such other or additional addresses as may be furnished in writing to the other Parties. Additionally, the Parties agree to provide concurrent notice via electronic mail.

12. EVENTS OF DEFAULT. The following event shall constitute an Event of Default under this Agreement: any Party fails in the performance of any material covenant in this Agreement, (except for those events allowing the termination of this Agreement as set forth herein) and such failure continues for thirty (30) days after written notice specifying such default and requiring the same to be remedied is given by a non-defaulting Party to the defaulting Party.

If such default is not of a type which can be cured within such thirty (30) day period and the defaulting Party gives written notice to the non-defaulting Party or Parties within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting Party shall have an additional reasonable period of time (in no event to exceed thirty (30) days for a total of sixty (60) days) to cure such default. In no event shall Developer's pledge or assignment of this Agreement or Developer's rights hereunder to any lender as collateral security for any financial accommodation extended to Developer by such lender constitute an Event of Default hereunder, and Town agrees to make all payments of Add-On PIF and/or Credit PIF, as applicable, to such lender if and when directed to do so by Developer.

13. REMEDIES. Upon the occurrence and continuation of an Event of Default, the non-defaulting Party's remedies will be limited to the right to enforce the defaulting Party's obligations by an action for injunction, specific performance, or other appropriate equitable remedy or for mandamus, or by an action to collect and enforce payment of sums owing hereunder, and no other remedy (unless otherwise expressly authorized by this Agreement) will be available, and no Party will be entitled to or claim damages for an Event of Default by the defaulting Party, including, without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages. In the event of any litigation or other proceeding to enforce any of the terms, covenants or conditions of this Agreement, the prevailing party in such litigation or other proceeding will receive, as part of its judgment or award, its reasonable attorneys' fees and costs.

14. TERMINATION FOR CONVENIENCE. This Agreement may be terminated by the Developer at any time prior to the occurrence of either or both of the Credit PIF Terminate Date and/or the Add-On PIF Termination Date. To terminate this Agreement, the Developer shall provide written notice of such termination to the Town. Such termination will be effective thirty (30) days after the date of such notice unless prior to such time, the Parties are able to negotiate in good faith to reach an agreement to avoid such termination. Upon such termination, this Agreement will be null and void and of no effect, and no action, claim or demand may be based on any term or provision of this Agreement. In addition the Parties agree to execute a mutual release or other instruments reasonably required to effectuate and give notice of such termination.

If this Agreement is terminated pursuant to the provisions of this Section 14, any PIF Revenues on deposit with the Town shall be remitted to the Developer, subject to the Credit PIF Cap and Add-On PIF Cap.

15. NONLIABILITY OF OFFICIALS, AGENTS, MEMBERS, AND EMPLOYEES. Except for willful or wanton actions, no trustee, board member, commissioner, official, employee, consultant, manager, member, shareholder, attorney or agent of any Party, nor any lender to any Party or to the Project, will be personally liable under the Agreement or in the event of any default or for any amount that may become due to any Party.

16. ASSIGNMENT. This Agreement will not be assigned in whole or in part by any Party without the prior written consent of the other Parties; provided, however, that the following assignments and transfers will not require any such consent: (a) subject to written notice to the

Town from Developer containing the name and address of the successor owner or purchaser of the Project or any portion thereof, Developer may assign all or a portion of this Agreement to any such or successor owner or purchaser of all or any portion of the Project; (b) subject to written notice to the Town from Developer containing the name and address of the lender or other party, Developer may pledge, collaterally assign or otherwise encumber all or any part of its rights under this Agreement, including its right to receive any payment or reimbursement, to any lender or other party that provides acquisition, construction, working capital, tenant improvement or other financing to Developer in connection with development of the Property and/or construction of the Eligible Improvements. The Town further recognizes that Developer may form, together with its investors, a separate, special purpose entity to develop, own and/or operate all or a portion of the Property or of the Eligible Improvements to be constructed thereon and that one or more assignments of this Agreement may be required in connection with such activities and such transfer(s) will not require any consent by the Parties.

17. COOPERATION REGARDING DEFENSE. In the event of any litigation or other legal challenge involving this Agreement or any other material part or provision of this Agreement or the ability of any Party to enter into this Agreement, the Parties will cooperate and jointly defend against such action or challenge, to the extent permitted by law.

18. SECTION CAPTIONS. The captions of the sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

19. ADDITIONAL DOCUMENTS OR ACTION. The Parties agree to execute any additional documents or take any additional action, including but not limited to estoppel documents requested or required by lenders, that is necessary to carry out this Agreement or is reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement and to effectuate the agreements and the intent. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement.

