

TOWN OF WHITESTOWN TOWN COUNCIL

ORDINANCE NO. 2021-06

ORDINANCE AUTHORIZING THE ISSUANCE OF THE TOWN OF WHITESTOWN, INDIANA ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2021 (MILHAUS PROJECT), AND AUTHORIZING AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Town of Whitestown, Indiana (the “Town”), is a municipal corporation and political subdivision of the State of Indiana and by virtue of Indiana Code 36-7-11.9 and Indiana Code 36-7-12 (collectively, the “Act”), is authorized and empowered to adopt this ordinance (this “Bond Ordinance”) and to carry out its provisions;

WHEREAS, Milhaus Properties, LLC, or an affiliate or permitted assignee thereof (the “Company”), desires to finance the construction of certain improvements as more particularly described in Exhibit A attached hereto and incorporated herein by reference which are located in the Town (the “Project”);

WHEREAS, the Company has advised the Town’s Economic Development Commission (the “Commission”) and the Town that it proposes that the Town issue its Economic Development Revenue Bonds, Series 2021 (Milhaus Project), in an amount not to exceed Four Million One Hundred Thousand Dollars (\$4,100,000) (the “Bonds”) under the Act and provide a portion of the proceeds of such Bonds to the Company for the purpose of financing the Project, including costs of issuance of the Bonds and, if necessary, funding capitalized interest and a reserve for the Bonds;

WHEREAS, the completion of the Project results in the diversification of industry, the creation of jobs and business opportunities in the Town;

WHEREAS, in connection with the issuance of the Bonds, a portion of the proceeds of the Bonds will be paid over to the Town of Whitestown Redevelopment Commission (the “Redevelopment Commission”), on behalf of the Town, in a sum equivalent, taking into account any other sums that have been paid over to the Town for such purpose from any other sources, to the market value price of the Project site in exchange for the agreement of the Town and the Redevelopment Commission to release certain of their respective rights in connection with the Project site and the development thereof as set forth in the Amended and Restated Economic Development Agreement (Little League Central Region Headquarters & Mixed Use Development), dated July 26, 2019, among the Town, the Commission, Little League Baseball, Incorporated, and Kite Harris Property Group, LLC, as amended by the First Amendment to Amended and Restated Economic Development Agreement, dated July 9, 2020 (as amended, the “Project Site Development Agreement”); and

WHEREAS, pursuant to Indiana Code 36-7-12-24, the Commission published notice of a public hearing (the “Public Hearing”) on the proposed issuance of the Bonds to finance the Project;

WHEREAS, on February 10, 2021, the Commission held the Public Hearing on the Project; and

WHEREAS, the Commission has performed all actions required of it by the Act preliminary to the adoption of this Bond Ordinance and has approved and forwarded to the Town Council the forms of: (1) a Financing Agreement between the Town and the Company; (2) a Trust Indenture between the Town and a corporate trustee to be selected by the Town Council President and acceptable to the Company (the "Trustee") (the "Indenture"); (3) the Bonds; (4) the Bond Purchase Agreement between the Town and the purchaser of the Bonds (the "Purchase Agreement"); and (5) this Bond Ordinance (the Financing Agreement, the Indenture, the Bonds, the Purchase Agreement and this Bond Ordinance, collectively, the "Financing Agreements");

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA, THAT:

Section 1. Findings; Public Benefits. The Town Council hereby finds and determines that the Project involve the acquisition, construction and equipping of an "economic development facility" as that phrase is used in the Act; that the Project will increase employment opportunities and increase diversification of economic development in the Town, will improve and promote the economic stability, development and welfare in the Town, will encourage and promote the expansion of industry, trade and commerce in the Town and the location of other new industries in the Town; that the public benefits to be accomplished by this Bond Ordinance, in tending to overcome insufficient employment opportunities and insufficient diversification of industry, are greater than the cost of public services (as that phrase is used in the Act) which will be required by the Project; and, therefore, that the financing of the Project by the issue of the Bonds under the Act (i) will be of benefit to the health and general welfare of the Town and (ii) complies with the Act.

Section 2. Approval of Financing. The proposed financing of the Project by the issuance of the Bonds under the Act, in the form that such financing was approved by the Town's Economic Development Commission, is hereby approved. The payment of a portion of the proceeds of the Bonds to the Redevelopment Commission, on behalf of the Town, in connection with the release of certain rights of the Town and Redevelopment Commission under the Project Site Development Agreement is hereby approved.

Section 3. Authorization of the Bonds. The issuance of the Bonds, payable solely from revenues and receipts derived from the Financing Agreements, is hereby authorized.

