

RESOLUTION NO. 2023-17

**RESOLUTION OF THE TOWN OF WHITESTOWN REDEVELOPMENT
COMMISSION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT AND
AUTHORIZING OTHER MATTERS IN CONNECTION THEREWITH**

Mauer Commons Phase I

WHEREAS, the Town of Whitestown Redevelopment Commission (the “Commission”), governing body of the department of redevelopment of the Town of Whitestown, Indiana (the “Town”) pursuant to Indiana Code 36-7-14 and 36-7-25, each as amended (collectively, the “Act”), desires to foster and encourage economic development and redevelopment of the Town that will be of public benefit to the Town and in connection therewith is authorized to enter into one or more economic development agreements with project developers; and

WHEREAS, the Commission has been advised by its staff and others of a proposed economic development agreement by and among the Town, the Commission, and Milhaus Development, LLC, the substantially final form of which agreement is attached hereto as Exhibit A and incorporated herein by reference (the “Agreement”), pursuant to which Milhaus Development, LLC (the “Developer”) has proposed to undertake the development and construction of a mixed-use development including market rate apartments, for-rent townhomes, and a hotel (collectively, the “Project”) in the Town; and

WHEREAS, pursuant to the Agreement, the Town and the Commission have proposed to take certain actions (the “Town Actions”) in connection with the Project to facilitate the development thereof, including providing certain bond financing incentives in accordance with Indiana Code 36-7-11.9 and -12, as amended; and

WHEREAS, the Commission has reviewed the Agreement and considered the information provided to it by its staff and others relating to the proposed Project and the Town Actions in connection therewith and finds that the terms of the Agreement are consistent with the provisions of Indiana law, including the Act, and the Commission’s development plan for the Project site, will serve to foster and encourage economic and redevelopment of the Town and will be of public benefit to the Town;

NOW, THEREFORE, BE IT RESOLVED by the Town of Whitestown Redevelopment Commission, as follows:

Section 1. The Agreement, in substantially final form attached hereto as Exhibit A, is hereby approved and the President is authorized to execute, and the Secretary is hereby authorized to attest, said Agreement on behalf of the Commission.

Section 2. The President of the Commission is hereby authorized and empowered to approve such non-material amendments, additions, deletions and changes to the Agreement as the President deems necessary or advisable, with the advice of counsel, and the President’s

approval shall be signified by the President's execution of said Agreement, as attested by the Secretary.

Section 3. The President, Vice President and the Secretary of the Commission, and such other staff members, service providers and firms as they may direct are hereby authorized and directed to take any and all other actions on behalf of the Commission as may be necessary or appropriate to carry out the purposes of this resolution.

Section 4. This resolution shall be effective from and after its passage.

Adopted the 6th day of November, 2023, by a vote of _____ in favor and _____ against.

TOWN OF WHITESTOWN
REDEVELOPMENT COMMISSION

Adam Hess, President

ATTEST:

Eric Nichols, Secretary

EXHIBIT A

Form of Agreement

ECONOMIC DEVELOPMENT AGREEMENT

Mauer Commons Phase I

This ECONOMIC DEVELOPMENT AGREEMENT (the “**Agreement**”) is made and entered into this _____ day of _____, 2023 (the “**Effective Date**”) by and among the TOWN OF WHITESTOWN, INDIANA, a municipality and a political subdivision organized and existing under the laws of the State of Indiana (the “**Town**”), the WHITESTOWN REDEVELOPMENT COMMISSION (the “**Commission**” and collectively with the Town, the “**Town Parties**”), a redevelopment commission organized and existing under the provisions of Indiana Code 36-7-14 and Indiana Code 36-7-25, each as amended (the “**Act**”), and MILHAUS DEVELOPMENT, LLC, an Indiana limited liability company (“**Milhaus**”), to facilitate the development of a mixed use development in the Town.

WITNESSETH:

WHEREAS, the Commission is the owner of a parcel of land more fully described on the attached Exhibit A (the “**Property**”); and

WHEREAS, the Commission previously conducted a public offering of the Property, pursuant to Indiana Code 36-7-14-22, in order to attract investment, economic development, and redevelopment opportunities to the Property and Town; and

WHEREAS, the Town Parties and Milhaus, along with Academy E, LLC, previously entered into an Economic Development Agreement dated November 11, 2021, concerning the development of a portion of the Property (“**Prior Agreement**”), which Prior Agreement has expired and is no longer in effect; and

WHEREAS, Milhaus now seeks to acquire and redevelop portions of the Property into the first phase of a mixed-use development (each, a “**Phase I Project**” and, collectively, the “**Phase I Projects**”) consisting of the following uses and/or other uses as may be established pursuant to this Agreement (each, a “**Component Project**” and, collectively, the “**Component Projects**”): a flagged hotel with at least 125 rooms (the “**Hotel**”); an approximately 228-unit market rate apartment project (the “**Multifamily Project**”); and approximately 75 for-rent residential townhome units (the “**Townhome Project**”) and associated site work and infrastructure; and

WHEREAS, the Phase I Projects will be developed by Milhaus or approved Component Project Developers (as defined in Section 2.02(a)) on that portion of the Property (the “**Phase I Property**” and each portion of the Property on which a Component Project is to be developed, a “**Component Project Property**”) identified as Multi-Family and Hotel for such purposes on the attached Exhibit B (the “**Master Site Plan**”); and

WHEREAS, Milhaus represents that the real property assessed value (“**AV**”) of the Phase I Projects is expected to equal or exceed Sixty-Four Million Dollars (\$64,000,000) when completed (the “**Phase I Projects Investment**”), and consisting of the following (each, a “**Component Project Investment**”): approximately \$13,125,000 of AV for the Hotel (“**Hotel**”)

Investment"); \$36,480,000 of AV for the Multifamily Project ("**Multifamily Investment**"); and \$14,400,000 of AV for the Townhome Project ("**Townhome Investment**"); and

WHEREAS, Milhaus has requested certain economic development assistance from the Town for the Phase I Projects, without which Milhaus would not proceed with the Phase I Projects; and

WHEREAS, in the preliminary construction and development of the Phase I Projects, Milhaus will further provide to the Town Parties various site improvements and infrastructure for the remaining portions of the Property, including the earthwork, preliminary site development, drainage, and installation of the streets and utilities for the master development of the Property at a cost that is expected to exceed Twelve Million Six Hundred Thousand Dollars (\$12,600,000) (the "**Public Improvements**"); and

WHEREAS, the Town Parties have a public interest in encouraging development and redevelopment of the Property, and desires that Milhaus proceed with the Phase I Projects and Public Improvements in order to stimulate, promote, and further the general and economic welfare of the Town; and

WHEREAS, the Phase I Projects will (i) benefit the public health, safety, morals, and welfare for the Town; (ii) increase the economic well-being of the Town and the State of Indiana by creating jobs and employment opportunities; (iii) serve to protect and increase property values in the Town and the State of Indiana; and (iv) attract a major new business enterprise to the Town; and

WHEREAS, as an inducement to the Milhaus to construct the Phase I Projects and Public Improvements, and make the respective project investments, the Commission finds that the economic development incentives set forth herein should be provided in order to provide for the development, redevelopment, and rehabilitation of the Property and the Phase I Projects.

NOW, THEREFORE, in consideration of the promises and mutual obligations and covenants of the parties hereto contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Milhaus and the Town Parties agree as follows:

ARTICLE I. RECITALS

1.01 Recitals Part of Agreement. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

ARTICLE II. MUTUAL ASSISTANCE; PLANNING

2.01 Mutual Assistance. The parties agree, subject to further proceedings required by law, to take such actions, including, but not limited to, the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the Town Parties, the adoption of such ordinances and resolutions), as may be necessary or appropriate, from time to

time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent. In addition, the parties to this Agreement agree to use their best efforts to cooperate with each other and act in good faith to effectuate the intent of this Agreement.