20. AMENDMENT. This Agreement may be amended only by an instrument in writing signed by the Parties.

21. WAIVER OF BREACH. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and will not operate or be construed as a waiver of any subsequent breach by any Party.

22. GOVERNING LAW. The laws of the State of Colorado govern this Agreement. The District Court of Pitkin County will be the exclusive venue for any litigation.

23. BINDING EFFECT, ENTIRE AGREEMENT. This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph permits the assignment of this Agreement except as set forth in Section 16. This Agreement represents the entire Agreement among the Parties and supercedes any prior written or oral agreements or understandings with regard to the Property or Project not specifically set forth in this Agreement.

24. EXECUTION IN COUNTERPARTS. This Agreement may be executed in several counterparts, each of which will be deemed an original and all of which will constitute but one and the same instrument.

26. NO THIRD-PARTY BENEFICIARIES. This Agreement is intended to describe the rights and responsibilities only as to the Parties to this Agreement. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party to this Agreement.

27. NO PRESUMPTION. The Parties and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement will be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.

28. SEVERABILITY. If any provision of this Agreement as applied to any Party or to any circumstance is adjudged by a court to be void or unenforceable, the same will in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity, or enforceability of the Agreement as a whole.

29. MINOR CHANGES. This Agreement has been approved in substantially the form submitted to the governing bodies of the Parties. The officers executing this Agreement are authorized to make and may have made, minor changes to this Agreement and attached exhibits as they have considered necessary. So long as such changes were consistent with the intent and understanding of the Parties at the time of approval by the governing bodies, the execution of the Agreement will constitute the approval of such changes by the respective Parties.

30. DAYS. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to Section 24-11-101(1), C.R.S., such day will be extended until the next day on which such banks and state offices are open for the transaction of business.

31. RECORDING. This Agreement will be recorded in the real property records of Eagle County, Colorado.

32. GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, consent, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

33. PARTIES NOT PARTNERS. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party.

34. NO WAIVER OF IMMUNITY. Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by any Party under applicable state law.

35. SUBORDINATION. Developer shall cause any mortgagee or deed of trust beneficiary to subordinate its interest in the Property to this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the Parties as of _____, 2016.

ATTEST:

TOWN OF BASALT

Pamela K. Schilling, Town Clerk

Jacque R. Whitsitt, Mayor

(SEAL)

Approved as to form:

Notice Address:
Town of Basalt
Basalt Town Hall
101 Midland Avenue
Basalt, Colorado 81621
Thomas Smith, Town Attorney
Email: tsmith@aps-pc.com

Fax: 970-925-4720

WILLITS TOWN CENTER LLC,
a Delaware limited liability company

By: Mariner Real Estate Management, LLC, its Manager

By: _____
Name: _____
Title: _____

Notice Address:

Willits Town Center LLC
4601 College Boulevard, Suite 350
Leawood, KS 66211
Attention: President
Telephone: (816) 561-3796
Email: ryan.anderson@mariner-re.com terry.anderson@mariner-re.com

With a copy to:

Polsinelli PC
1515 Wynkoop, Suite 600
Denver, Colorado 80202
Direct: 303.583.8240
Fax: 303.942.3940
Attention: Paul V. Franke, Esq.
[Email: pvfranke@polsinelli.com](mailto:pvfranke@polsinelli.com)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Block 1, lot 3:

2nd Amended Lot 3, Block 1, according to the Second Amended Final Plat and Zone District Map of: Lot 3, Block 1, Amended Tract 1, Amended Blocks 2, 6, and 8, Block 12, Transit/Government Tract, Amended Public Parking Tract, Amended Reed Street and a Portion of Grange Street, Willits Town Center PUD, recorded November 9, 2011 at [Reception No. 201120959](#), County of Eagle, State of Colorado.

Block 2:

Lots A, B, C, D, E and F, WILLITS TOWN CENTER, FILING NO.2, according to the Final Plat thereof recorded November 9, 2011 at [Reception No. 201120960](#), County of Eagle, State of Colorado.

Block 3:

Block 3, WILLITS TOWN CENTER PLANNED UNIT DEVELOPMENT, according to the Plat thereof recorded July 25, 2001 as [Reception No. 763043](#), County of Eagle, State of Colorado.

Block 4:

Block 4, WILLITS TOWN CENTER PLANNED UNIT DEVELOPMENT, according to the Plat thereof recorded July 25, 2001 as [Reception No. 763043](#), County of Eagle, State of Colorado.