Section 4. Terms of the Bonds. (a) The Bonds, in the aggregate principal amount not to exceed Four Million One Hundred Thousand Dollars (\$4,100,000), shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Town Council President and the Clerk-Treasurer of the Town; (ii) be dated as of the date of their delivery; (iii) mature on a date not later than twenty-five (25) years after the date of issuance; (iv) bear interest at such rates as determined with the purchaser of the Bonds in the Purchase Agreement; (v) be issuable in such denominations as set forth in the Financing Agreements; (vi) be issuable only in fully registered form; (vii) be subject to registration on the bond register as provided in the Indenture; (viii) be payable in lawful money of the United States of America; (ix) be payable at an office of

the Trustee as provided in the Indenture; (x) be subject to optional redemption prior to maturity and subject to redemption as otherwise provided in the Financing Agreements; (xi) be issued in one or more series; and (xii) contain such other terms and provisions as may be provided in the Financing Agreements.

(b) The Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the Town, but shall be special and limited obligations of the Town, payable solely from revenues and other amounts derived from the Financing Agreements. Forms of the Financing Agreements are before this meeting and are by this reference incorporated in this Bond Ordinance, and the Clerk-Treasurer of the Town is hereby directed, in the name and on behalf of the Town, to insert them into the minutes of the Town Council and to keep them on file.

Section 5. Sale of the Bonds. The Town Council President and the Clerk-Treasurer of the Town are hereby authorized and directed, in the name and on behalf of the Town, to sell the Bonds to the purchaser at the price, in the manner and at the time set forth in the Purchase Agreement, at such prices as are determined on the date of sale and approved by the Town Council President and the Clerk-Treasurer of the Town.

Section 6. Execution and Delivery of Financing Agreements. The Town Council President and the Clerk-Treasurer of the Town are hereby authorized and directed, in the name and on behalf of the Town, to execute and deliver the Financing Agreement, the Indenture, the Purchase Agreement and the Bonds, submitted to the Town Council, which are hereby approved in all respects.

Section 7. Changes in Financing Agreements. The Town Council President and the Clerk-Treasurer of the Town are hereby authorized, in the name and on behalf of the Town, without further approval of the Town Council or the Commission, to approve such changes in the Financing Agreements as may be permitted by Act, such approval to be conclusively evidenced by their execution thereof.

Section 8. Release Documents. The Town Council President and Clerk-Treasurer are hereby authorized, in the name and on behalf of the Town, without further approval of the Town Council or the Commission, to execute, with the advice of counsel, any such documents, releases, amendments or other instruments (collectively, the "Release Documents") as may be necessary to effectuate the release of the Town's rights in respect of the Project site under the terms of the Project Site Development Agreement in exchange for the receipt of payment from the proceeds of the Bonds (or such other sources as may be acceptable to the Town Council President) of the market value of the Project site at the time or prior to the issuance of the Bonds. Any actions taken to date by the Town Council President and Clerk-Treasurer in connection with any Release Documents are hereby ratified and approved.

Section 9. General. The Town Council President and the Clerk-Treasurer of the Town, and each of them, are hereby authorized and directed, in the name and on behalf of the Town, to execute or endorse any and all agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by them, or either of them, to be necessary or desirable in order to carry out and comply with the intent,

conditions and purposes of this Bond Ordinance (including the preambles hereto and the documents mentioned herein), the Project, the issuance and sale of the Bonds, and the securing of the Bonds under the Financing Agreements, and any such execution, endorsement, performance or doing of other things heretofore effected by, and hereby is, ratified and approved.

Section 10. Binding Effect. The provisions of this Bond Ordinance and the Financing Agreements shall constitute a binding contract between the Town and the holders of the Bonds, and after issuance of the Bonds this Bond Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of the holders of the Bonds as long as the Bonds or interest thereon remains unpaid.

Section 11. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 12. Effective Date. This Bond Ordinance shall be in full force and effect immediately upon adoption.

Section 13. Copies of Financing Agreements on File. Two copies of the Financing Agreements incorporated into this Bond Ordinance were duly filed in the office of the Clerk-Treasurer of the Town, and are available for public inspection in accordance with Indiana Code 36-1-5-4.

PASSED AND ADOPTED on the _____ day of _____, 2021, by the Town Council of the Town of Whitestown, Indiana, by a vote of _____ in favor and _____ against.

TOWN COUNCIL OF THE
TOWN OF WHITESTOWN, INDIANA

Clinton Bohm, President

ATTEST:

Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana

EXHIBIT A

Description of Project

The Project shall consists of the development and construction by the Company of a mixed-use multifamily housing development containing approximately 240 Class A Apartments (studio-3-BR) with amenities (e.g., resort style pool and deck, lounges, dog park fitness center, etc.); and 5,000 – 10,000 square feet of retail. The total estimated investment in the Project is estimated at \$41,500,000. The proceeds of the Bonds will be allocated to costs of the Project relating to site development, land preparation, building foundations, drainage, parking, utilities, roads, infrastructure, green spaces, and other costs permissible under Indiana Code 36-7-14 and 36-7-12, each as amended.