2.02 General Planning Considerations.

(a) Master Development; Component Project Developers. Milhaus shall serve as master developer for the Phase I Projects and shall be primarily responsible for the layout, design and development of the Phase I Projects, including infrastructure, in accordance with, and subject to, the terms and conditions of this Agreement. Milhaus shall be entitled to designate one or more third-party developers (each, a “**Component Project Developer**”) to develop Component Projects, provided that all such Component Project Developers shall be subject to the approval and other requirements of Section 7.06.

(b) Master Site Plan. Milhaus and the Commission shall finalize the Master Site Plan (as to the Phase I Property and Public Improvements) and the legal descriptions for the Phase I Property prior to and as a condition of the Closing. Following agreement by the parties on the final Master Site Plan, if Milhaus and the Commission approve a revision and/or amendment to the Master Site Plan, then the parties shall memorialize in writing any resulting reasonably necessary revisions and/or amendments to this Agreement.

2.03 Milestone Schedule. A preliminary Milestone Schedule for the construction of the Phase I Projects and Public Improvements is attached hereto as Exhibit C (the “**Milestone Schedule**”). Milhaus and the Commission shall agree upon a final Milestone Schedule prior to and as a condition to the Closing, which, upon such agreement, shall replace the preliminary Milestone Schedule. Following agreement by the parties on the final Milestone Schedule, if the parties approve a revision and/or amendment to the Milestone Schedule, then the parties shall memorialize in writing any resulting reasonably necessary revisions and/or amendments to the Milestone Schedule. To the extent that revisions and/or amendments to the Milestone Schedule pursuant to this Section 2.03 result in the need for conforming revisions and/or amendments to this Agreement and/or any component of the Master Site Plan, the parties shall also memorialize such revisions and/or amendments in writing.

2.04 Declarations. The parties will work together to prepare and record in connection with or following the Closing a mutually acceptable agreement encumbering the Property (the “**Master Declaration**”) pursuant to which: (a) easements necessary or appropriate for the construction and/or use of the master development of the Property are granted, which easements may include, without limitation and as warranted: (i) temporary easements for the construction and/or installation of infrastructure improvements (which may include utility, drainage, and other facilities), public greenspace amenities, lighting, and signage; (ii) permanent easements to use and maintain all of the foregoing; (iii) vehicular and pedestrian access, ingress, and egress; and (iv) parking; (b) covenants, restrictions, and obligations are imposed with respect to the use and maintenance of the Property, which may include the obligation to make contribution payments in certain circumstances provided that the Town Parties may not be obligated to make any such contribution payments; and (c) such other matters determined by the parties to be necessary or

appropriate are addressed. Milhaus shall also be entitled, but not obligated, to prepare and record one or more additional agreements (each, a “**Component Project Declaration**”) similar in nature to the Master Declaration, but applicable only to one or more Component Projects, which agreement shall be consistent with the Master Declaration. A Component Project Declaration may include: (a) the obligation to make contribution payments in certain circumstances (except for the Town Parties); (b) the further allocation of any costs or expenses allocated or charged to such Component Projects pursuant to the Component Project Declaration; and (c) such other matters determined by Milhaus to be necessary or appropriate. Notwithstanding any of the foregoing, in no event shall the Master Declaration or any Component Project Declaration obligate the Town Parties without the Town Parties’ written consent. The forms of each Component Project Declaration shall be subject to approval by the Commission, which approval shall not be unreasonably withheld, conditioned or delayed.

2.05 Title and Survey Review. Milhaus shall have a period of thirty (30) days from and after the Effective Date within which to order an ALTA commitment for an owner’s policy of title insurance with respect to the Phase I Property (the “**Title Commitment**”) and an ALTA/NSPS Minimum Standard Detail Survey of the Property (the “**Survey**”) certified as of a current date by a surveyor or engineer licensed in the State of Indiana (the “**Surveyor**”). Prior to the expiration of the period: (a) commencing upon the date on which Milhaus receives the last of the Title Commitment and the Survey; and (b) ending on the date that is thirty (30) days thereafter (the “**Title/Survey Objection Period**”), Milhaus shall notify the Town Parties in writing of any matters reflected in or on the Title Commitment or the Survey to which Milhaus objects (the “**Objection Matters**”). Within ten (10) days after receipt by the Town Parties of a notice of Objection Matters, the Town Parties shall notify Milhaus as to whether the Town Parties agrees to cure the Objection Matters in a manner satisfactory to Milhaus. The Town Parties shall have no obligation to cure the Objection Matters. If the Town Parties fail to notify Milhaus that the Town Parties will cure one or more of the Objection Matters, then Milhaus, as its sole remedy, may elect to terminate this Agreement by delivery of written notice to the Town Parties within ten (10) days after receipt of such notice from the Town Parties or expiration of the ten (10) day notice period for the Town Parties to agree to cure Objection Matters. If Milhaus does not elect to terminate this Agreement within such ten-day period, then: (i) Milhaus shall be deemed to have waived the Objection Matters that the Town Parties have declined to cure; and (ii) such Objection Matters shall become “**Permitted Exceptions**”. Permitted Exceptions shall also include: (a) those matters disclosed by the Title Commitment and the Survey to which Milhaus does not object within the Title/Survey Objection Period; (b) the lien of current real estate taxes not delinquent; (c) matters specifically designated as Permitted Exceptions in other sections of this Agreement; and (d) such other matters that Milhaus agrees in writing to accept. If, at any time prior to the Closing: (i) the Title Commitment or the Survey is revised; and (ii) the revisions: (A) include matters not previously disclosed on the Title Commitment or the Survey, respectively; and/or (B) do not cure to Milhaus’s satisfaction any Objection Matters that the Town Parties have agreed to cure; then, notwithstanding that the Title/Survey Objection Period may have expired, the foregoing process shall apply with respect to the revisions, with: (i) the Title/Survey Objection Period commencing on the date that Milhaus receives the revised Title Commitment or Survey, as applicable; and (ii) Milhaus having the right to terminate this Agreement during the ten (10) day period following the non-receipt of written notice from the Town Parties that they will cure one or more of the revisions that are Objection Matters. Nothing in this Section shall be deemed to prohibit Milhaus from working

directly with the Title Insurer to address any Objection Matters (regardless of whether identified to the Town Parties in a Title/Survey Objection notice).

ARTICLE III. PHASE I PROJECT DEVELOPMENT

3.01. Phase I Property Transfer.

(a) To provide for the completion of the Phase I Projects, subject to the procedures required by law including the Act, and subject to the terms, conditions, and contingencies set forth throughout this Agreement, and unless otherwise agreed to by the parties in writing, the Commission agrees to sell the Phase I Property to Milhaus for a purchase price of One Dollar (\$1) under a closing to occur contemporaneous with the closing of the Construction Loan (as hereinafter defined) by Milhaus (the “**Closing**”). Unless otherwise agreed to by the Commission in writing, the Phase I Property will be conveyed at the Closing “as is” through execution and delivery by the Commission of a special warranty deed consistent with the form of Special Warranty Deed attached hereto as Exhibit D (the “**Deed**”), and subject to (a) building and zoning ordinances; (b) Permitted Exceptions; and (c) the terms, conditions and restrictions of this Agreement.

(b) The Town Parties have previously provided to Milhaus any environmental surveys, prior title work, and feasibility studies prepared with respect to the Property and identified by the Town Parties in their possession. Milhaus shall be responsible for any further environmental surveys and any title work or policies to be completed at their discretion on the Phase I Property and such items shall, if completed, be completed at the sole cost of Milhaus.