Block 5:

Condominium Units C-100, C-104, C-106, C-110A, C-110B, C-111, C-112, C-116, C-118, C-120, C-122, C-124, C-126 and C-128, TRIANGLE PARK LOFTS, according to the Condominium Map recorded October 10, 2006 as [Reception No. 200627627](#) and amended by First Amendment thereto recorded November 16, 2012, at [Reception No. 201223141](#), and by Second Amendment thereto recorded October 1, 2013 at [Reception No. 201319794](#); and according to the Condominium Declaration recorded October 10, 2006 as [Reception No. 200627628](#), as amended by First Amendment thereto recorded October 11, 2006 as [Reception No. 200627864](#), by Second Amendment thereto recorded November 16, 2012, at [Reception No. 201223140](#), and by Third Amendment thereto recorded October 1, 2013 at [Reception No. 201319795](#), County of Eagle, State of Colorado.

Block 6:

Condominium Units 001, 101, 201, and 301, CONDOMINIUM MAP OF MARKET STREET CROSSINGS, according to the Condominium Map thereof recorded June 25, 2014 at [Reception No. 201410385](#), and as defined and described in the Condominium Declaration for Market Street Crossings recorded June 25, 2014 at [Reception No. 201410386](#), County of Eagle, State of Colorado.

Block 7:

Block 7, WILLITS TOWN CENTER PLANNED UNIT DEVELOPMENT, according to the Plat thereof recorded July 25, 2001 as [Reception No. 763043](#), County of Eagle, State of Colorado.

Block 8:

2nd Amended Block 8/Transit/Government Tract, according to the Second Amended Final Plat and Zone District Map of: Lot 3, Block 1, Amended Tract 1, Amended Blocks 2, 6, and 8, Block 12, Transit/Government Tract, Amended Public Parking Tract, Amended Reed Street and a Portion of Grange Street, Willits Town Center PUD, recorded November 9, 2011 at [Reception No. 201120959](#), County of Eagle, State of Colorado.

Block 9:

Block 9, WILLITS TOWN CENTER PLANNED UNIT DEVELOPMENT, according to the Plat thereof recorded July 25, 2001 as [Reception No. 763043](#), County of Eagle, State of Colorado.

Block 10:

Lot B, Block 10, Willits Town Center, Filing No. 10 according to the Amended Final Plat thereof recorded May 28, 2008 as [Reception No. 200811079](#), County of Eagle, State of Colorado, AND

Units P-13, P-27, P-28, P-29, P-30, P-32, P-52, P-55 and P-56, MARKET STREET LOFTS CONDOMINIUMS, according to the Condominium Map of Market Street Lofts Condominiums recorded May 28, 2008 as [Reception No. 200811080](#) and as described and defined by the Condominium Declaration for Market Street Lofts Condominiums recorded May 28, 2008 as [Reception No. 200811082](#), and First Amendment thereto recorded April 16, 2012 at [Reception No. 201207462](#), all in the Office of the Clerk and Recorder of Eagle County, Colorado.

Block 11:

Block 11, WILLITS TOWN CENTER PLANNED UNIT DEVELOPMENT, according to the Plat thereof recorded July 25, 2001 as [Reception No. 763043](#), County of Eagle, State of Colorado.

Block 12:

Lot 1, 2nd Amended Block 12, WILLITS TOWN CENTER FILING NO. 12, according to the Plat thereof recorded October 14, 2014 at [Reception No. 201417565](#), County of Eagle, State of Colorado.

ADDED

EXHIBIT B to the PIF Agreement

PROCEDURE FOR DOCUMENTING, CERTIFYING AND PAYING ELIGIBLE COSTS AND PROJECT COSTS

1. Applicability. All capitalized terms that are not specifically defined in this Exhibit B will have the same meaning as defined in the Agreement.

2. Engineer. The Town will select a licensed engineer experienced in the design and construction of public improvements in Eagle County, Colorado (the "**Town Engineer**"). The Town Engineer shall be responsible for reviewing, approving, and providing the certificate required by Paragraph 3(b).

3. Procedure for Documentation, Certification and Payment of Eligible Costs and Project Costs. The Developer will be responsible for documenting all Eligible Costs and Project Costs. Eligible Costs for Eligible Improvements constructed by Developer and accepted by Town on or prior to the date hereof ("Existing Eligible Improvements") and for Eligible Improvements to be constructed in the future ("Future Eligible Improvements") shall be subject to the following requirements, as applicable.