(c) In connection with the Closing, Milhaus and the Commission, as applicable, shall execute and deliver the following items:

(A) the Deed conveying to Milhaus fee simple title to the Phase I Property;

(B) if necessary, a vendor’s affidavit in form and substance such that any title company providing title insurance in connection with the Closing (the “**Title Company**”) agrees to delete the standard exceptions for non-survey matters;

(C) if necessary, an affidavit that the Commission is not a “foreign person”, in form and substance required by the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder;

(D) a certification by the Commission that all of the material representations and warranties set forth in this Agreement remain true and accurate in all respects as of the Closing and that, to the Commission’s knowledge, there is no existing material breach of this Agreement by any of the Town Parties;

(E) a certification by Milhaus that all of the representations and warranties set forth in this Agreement remain true and accurate in all material respects as of the Closing and that, to Milhaus’ knowledge, there is no existing breach of the material provisions of this Agreement by Milhaus;

(F) a promissory note and a real estate mortgage for each Component Project executed by Milhaus or a Component Project Developer (if Milhaus is not the developer of the Component Project) in the forms attached hereto as Exhibit E (each, collectively, the “**Note and Mortgage**”), to be recorded in the chain of title of each Component Project Property, securing the interests of the Town Parties in the Shortfall Payment, if any, that would be due to the Town Parties as provided in Section 6.03 hereof;

(G) a recordable memorandum of this Agreement, to be recorded in the chain of title for the Phase I Property;

(H) such other customary documents or instruments, resolutions, consents of members, partners, and/or shareholder and other evidence as the Commission, Milhaus or the Title Company reasonably may request, establishing that: (1) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action; and (2) the execution and delivery of such documents, and the conveyance of the Phase I Property to Milhaus in accordance with the terms and conditions of this Agreement, have been properly authorized by the signatories thereto; and

(I) such other customary documents or instruments as the Commission, Milhaus or the Title Company may request in connection with the transfer of the Phase I Property (including, for example, a Sales Disclosure Form and a closing statement).

Following the Closing, Milhaus assumes and agrees to pay all real estate taxes and assessments then existing or becoming a lien against the Phase I Property, and there shall be no pro-ration of taxes or assessments. Notwithstanding the foregoing, it is anticipated that because the Town Parties are tax exempt entities, there will not be property tax assessments against the Phase I Property for the periods that the Phase I Property was owned by the Town Parties.

(d) The parties acknowledge and agree that Milhaus, in its discretion, may subdivide the Phase I Property into multiple parcels at or following the Phase I Closing (each such parcel being a “**Phase I Parcel**”) in order to facilitate the separate financing and development of each Phase I Project. Subject to Section 7.06, each Phase I Parcel may be owned by a separate entity, which may or may not be an affiliate entity of Milhaus, and each of the Phase I Parcels shall be conveyed to the respective separate entity and such entity shall be entitled to the rights and bound by the obligations under this Agreement with respect to such Phase I Parcel only.

3.02. First Phase Contingencies and Pre-Closing Access to the Property.

(a) Milhaus shall have up until the Closing to satisfy any concerns they may have relative to zoning or land use, drainage, permits, environmental conditions, access, utilities, or any other matters related to the feasibility or desirability of the Phase I Projects (collectively, “**First Phase Contingencies**”). The First Phase Contingencies include, but are not limited to, the following:

- i. Permits. Milhaus shall have obtained all necessary documentation to secure all required permits and approvals for construction and installation of the Project infrastructure.

- ii. Title and Survey Conditions. Milhaus shall have reasonably determined that there are no exceptions or matters of record reflected in the Title Commitment or Survey that are unacceptable to Milhaus. Milhaus shall be responsible, at its cost, for obtaining the policy of title insurance contemplated pursuant to the Title Commitment, together with any endorsements that they deem to be necessary or appropriate.
- iii. Environmental Condition. Milhaus, at its expense, shall have determined that: (i) it is satisfied with the environmental condition of the Property, the Remediation Agreement obligations and the Restrictive Covenants; and (ii) there are no underground storage tanks located on the Property. To the extent deemed necessary or appropriate by Milhaus, Milhaus shall have obtained a comfort letter issued by the Indiana Department of Environmental Management through the Indiana Brownfields Program (“IDEM”) confirming, among other things, IDEM’s opinion that Milhaus meets the requirements to be considered a bona fide prospective purchaser of the Phase I Property.
- iv. Physical Condition. Milhaus, in its sole and absolute discretion and at its expense, shall have determined that no test, inspection, examination, study, or investigation of the Property establishes that there are conditions that would interfere materially with the construction and use of the Phase I Projects, in accordance with the terms and conditions of this Agreement.
- v. Zoning. Milhaus shall have (i) received all zoning approvals and variances necessary for the construction and use of the Phase I Project in accordance with the terms and conditions of this Agreement; and (ii) determined that the Phase I Property is subject only to commitments and restrictions that are acceptable to Milhaus in its reasonable discretion.
- vi. Utility Availability. Prior to Closing, Milhaus, at its expense, shall have determined that gas, electricity, telephone, cable, water, storm and sanitary sewer, and other utility services are: (i) in adjoining public rights-of-way or properly granted utility easements; and (ii) serving, or will serve, the Phase I Property at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Phase I Project in accordance with the terms and conditions of this Agreement.
- vii. No Breach. There shall be no breach of this Agreement by the Town Parties that the Town Parties have failed to cure as of the Closing.
- viii. Other Infrastructure. Milhaus shall have determined to its satisfaction that the Town Parties will complete or provide for such offsite improvements as Milhaus determines to be necessary or appropriate for the Phase I Project, including but not limited to any infrastructure identified on Exhibit G as not being an obligation of Milhaus to construct.

In the event Milhaus determines that it is not satisfied as to any First Phase Contingencies prior to the Closing, Milhaus shall notify the Commission and such notice shall terminate its rights to the Phase I Property and obligations to carry out the Phase I Project under this Agreement. Upon the Closing, all First Phase Contingencies shall be deemed waived by Milhaus, and thereafter Milhaus shall be obligated to complete or cause to be completed the Phase I Projects and Public Improvements under the terms of this Agreement. The Town Parties may further terminate this Agreement if the Closing has not occurred within twelve (12) months after execution of this Agreement.

(b) Prior to and as a condition of any party's obligation to proceed with the Closing, the Commission and Milhaus shall have each mutually approved and agreed upon the final Master Site Plan for the Phase I Project and Public Improvements, the final allocation of the projected total Phase I Projects Investment among each of the Phase I Project, and the final Milestone Schedule for construction of the Phase I Project and Public Improvements (collectively, the "**Approved Phase I Plans**"); and

(c) To allow Milhaus to conduct preliminary site development work on the Property, the Commission and Milhaus will execute a Site Access Agreement to the Property in the form attached hereto as Exhibit F ("**Access Agreement**"). As is also set forth in the Access Agreement, Milhaus: (i) is responsible for any damages or liability that occurs as a result of its activities under the Access Agreement and will release and indemnify the Town Parties for the same, (ii) subject to any representations or warranties set forth in this Agreement or in the applicable Deeds, accepts the Property "AS IS", (iii) will comply with all applicable laws, rules, and regulations related to its activities, and (iv) will maintain comprehensive general liability insurance acceptable to the Commission and listing the Town Parties as additional insured while the Commission still holds title to the Property.

3.03. Construction and Operation of the Phase I Projects.

(a) Following the Closing, Milhaus (directly or through one or more Component Project Developers approved pursuant to Section 7.06) shall complete or cause to be completed each of the Phase I Projects on the Phase I Property in accordance with the Approved Phase I Plans and all applicable permits and approvals to be issued by applicable government officials and bodies (e.g., the Town building department). The total AV of the Hotel shall equal or exceed the Hotel Investment, the total AV of the Multifamily Project shall equal or exceed the Multifamily Investment, the total AV of the Townhome Projects shall equal or exceed the Townhome Investment, and the total AV of the Phase I Projects shall equal or exceed the projected Phase I Projects Investment. The Phase I Projects shall be substantially completed within forty-two (42) months following the Closing, or such later date as may be agreed to by the Commission in writing (the "**Phase I Completion Date**"), subject to extension for force majeure as provided for in Section 7.12. Substantial completion of the Phase I Projects shall be achieved upon completion of each of the following: (i) when occupancy permits have been issued for all Phase I Projects, and (ii) when Milhaus completes the Phase I Projects public infrastructure to the Town's applicable standards. Except as specifically provided in this Agreement, Milhaus is responsible for providing or arranging to provide (directly or through third parties) for the funding of all costs to complete the

Phase I Projects. The total additional assessed value of the Phase I Project Investment is anticipated to be not less than \$64,000,000.

(b) Within two (2) years of the Closing, and prior to the issuance of any occupancy permit for any portion of the Phase I Projects, Milhaus shall complete or cause to be completed the Public Improvements identified and described on Exhibit G and attached hereto as being the obligation of Milhaus to complete. All public infrastructure completed on the Property shall be completed to the Town's standards and specifications for such public infrastructure.

(c) Milhaus shall commence physical construction of the Public Improvements and Phase I Projects by no later than one hundred eighty (180) days of the Closing and shall substantially complete the Phase I Projects by the Phase I Completion Date. Milhaus shall further develop, construct, improve and complete (as evidenced by a certificate of occupancy) the respective Phase I Projects in accordance with the Milestone Schedule and Approved Phase I Plans.

(d) Exterior elevations and the site plan for each of the Phase I Projects shall be submitted by Milhaus to the Commission, or the Commission's designee, in accordance with the Milestone Schedule which shall include detailed schematic design drawings, detailed design development documents for the Phase I Projects, and a detailed construction schedule (each elevation and site plan, a "**Phase I Design**"). The Commission shall have a period of thirty (30) days to review and provide any input and approval on each Phase I Design. Unless objected to by the Commission (or its designee) by written notice to Milhaus within thirty (30) days of receipt, the parties hereby agree that the Phase I Design for the relevant Phase I Project shall be deemed approved. In the event the Commission should have any objections to the Phase I Design for a Phase I Project, the parties agree to work in good faith to reach mutually agreeable Phase I Design. The development, construction, improvement and completion of the Phase I Projects shall be accomplished by Milhaus substantially in accordance with such final Phase I Design as approved by the Commission. The provisions of this Section 3.03(d) are subject in all cases to applicable governmental entity review, including but not limited zoning and building approvals and requirements.

(e) Each owner of a Phase I Project, and its successors and assigns, shall be responsible to maintain, repair, replace and operate such owner's Phase I Project in good condition and repair in a commercially reasonable and workmanlike manner and consistent with this Agreement.

(f) Upon the Town's request, Milhaus agrees to permit the Town Parties and/or their designee, at the Town's sole cost and expense, to review and inspect copies of any and all (i) construction loan draw requests (as well as any revised draw requests) relating to construction of the Phase I Projects; and (ii) any inspections, reports, records, documents, and permits related to the Phase I Projects.

(g) Milhaus shall obtain or shall have determined to its reasonable satisfaction that it will be able to obtain all necessary permits, licenses, approvals and consents required by law for the construction of the Phase I Projects prior to the Closing.

(h) Milhaus agree to: (i) identify the Phase I Project and Phase I Property and all buildings thereon as located in or a part of the Whitestown community, in any advertisement or literature in which the location of the Phase I Project is provided; (ii) participate in a Whitestown chamber of commerce, or similar organization promoting business specific to the Whitestown community, if organized in the future; and (iii) work with the Town Parties in reasonable partnerships or opportunities, where available to the mutual benefit of all parties, to use the Phase I Project and Phase I Property in a manner that furthers Whitestown economic development.

(i) Milhaus, for and on behalf of themselves and any successor owner of the Phase I Projects, agrees that no portion of the Phase I Property shall be leased or used for any of the following prohibited uses: tattoo parlor; piercing studio; nail salon; massage parlor; alternative financial services; sexually oriented-business; tobacco shop, cigar lounge, hookah, head or other smoke shop; store the principal business of which is the sale of alcoholic beverages for consumption off premises; second hand or government surplus store; non-profit or institutional use by any entity which is exempt from property taxation and causes any portion of the Phase I Property to be exempt from property taxes (except to the extent dedicated to the Town Parties); or gambling facility.

(j) The Town Parties, or their inspector, may perform an inspection of the Phase I Projects or Public Improvements. Following identifying any Material Defect, the Town may deliver to Milhaus a notice (the “**Non-Compliance Notice**”) that identifies a Material Defect (for purposes of this provision, a “**Material Defect**” is any item or component of the Phase I Projects or Public Improvements that (i) is not in compliance with applicable building codes; (ii) violates applicable rules, regulations, laws, or ordinance with respect to the Phase I Projects or Public Improvements; or (iii) has not been performed materially in accordance with the terms and conditions of this Agreement). If the Town delivers a Non-Compliance Notice, then Milhaus shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted by the Town in writing. This provision shall be in addition to, and shall not in any respects be deemed to be, a waiver of any power of the Town under applicable laws or this Agreement.

(k) If Milhaus delivers to the Town a written request for a final inspection of the Phase I Projects, then, on or before the later of the date that is thirty (30) business days after: (i) receipt of such request; or (ii) the date specified in such request as the substantial completion date; the Town shall: (1) conduct the final inspection; and (2) deliver a Phase I Non-Compliance Notice (if applicable) to Milhaus (a “**Phase I Final Inspection Non-Compliance Notice**”). Upon receipt of a Phase I Final Inspection Non-Compliance Notice, Milhaus shall correct, or cause to be corrected, as soon as is practicable, all Phase I Material Defects identified in the Phase I Final Inspection Non-Compliance Notice. All then-completed items or components of the Phase I Project with respect to which no Phase I Material Defects are identified in a timely Phase I Final Inspection Non-Compliance Notice shall be deemed to be accepted by the Town for purposes of this Agreement. Upon: (i) correction of all Phase I Material Defects identified in the Phase I Final Inspection Non-Compliance Notice; or (ii) deemed acceptance pursuant to this section; the Phase I Projects shall be deemed for purposes of this Agreement to be materially constructed in accordance with the terms and conditions of this Agreement. Within thirty (30) business days after receipt of a written request from Milhaus, the Town shall certify to any lender of the Phase I

Projects or purchaser of the Phase I Projects the status of the final inspection and whether any Phase I Material Defects identified in any Phase I Final Inspection Non-Compliance Notice, if any, have been remedied. Notwithstanding the foregoing, no acceptance or deemed acceptance by the Town under this Agreement shall constitute a waiver or acceptance of the Town for purposes of applicable laws relating the construction or maintenance of property, including but not limited to applicable building codes.

3.04 Project Records, Reporting. For purposes of demonstrating the economic development guaranteed by the Project, for a period up to and including ten (10) year(s) following the completion date of any respective portion of the Phase I Projects and Public Improvements, Milhaus shall keep and maintain in their offices complete and accurate records and supporting documents relating to the receipt and expenditures related to the construction and completion of the Phase I Projects and Public Improvements, and will cooperate with and permit any duly authorized representative of the Town Parties, upon not more than ten (10) days' prior written notice, to have access to and the right to examine the records and supporting documents required to be kept and maintained under this Agreement.

3.05 Building Approvals. The Town Parties shall hold such meetings and assist Milhaus with all necessary permit applications and other submittals to each and any other applicable board, commission or office of the Town to facilitate procurement, by Milhaus, of all necessary and appropriate authorizations, approvals, permits and other entitlements required or otherwise associated with the Phase I Projects and Public Improvements to accommodate the timely construction of the Phase I Projects and Public Improvements.

3.06 Public Infrastructure. Milhaus will, with the use of some of the proceeds from the Development Incentives to be funded from the Bonds as described below, design, develop and construct the public infrastructure reasonably required to serve the Phase I Projects. The Town shall have the right to review and approve any such public infrastructure prior to its construction and such public infrastructure shall in all instances be designed and constructed in accordance with Town standards.

3.07 Project Entitlements. Milhaus will submit (or cause to be submitted) all necessary applications for appropriate property planning and zoning designations in order to accommodate the uses proposed by the Phase I Projects. The Town will consider and review all such applications in a prompt, timely manner.