(a)Eligible Costs. Pursuant to Paragraph 1 of the Agreement, Eligible Costs means, collectively, all reasonable and customary expenditures for design and construction of Eligible Improvements, including necessary and reasonable soft costs, and all reasonable and necessary costs related to the engineering and design work for the Eligible Improvements, provided, however, that, during the term of the Agreement, the cumulative present value amount paid under the Credit PIF to Developer under the Agreement as of any date shall not exceed the cumulative direct costs incurred by or on behalf of Developer for the design, construction and implementation of the Project as of such date.

(b)Existing Eligible Improvements. As of the date hereof, the Developer believes that there is \$ _____ of Eligible Costs that have previously been incurred by Developer for construction of Existing Eligible Improvements, of which fifty percent (50%) or potentially \$ _____ (the "Existing Eligible Improvements Cost Cap"), is eligible to be paid and reimbursed by Town to Developer in accordance with the Credit PIF consistent with the terms and provisions of the Agreement and this Exhibit B provided that the Town certifies the costs in accordance with the procedures established herein (Certified Existing Costs).

(1) In order to obtain credit for Eligible Existing Expenses, the Developer must submit the initial certification request of eligible improvements and associated costs to the Town no later than June 1, 2016 along with the supporting documentation to the Town and must receive a Certificate of Approval for Eligible Expenses from the Town no later than December 1, 2016.

(2) The Town shall have 60 days after receipt of the Request for Certification to conduct such inspections of the applicable improvements as it deems necessary and review of documents provided by the Developer and either:

(i) provide written notice to Owner that the Request is acceptable;
or

(ii) provide written notice to Developer that the request does not comply with the requirements of this agreement (“Deficiency Notice”). The Town shall not unreasonably withhold acceptance of any certification provided that sufficient documentation has been submitted that verifies that the costs were expended for existing eligible improvements.

(3) If the Developer does not receive a Deficiency Notice within the Approval Period, the Completed Portion shall be deemed Certified by the Town.

(4) If the Developer receives a Deficiency Notice within the Approval Period, Owner’s representative shall meet with the Town Engineer to discuss and reach agreement on Eligible Costs.

(5) Upon receipt of a Certificate of Approval for Eligible Expenses or paragraph (3) above applies, the Eligible Costs for such Existing Eligible Improvements (in each case subject to the Existing Eligible Improvements Cost Cap) shall be included in an aggregate running total by the Town of Certified Eligible Expenses and reimbursed by Town to Developer upon receipt of an invoice from Developer identifying that it is for a cost included in the Town list of Certified Expenses and available Credit PIF revenues. Such Eligible Costs shall be paid and reimbursed by Town to Developer quarterly in accordance with the Agreement and this Exhibit B from available Credit PIF revenues collected by the Town.

(c) Future Eligible Improvements. Eligible Improvements which satisfy the definition of Eligible Improvements which remain to be constructed on the date of the Agreement are eligible to be paid and reimbursed by Town to Developer as part of the Credit PIF in accordance with the terms and provisions of the Agreement and this Exhibit B provided that the Town certifies the costs in accordance with the procedures established herein (Certified Costs). For Future Eligible Improvements, Eligible Costs associated therewith may be certified when a pay application has been submitted by a contractor that complies with the procedure set forth in this Exhibit B or upon Completion of Construction of a Future Eligible Improvement. All submissions for Eligible Costs related to Future Eligible Improvements shall include a certification signed by both the authorized representative of the Developer and Town Engineer, as applicable. Each such certificate shall state that the information contained therein is true and accurate to the best of each individual's information and belief and, to the best knowledge of such individual, qualifies as Eligible Costs. Submissions for Eligible Costs for Future Eligible Improvements will include copies of backup documentation supporting the listed cost items, including bills, statements, pay request forms from first-tier contractors and suppliers, conditional lien waivers, and copies

of each check issued by the Developer for each item listed on the statement. Unless required by a Developer construction contract then being performed and approved by the Town Finance Director, statements for payment of Eligible Costs for Future Eligible Improvements shall not include advance payments of any kind for unperformed work or materials not delivered and stored on the Property to be used for Eligible Costs. Submissions in accordance with this subsection related to Future Eligible Improvements may be made by the Developer to the Town for review on a no more frequently than quarterly basis. Such review is for the purpose of verifying that the work represented in each payment request and supporting documentation complies with the requirements of this ***Exhibit B*** and the Agreement and is necessary for the Town to confirm that the work was completed in accordance with the Plan and Specifications approved by the Town.

(1) In order to obtain Certification by the Town Engineer and payment for Eligible Existing Expenses, the Developer must submit the initial certification request of eligible improvements and associated costs to the Town Engineer.