3.08 Environmental. The parties acknowledge that a degree of environmental conditions exists on the Property as contemplated in the Environmental Restrictive Covenant executed by the Commission (11/8/2019) and recorded in the Office of the Recorder of Boone County, Indiana, as Instrument Number 2019012179 (the "**Restrictive Covenants**"). Milhaus will accept the Phase I Property subject to the Restrictive Covenants and environmental conditions and will be responsible for any costs incurred in order to comply with the Restrictive Covenants or address environmental conditions in its development or use of the Phase I Property and Public Improvements. The Town Parties represent and warrant to Milhaus that, to the best of the Town Parties' knowledge, information, and belief: (a) IDEM has issued a Certificate of Completion through its VRP and the State of Indiana has issued a Covenant Not-to-Sue to Wrecks, Inc., a copy of which is attached

hereto as Exhibit H; and (b) there are not material outstanding defaults of either party to that certain Remediation Agreement by and between the Commission and Wrecks, Inc., dated December 28, 2018.

ARTICLE IV. ECONOMIC DEVELOPMENT INCENTIVES

4.01. Project Economic Development Area. The Town Parties shall, subject to further proceedings required by law, establish an economic development area and allocation area for the Phase I Property in accordance with Indiana Code 36-7-14, as amended in order to collect tax increment revenue generated from the Phase I Projects (the “**TIF Revenues**”). The term of the allocation area shall extend for the maximum term permitted by Indiana Code 36-7-14-39. Milhaus agrees to attend and participate in meetings and hearings of the Town Parties, and provide such documentation as may be necessary, for the establishment of the new economic development area and allocation area for the Phase I Property.

4.02. Economic Development Revenue Bonds.

(a) The Town Parties shall each, subject to further proceedings required by law, issue, or cause to be issued four or more series of economic development revenue bonds pursuant to Indiana Code 36-7-12 (the “**Bonds**”), which Bonds may or may not be issued as tax-exempt based on a determination of the Town Parties at the time of issuance of the Bonds upon the advice of the Town Parties’ bond counsel. The Bonds for the Phase I Projects and Public Improvements (the “**TIF Bonds**”) may, at the election of Milhaus, be issued in two or more series and shall be issued in a principal amount sufficient to provide for the deposit to a project fund the total sum not to exceed \$9,588,795 (the “**Project Fund Deposit**”). The actual par amount of the Bonds will be sized to ensure sufficient proceeds to provide, in addition to the Project Fund Deposit, the cost of issuance including (a) funding a debt service reserve for the Bonds, (b) funding capitalized interest on the Bonds for a period not exceeding two (2) years from the date of delivery of the Bonds, and (c) the legal, financial advisory, and planning consultant expenses incurred by the Town Parties in connection with the issuance of the Bonds. The final sizing of the Bonds will be determined by the Town Parties with the advice of the Town’s municipal advisor.

(b) In connection with the issuance of the Bonds, the Town Parties agree to pledge the following sources of funds to the payment of the Bonds (note, no other sources of funds of the Town Parties will be pledged to the Bonds): 90% of the TIF Revenues from the Phase I Projects will be pledged to the payment of the TIF Bonds. The remaining 10% of the TIF Revenues from the Phase I Projects will be retained by the Commission and available for use by the Commission for any purpose permitted by Indiana law.

(c) Milhaus acknowledge that the ability of the Town Parties to pay debt service on the TIF Bonds is directly related to the assessed value of Phase I Projects. To facilitate the financing of the cost of the projects, Milhaus shall either (i) purchase the TIF Bonds directly through Milhaus, an affiliate thereof, and/or one or more third parties provided by Milhaus, or (ii) cause the increment expected to be generated in connection with the TIF Bonds to be guaranteed by Milhaus, an affiliate thereof, and/or one or more third-parties provided by Milhaus provided such guaranty shall be reasonably sufficient to enable the marketing of the TIF Bonds to a financial

institution or other purchaser. In connection herewith, Milhaus agrees to execute, or cause its affiliates or third parties provided by Milhaus to execute, any such purchase agreements and or guaranty agreements as may be necessary and appropriate in connection with the marketing and sale of the TIF Bonds. Subject to any conditions or requirements of the purchaser of the TIF Bonds, the Town Parties will not independently require subsequent owners of the Property to guarantee the payment of the TIF Bonds.

(d) Milhaus and Town Parties agree that the Bonds shall be used primarily for the cost of the construction of the Phase I Projects, the Public Improvements, Phase I Projects site development and infrastructure work, Phase I Projects foundations and all other costs of the construction of the Phase I Projects as set forth in this Agreement.

(e) So long as the Bonds remain outstanding, Milhaus covenant and agrees to not seek any property tax abatements (real or personal) on the Phase I Property and/or appeals against the assessed value of any applicable portion of Phase I Projects or Phase I Property that would decrease the actual tax assessment of the Phase I Property to an amount that is less than 110% of the Phase I Projects Investment.

(f) The Town Parties shall commence with all preliminary actions and approvals that may be necessary to proceed with the bond sale process as to the TIF Bonds.

(g) As soon as reasonably possible after the Closing (but in any event on or before 60 days after such Closing date), the Town Parties will complete the sale of the TIF Bonds and will make proceeds available to Milhaus for a period of four (4) years after closing on the sale of the TIF Bonds subject to the hereinafter described disbursement conditions. The funds held in the TIF Bonds Project Fund will be made available to the Milhaus to pay for any and all costs of the Phase I Projects and Public Improvements that are eligible for payment under Indiana law. The ability of Milhaus to access the proceeds of the TIF Bonds shall be subject to (i) the approval by the Commission of a final Phase I Projects budget (the "**Project Budget**") provided by Milhaus and acceptable by the Commission, which acceptance shall not be unreasonably withheld or delayed, and (ii) the prior written consent of the Town in accordance with commercially reasonable disbursement conditions to ensure that the proceeds of the TIF Bonds are used for capital costs of the Phase I Projects and Public Improvements and drawn on a pro-rata basis with other financing for the Project Budget, and otherwise in accordance with this Agreement and the Project Budget. Prior to the issuance of the TIF Bonds, Milhaus shall have secured such other funds to the Commission's satisfaction in an amount sufficient to cover all costs of the Phase I Projects and Public Improvements to completion, to the extent not funded from the TIF Bond proceeds.

(h) Milhaus and Town Parties agree to execute such agreements as may be necessary to effectuate the sale and security of the Bonds.

4.03 Developer Loans. The Town Parties understand that Milhaus and/or Component Project Developers will obtain developer construction loan(s) for portions of the Phase I Projects (each, a "**Construction Loan**") and may enter into refinancings with respect to the Phase I Projects (the Construction Loans and refinancings for a Component Project, collectively, "**Loans**"). Upon request by a Milhaus's lender, the Town Parties agree to negotiate in good faith with Milhaus's

lenders to memorialize one or more agreements (the "**Intercreditor Agreement**") between the Commission (and any other Town Parties), Milhaus, and Milhaus's lender to, among other things, (i) subordinate the Note and Mortgage for the Component Project to the Loan documents in all respects, (ii) provide notice to the other party in the event of a default by the borrower under the Loan documents and this Agreement (and related Bond transaction documents), (iii) allow the lender to cure any default by Milhaus under such project documents, and (iv) address how any remedies will proceed in the event of a default by Milhaus under this Agreement or the Loan documents. Milhaus' and the Town Parties' obligations to close on the Phase I Property and the Bonds shall be subject to the Commission (and any other Town Parties) and Milhaus's lender agreeing upon a commercially reasonable agreement pursuant to this Section.

4.04 Alternative Financing. If the Town Parties and Milhaus agree that a form of financing other than the issuance of the Bonds would better accomplish the purposes of this Agreement, the terms of this Agreement will be amended to provide for such alternative financing.

4.05 Park Impact Fees. Following completion of the Public Improvements, the Town will issue Milhaus a credit in the amount of Nine Hundred Ninety-Two Thousand, One Hundred Sixty-Seven Dollars (\$992,167) ("**PIF Credits**") for park impact fees that may be imposed by the Town on the Phase I Projects. The PIF Credits may be used by Milhaus only for park impact fees imposed on Milhaus or Component Project Developers within the Phase I Property by the Town for development of the Phase I Projects in accordance with this Agreement, and shall expire if not otherwise used within four (4) years following the Closing. The Commission shall be responsible for paying or providing parks facilities or amenities to the Town, whether through community space on the Property or otherwise, as may be required to satisfy payments or contributions to the Town sufficient to satisfy the PIF Credits. Milhaus or the respective Component Project Developers shall be responsible for paying any park impact fees imposed by the Town for the Phase I Projects in excess of the PIF Credit. For the avoidance of any doubt, Milhaus will not be entitled to any payment from the Town Parties for any PIF Credits.

4.06. Additional Projects. In this event Milhaus desires to develop one or more projects within the Retail and Office areas depicted on the Master Site Plan (each, an "**Additional Project**"), Milhaus may submit a detailed proposal to the Commission (each such proposal, an "**Additional Project Proposal**"). Each Additional Project Proposal may include such information as may be required by the Commission in its discretion concerning the use, design, aesthetics, component, size, investment commitments, and any other matters concerning the economic development of and impact on the Property, the Town, and the community, including but not limited to elevations, schematic design, site plans, public infrastructure, construction costs, assessed value, investment commitments, construction schedule, and milestone schedule. The Town Parties may, in their sole discretion subject to applicable law and procedures, enter into additional project agreements with Milhaus concerning the development of such additional projects. Nothing herein shall be interpreted as granting Milhaus any rights or interest in the transfer or development of such Property.

ARTICLE V. AUTHORITY

5.01 Actions. Each of the Town Parties represents and warrants that it has taken or will take (subject to further proceedings required by law and Milhaus' performance of their agreements and obligations hereunder) such action(s) as may be required and necessary to enable each of the respective Town Parties to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

5.02 Powers. Each of the parties represent and warrant that each has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform their respective obligations under this Agreement.

ARTICLE VI. DEFAULTS

6.01 Milhaus Events of Default. Each of the following events is an "event of default" by Milhaus hereunder:

(a) If Milhaus fails to perform any obligation under this Agreement within ninety (90) days after Milhaus' receipt of written notice from the Town Parties of its failure to perform such obligations, and provided that the Town Parties have fulfilled any applicable obligations relating to such Milhaus obligation; or

(b) Failure by Milhaus to make or cause to be made the Phase I Projects Investment or complete or cause to be completed the Phase I Projects by the Phase I Completion Date, subject to extension for force majeure as provided for in Section 7.12; or

(c) Failure by the Milhaus to construct the Phase I Projects in accordance with terms of this Agreement; or

(d) Failure by the Milhaus to construct the Public Improvements in accordance with terms of this Agreement; or

(e) Cessation of all construction work of a material nature with respect to the Phase I Projects or Public Improvements for a period of at least sixty (60) days or for more than ninety (90) days during any one hundred eighty (180) day period, other than as a result of force majeure as provided for in Section 7.12; or

(f) The commencement by Milhaus of any voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or the appointment of or the taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Milhaus or of any substantial part of its property, or the making by it of any general assignment for the benefit of creditors, or the failure of Milhaus generally to pay its debts as such debts become due, or the taking of corporate action by Milhaus in furtherance of any of the foregoing; or

(g) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Milhaus in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of Milhaus or for any substantial part of its property, or ordering the windup or liquidation of its affairs; or the filing and pendency for thirty (30) days without dismissal of a petition initiating an involuntary case under any other bankruptcy, insolvency or similar law.

6.02 Special Remedies.

(a) In addition to any other remedies available to the Town Parties at law or equity, if, after the Closing, Milhaus falls one hundred eighty (180) or more days behind the applicable dates set forth in the Milestone Schedule, subject to extension for force majeure as provided for in Section 7.12, then:

(i) the Commission, by delivery of written notice to Milhaus, may require Milhaus to submit, within fifteen (15) days, a catch-up plan for the Commission's approval, which approval shall not be withheld unreasonably. At such time as the Commission has approved a catch-up plan, Milhaus shall implement, and diligently pursue the application of, such catch-up plan. For purposes of this Section 6.02(a), catch-up plan means a plan pursuant to which Milhaus will (a) avoid falling further behind the date set forth in the Milestone Schedule for construction of the Phase I Projects and Public Improvements and (b) complete the Phase I Projects and Public Improvements in accordance with (and in no event more than two hundred forty (240) days behind) the applicable dates set forth in the Milestone Schedule.

(ii) if Milhaus: (A) fails to timely submit a catch-up plan; (B) submits a catch-up plan that is rejected by the Commission; (C) fails to implement an approved catch-up plan; (D) implements an approved catch-up plan, but fails to diligently pursue the application thereof; or (E) implements an approved 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 one hundred eighty (180) or more days behind the applicable dates set forth in the Milestone Schedule; then the Commission may:

(A) develop a reasonable catch-up plan and require Milhaus to implement, and diligently pursue the application of, such catch-up plan;

(B) complete the Phase I Projects or Public Improvements for and on behalf of Milhaus; or

(C) purchase the developer construction loan, if acceptable to the lender provider thereof;

provided that, if the Commission elects either the option in clause (B) or the option in clause (C), then Milhaus shall be obligated to pay to the Commission (or to reimburse the Commission for) all costs of completing the Phase I Projects or Public Improvements that are in excess of the proceeds of the developer construction loan that are disbursed to the Commission. Notwithstanding the foregoing, if the Commission rejects a catch-up plan,

the Commission shall: (i) specify the part or parts that the Commission is rejecting; and (ii) include the specific basis for such rejection; then Milhaus shall revise and resubmit the catch-up plan to the Commission within fourteen (14) days of such notice, and the parties shall work in good faith to develop a reasonable catch-up plan.

Milhaus shall be responsible for all costs and expenses to prepare and implement a catch-up plan (including the reasonable out of pocket costs and expenses incurred by the Town Parties pursuant to this Subsection). Milhaus' liability for such costs and expenses shall survive termination of this Agreement.

(b) No delay or failure by the Town Parties to enforce any of the covenants, conditions, reservations and rights contained in this Agreement, or to invoke any available remedy with respect to a breach of this Agreement by Milhaus shall under any circumstances be deemed or held to be a waiver by the Town Parties of the right to do so thereafter, or an estoppel of the Town Parties to assert any right available to it upon the occurrence, recurrence or continuation of any violation or violations hereunder. For purposes of this Agreement, commencement of construction shall mean material and substantial work on the respective Property related to the construction of the respective Project such as installation of footings, foundations, and infrastructure and shall not be deemed to occur as a result of mere excavation work.

6.03 Reimbursement Obligation. In addition to any other available remedies of the Town Parties, if the Commission reasonably determines that Milhaus or a Component Project Developer, as applicable, has failed to perform by not meeting or exceeding its Component Project Investment by the Phase I Completion Date, Milhaus or such Component Project Developer, as applicable, shall make payments pursuant to its Note Mortgage each year to the Commission equivalent to the projected lost real and personal property tax increment revenues resulting from the shortfall in the minimum total Component Project Investment after reduction for any payments made pursuant to any taxpayer agreement or similar guaranty relating to the Component Project (such payments, herein "**Shortfall Payments**") until the earlier of (a) the Component Project Investment is met; or (b) the Note and Mortgage for the Component Project is paid in full. The calculation of Shortfall Payments with respect to a Component Project will be undertaken by the Commission's financial advisor each year, commencing from January 1, 2027 and continuing until the total Component Project Investment for the Component Project is met. If in any such year the Commission determines, based upon the calculations of its financial advisor, that a Shortfall Payment is due with respect to a Component Project, the Commission shall invoice Milhaus or the Component Project Developer, if applicable, for a Shortfall Payment which Milhaus or the Component Project Developer shall pay to the Commission within thirty (30) days' of mailing by the Commission. In any event, the obligations to make Shortfall Payments hereunder with respect to a Component Project shall expire once the Component Project Investment for the Component Project is met or the total amount due under the Note and Mortgage for the Component Project is paid in full. The obligation to pay the Shortfall Payments herein shall be evidenced by and be enforceable by the Town Parties in accordance with the Note and Mortgage for each Component Project. The Note and Mortgage for each Component Project shall have a first lien priority on the applicable Component Project Property, subject only to the Loan for the Component Project. In the enforcement of the provisions of this Section, Milhaus or the Component Project Developer, if applicable, shall be further responsible for any reasonable court costs and attorneys' fees incurred by the Town Parties. Within thirty (30) days of a Component Project meeting its

Component Project Investment, the Commission shall file a satisfaction of Mortgage for such Component Project in the Boone County Recorder's Office. The Note and Mortgage principal amount for each Component Project shall be as follows: (i) Multifamily Project - \$1,752,750; (ii) Townhome Project - \$691,875; and (iii) Hotel - \$630,375; provided, however, that Milhaus shall retain discretion to adjust each Component Project Investment, in its discretion, prior to Closing so long as the total projected Phase I Projects Investments equals or exceeds \$64,000,000. The Notes and Mortgages for the Component Projects shall not be cross-defaulted or cross-collateralized.