(2) The Town Engineer shall have 30 days after receipt of the Request for Certification to conduct such inspections of the applicable improvements as it deems necessary and to review documents provided by the Developer and either:

(i) provide written notice to Owner that the Request is acceptable;

or

(ii) provide written notice to Developer that the request does not comply with the requirements of this agreement (“Deficiency Notice”). The Town shall not unreasonably withhold acceptance of any certification provided that sufficient documentation has been submitted that verifies that the costs were expended for existing eligible improvements.

(3) If the Developer does not receive a Deficiency Notice within the Approval Period, the Completed Portion shall be deemed Certified by the Town.

(4) If the Developer receives a Deficiency Notice within the Approval Period, Owner’s representative shall meet with the Town Engineer to discuss and reach agreement on any requirements necessary to certify the costs as Eligible Costs.

(5) Upon receipt of a Certificate of Approval for Eligible Expenses or subparagraph (3) above applies, the Eligible Costs for such Eligible Improvements shall be included an aggregate running total by the Town of Certified Eligible Expenses and reimbursed by Town to Developer upon receipt of an invoice from Developer identifying that it is for a cost included in the Town list of Certified Expenses. Such Eligible Costs shall be paid and reimbursed by Town to Developer quarterly in accordance with the Agreement and this ***Exhibit B*** from available Credit PIF revenues collected by the Town.

Upon the Town Engineer’s approval and inclusion in the aggregate running total of Certified Eligible Expenses, the Developer may invoice the Town and the Town will remit

payment within 45 days from available Credit PIF revenues as provided in this Exhibit B and the Agreement.

(d)Project Costs. Project Costs may be certified by Developer at any time but shall be paid quarterly in accordance with the terms of the Agreement and this Exhibit B. Certifications for Project Costs need only be signed and notarized by the Developer. Each certificate shall state that the information contained therein is true and accurate to the best of each individual's information and belief and, to the best knowledge of such individual, qualifies as Project Costs. Submissions for Project Costs shall include copies of paid receipts or other evidence reasonably acceptable to Town that the expenditures have been incurred. Unless required by a Developer construction contract then being performed, statements for payment of Project Costs shall not include advance payments of any kind for unperformed work or materials not delivered and stored on the Property. Upon the earlier of approval of such documentation or expiration of ten (10) business days following the Town's receipt of Developer's certification, the Town shall compile and maintain an aggregate running total of Project Costs to be reimbursed from Add-On PIF revenues. Thereafter, the Town will make payments of Project Costs to the Developer from then available Add-On PIF revenues as provided in this Exhibit B and the Agreement.

4. Town May Develop Additional Procedures. Notwithstanding the foregoing provisions, the Town Finance Director and Town Engineer may place additional requirements for submittal of expenses and invoices as reasonably necessary to implement the Agreement and this Exhibit B.

5. No Town Liability for PIF Revenue Shortfalls. Notwithstanding the foregoing provisions, the Parties acknowledge and agree that PIF Revenues collected by the Town for payment of Eligible Costs and/or Project Costs, as applicable, may be insufficient to make the payments or reimbursements. In the event there are insufficient PIF Revenues to reimburse Developer, this shall not constitute an event of default under the Agreement and any such payments or reimbursements shall be made only from available PIF Revenues and any unpaid amount, or portion thereof, shall be made when PIF Revenues are thereafter received by the Town.

EXHIBIT C to the PIF Agreement

**Town of Basalt, Colorado
Ordinance No. 26
Series of 2015**

**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO AMENDING
CHAPTER 4, REVENUE AND FINANCE, OF THE BASALT MUNICIPAL CODE
CONCERNING THE TOWN'S SALES TAX,
BY PROVIDING FOR A SALES TAX CREDIT AGAINST CERTAIN
PUBLIC IMPROVEMENT FEES PAID AT WILLITS TOWN CENTER, BASALT,
COLORADO**

[Ordinance No. 26, 2015 as approved by the Town Council will be inserted here].

EXHIBIT D to the PIF Agreement

**Town of Basalt, Colorado
Ordinance No. 28
Series of 2015**

**ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO APPROVING
AMENDMENTS TO THE APPROVAL DOCUMENTS FOR THE WILLITS TOWN
CENTER PUD AND AUTHORIZING TRANSFER OF PROPERTY INTERESTS FROM
THE TOWN TO THE WILLITS TOWN CENTER (WTC) DEVELOPER**

[Ordinance No. 28, 2015 as approved by the Town Council will be inserted here].