6.04 Default of Town Parties. Upon the occurrence of any default on the part of the Town Parties hereunder, Milhaus shall give the Town Parties written notice (a "**Town Default Notice**") of the circumstances constituting that default and the Town Parties shall have thirty (30) days following its receipt of such Town Default Notice in which to cure any such default or such longer period as may be reasonably required, provided that the Town Parties commence such cure within that thirty (30) day period and diligently and continuously pursue such cure to completion. In the event that the Town Parties fail to timely cure any such default hereunder, Milhaus may commence the dispute resolution procedures as provided in Section 6.05 below. No cure period shall be available to the Town Parties with respect to the Town Parties' failure to complete the Phase I Closing by the applicable outside date.

6.05 Dispute Resolution. Any lawsuit arising out of or relating to this Agreement must be brought in a state court of appropriate jurisdiction situated in the State of Indiana, Boone County. The Town Parties and Milhaus consent to the jurisdiction of such court and irrevocably waive any objections they may have to such jurisdiction or venue. In addition to other remedies that may be available to Milhaus at law or in equity, if the Town Parties default in their obligation to convey any portion of the Phase I Property as required under this Agreement, Milhaus may sue for specific performance of the conveyance of such portion of the Phase I Property in accordance with the terms of this Agreement.

ARTICLE VII. MISCELLANEOUS

7.01 Nondiscrimination. Milhaus and its respective officers, agents, and employees will not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions or privileges of employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability or United States military service veteran status.

7.02 Information Reporting. Milhaus shall cooperate in all reasonable ways and provide necessary and reasonable information to the Town Parties or any other applicable governmental authority to enable the Town Parties to review Milhaus's performance of its obligations under this Agreement, assure its compliance with the terms of this Agreement, prepare any reports required by applicable law, and to comply with any other reporting requirements of the Act and/or this Agreement.

7.03 Cooperation. The Town Parties covenant and agree to take or cause to be taken (and shall cooperate Milhaus to enable Milhaus to take or cause to be taken) all actions necessary

or desirable under statutes, regulations and rules applicable to the Phase I Projects, Public Improvements, and the development incentives, and to execute and deliver or cause to be executed and delivered (and shall cooperate Milhaus to enable Milhaus to execute and deliver or cause to be executed and delivered) such agreements, instruments, documents, indentures, applications and other papers as may be necessary or desirable under such statutes, regulations and rules to assist and permit Milhaus to undertake and complete the Phase I Projects and Public Improvements and enable the Town Parties to undertake and provide the Development Incentives.

7.04 Certificates. On Milhaus's request, the Town Parties shall each execute and deliver a certificate stating: (a) that this Agreement is in full force and effect or will provide a written explanation of why this Agreement is not in full force and effect; (b) that Milhaus is not in default under the terms of this Agreement or specifying why Milhaus is in default; or (c) any other matters which Milhaus reasonably requests. When Milhaus has satisfied all of its obligations under this Agreement then, on Milhaus' request, the Town Parties shall each execute an instrument in recordable form evidencing the termination of this Agreement and releasing the covenants as to Milhaus.

7.05 Agreement Binding on the Town Parties. No covenant, obligation or other agreement in this Agreement shall be deemed to be a covenant, obligation or agreement of any past, present or future member, official, officer, agent or employee of the Town Parties, other than in his or her official capacity, and neither the officers of the governing bodies of the respective Town Parties executing this Agreement shall be liable personally by reason of the covenants, obligations or agreements of the Town Parties under this Agreement.

7.06 Assignment. Milhaus may not assign its interests, rights and responsibilities under this Agreement without the prior written consent of the Town Parties, provided that Milhaus shall be entitled to assign rights and obligations to affiliated special purpose entities created for structuring purposes without the consent of the Town Parties. The Commission is hereby authorized to grant or deny any such written consent on behalf of the Town Parties. In addition, and without limitation, the Town Parties acknowledge and agree that Milhaus may encumber their interest in the Phase I Property with a mortgage or similar instrument or indenture, which instruments shall in all cases be subject to the rights of the Town Parties outlined in this Agreement. In connection with any assignment hereunder, the assignee party shall assume all obligations of the assigning party under this Agreement with respect to the rights and obligations assigned. Except for an assignment to an affiliated special purpose entity, the assigning party shall have no further responsibility with respect to the assigned rights and obligations arising after such assignment. In the event Milhaus desires to assign its rights and obligations under this Agreement with respect to a Component Project to an unaffiliated Component Project Developer, the Commission shall be entitled to require, as a condition precedent to giving his/her consent on behalf of the Town Parties to such assignment, reasonable information regarding the business and financial capabilities of the proposed Component Project Developer, and may require as a condition to any such assignment terms and conditions as the Town Parties determine to be necessary or appropriate to ensure that the assigned Component Project will be completed in compliance with this Agreement. Where the context requires, the term "Phase I Project" when used herein shall apply to each Component Project separately. Each Component Project Developer approved by the Commission shall be directly responsible for the obligations of Milhaus with respect to its Component Project, including without limitation all design and construction

obligations set forth in this Agreement, and shall execute an acknowledgement of the foregoing and an assumption of the Milhaus' obligations pursuant to this Agreement insofar as they relate to the applicable Component Project. Such acknowledgement and assumption shall be in form and substance satisfactory to the Town Parties and Milhaus. A default by a Component Project Developer in the performance of its assumed obligations pursuant to this Agreement or of its obligations pursuant to any guaranty or taxpayer agreement that may be executed in connection with the TIF Bonds shall not be deemed a default by Milhaus or any other Component Project Developer.

7.07 Binding Effect. This Agreement shall inure to the benefit of and be binding upon Milhaus, the Commission, the Town and their respective legal representatives, and permitted successors and assigns.

7.08 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

7.09 Notices. Except as otherwise specifically set forth in the Agreement, all notices, demands, consents or approvals given in connection with this Agreement (the "Notice") shall be in writing and shall be deemed sufficiently given or delivered: (a) on the date the Notice is delivered by personal delivery; (b) on the date the Notice is delivered by any nationally recognized overnight delivery service providing tracking service; (c) on the date the return receipt is signed or refused for any Notice sent by certified mail, postage prepaid, return receipt requested; (d) on the date received by electronic mail, so long as in each case, the Notice is delivered at the addresses set forth below, or to any other address for which notice is given as provided in this Section:

If to Milhaus:

Milhaus Development, LLC
460 Virginia Avenue
Indianapolis, Indiana 46203
Attn: Tadd M. Miller
Notice email: Tadd.Miller@milhaus.com

With a copy to:

Dinsmore & Shohl LLP
211 North Pennsylvania Street
One Indiana Square, Suite 1800
Indianapolis, Indiana 46204
Attn: E. Joseph Kremp
Notice email: Joe.Kremp@dinsmore.com

*If to Commission
and/or Town:*

Town of Whitestown
6210 Veterans Drive
Whitestown, Indiana 46075
Attention: Town Manager
Notice email: townmanager@whitestown.in.gov

With a copy to:

Stephen C. Unger

Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
Notice email: sunger@boselaw.com

7.10 No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the Town Parties and Milhaus or any affiliates thereof.

7.11 Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the performance of their obligations (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation. The Town Parties agree that they will, in good faith, expedite the review and approval of matters relating to this Agreement that are under their respective jurisdiction. Milhaus agrees that whenever any provision of this Agreement provides for its review and/or approval, they will make a good faith effort to take such action as expeditiously as possible. In calculating any period of time provided for in this Agreement, the number of days allowed shall refer to calendar and not business days. If any day scheduled for performance of any obligation hereunder shall occur on a weekend or legal holiday, the time period allowed and day for performance shall be continued to the next business day.

7.12 Force Majeure. If any party is delayed or hindered in or prevented from the performance of any act required under this Agreement (which does not include the payment of any monetary amounts) by reason of any strike, lock out, labor trouble, inability to procure materials or energy, pandemic, failure of power, riot, insurrection, picketing, sit in, war, acts of foreign or domestic terrorism, civil unrest, or other unavoidable reason of a like nature not attributable to the negligence or fault of the party delayed in performing or doing any act required under the terms of this Agreement, then the performance of the work or action will be excused for the period of the unavoidable delay and the period for performance of any action will be extended for an equivalent period. Any party claiming a force majeure event under this Section must notify the other parties within thirty (30) days of the event causing the delay, the extent of the delay, the time periods under this Agreement for which the force majeure event will cause a delay. Failure to provide timely notice constitutes a waiver of any claim to a delay cause by a force majeure event. In no event may any deadline in this Agreement be extended under this Section by a period of greater than one (1) total year.

7.13 Wording. Any word used in this Agreement shall be construed to mean either singular or plural as indicated by the number of signatures hereto. All references to the Act, the Indiana Code, and codified ordinances, rules, or any other statute, regulation or ordinance are intended to refer to the provisions presently in effect and to all future amendments, modifications, replacements or successor provisions.

7.14 Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana. This Agreement shall constitute the entire agreement of Milhaus, Town and Commission and no oral, verbal or implied agreement or understanding shall cancel, modify or vary the terms of this Agreement. No representations or promises shall be binding on the parties hereto except those representations and promises contained herein or in some future

writing signed by the parties making such representations and promises. This Agreement may only be amended by a written instrument executed by each of the parties to this Agreement, or their permitted successors or assigns.

7.15 Governing Law. Except to the extent preempted by federal law, the laws of the State of Indiana shall govern all aspects of this Agreement, including execution, interpretation, performance and enforcement.

7.16 No Waiver. Neither failure nor delay on the part of the Town Parties or Milhaus in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by Milhaus or the Town Parties therefrom shall be effective unless the same shall be in writing, signed on behalf of the Town Parties or Milhaus by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the Town Parties or Milhaus shall entitle the Town Parties or Milhaus to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of the Town Parties' or Milhaus's right to take other or further action in any circumstances without notice or demand.

7.17 Prior Agreement. The Prior Agreement, to the extent not already expired, is terminated and of no force and any effect. Milhaus acknowledges the expiration and termination of the Prior Agreement on behalf of Academy E, LLC.

7.18 Binding of Successors, Assigns. Subject to the further provisions of this Agreement, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Town Parties and Milhaus and their respective successors and assigns. The parties agree that the terms of this Agreement shall not merge into the respective deeds granted by the Commission under this Agreement.

7.19 Further Assurances. Subject to the further provisions of this Agreement, Milhaus and the Town Parties shall, at such party's expense, upon request of the other such party, duly execute and deliver, or cause to be executed and delivered, such further instruments and perform or cause to be performed such further acts as may be reasonably necessary or proper in the reasonable opinion of the Town Parties or Milhaus to carry out the provisions and purposes of this Agreement.

7.20 Severability. The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions.

7.21 Headings. The headings of the articles, sections and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

7.22 Entire Agreement. This Agreement and the document incorporated by reference herein constitutes the entire agreement by and between the Town Parties and Milhaus and supersedes all prior agreements, written or verbal, between the Town Parties and Milhaus. No

statements, promises or agreements whatsoever, in writing or verbally, in conflict with the terms of this Agreement have been made by the Town Parties or Milhaus that in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations of this Agreement.

7.23 Interpretation. Unless the context requires otherwise, (i) the singular includes the plural and vice versa, (ii) the recitals, all schedules, attachments and exhibits identified herein form a part of this Agreement, (iii) the word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it, and (iv) where a term is defined, another part of speech or grammatical form of that term shall have a corresponding meaning.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Town Parties and Milhaus have executed this Agreement the day and year first written above.

TOWN OF WHITESTOWN, INDIANA

Town Council President

Attest:

Clerk-Treasurer

WHITESTOWN REDEVELOPMENT
COMMISSION

President

Attest:

Secretary

MILHAUS DEVELOPMENT, LLC

Tadd M. Miller, Manager

Attest:

4657751

EXHIBIT A
Property

Legal Description of Area C

A PART OF THE LAND DESCRIBED IN DEED BOOK 218, PAGE 598 IN THE OFFICE OF THE RECORDER, BOONE COUNTY, INDIANA AND A PART OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 17 NORTH, RANGE 1 EAST AND THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 17 NORTH, RANGE 2 EAST OF THE 2ND PRINCIPAL MERIDIAN MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 1 MARKED BY A REBAR PER BOONE COUNTY SURVEYOR REFERENCE TIES; THENCE SOUTH 87 DEGREES 11 MINUTES 19 SECONDS WEST ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER (BASIS OF BEARINGS IS INDIANA EAST ZONE STATE PLANE COORDINATES ON SECTION CORNERS) A DISTANCE OF 2121.42 FEET; THENCE NORTH 32 DEGREES 52 MINUTES 26 SECONDS EAST A DISTANCE OF 25.92 FEET; THENCE NORTH 16 DEGREES 33 MINUTES 21 SECONDS EAST A DISTANCE OF 136.93 FEET; THENCE NORTH 26 DEGREES 25 MINUTES 35 SECONDS EAST A DISTANCE OF 15.65 FEET; THENCE NORTH 19 DEGREES 43 MINUTES 47 SECONDS EAST A DISTANCE OF 34.61 FEET; THENCE NORTH 14 DEGREES 08 MINUTES 40 SECONDS EAST A DISTANCE OF 280.29 FEET; THENCE NORTH 08 DEGREES 33 MINUTES 18 SECONDS EAST A DISTANCE OF 35.83 FEET; THENCE NORTH 87 DEGREES 06 MINUTES 52 SECONDS EAST A DISTANCE OF 1352.90 FEET; THENCE NORTH 31 DEGREES 55 MINUTES 39 SECONDS EAST A DISTANCE OF 382.57 FEET TO A REBAR; THENCE NORTH 50 DEGREES 52 MINUTES 55 SECONDS EAST A DISTANCE OF 722.20 FEET TO THE WEST RIGHT-OF-WAY LINE OF INDIANAPOLIS ROAD; THENCE NORTH 40 DEGREES 34 MINUTES 26 SECONDS WEST ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 107.79 FEET TO THE NORTH LINE OF THE LAND DESCRIBED IN DEED BOOK 218, PAGE 598; THENCE NORTH 89 DEGREES 44 MINUTES 03 SECONDS EAST ALONG SAID NORTH LINE A DISTANCE OF 65.57 FEET TO THE CENTERLINE OF OLD U.S. HIGHWAY 52 AND THE EAST LINE OF SAID LAND, THE REMAINING COURSES ARE ALONG THE EAST AND SOUTH LINES OF SAID LAND; THENCE SOUTH 40 DEGREES 34 MINUTES 26 SECONDS EAST A DISTANCE OF 963.05 FEET; THENCE SOUTH 41 DEGREES 42 MINUTES 09 SECONDS EAST A DISTANCE OF 90.77 FEET; THENCE SOUTH 42 DEGREES 15 MINUTES 43 SECONDS EAST A DISTANCE OF 632.88 FEET; THENCE SOUTH 41 DEGREES 13 MINUTES 14 SECONDS EAST A DISTANCE OF 93.03 FEET; THENCE SOUTH 40 DEGREES 52 MINUTES 46 SECONDS EAST A DISTANCE OF 34.70 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 45 SECONDS WEST A DISTANCE OF 1331.75 FEET TO THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 6; THENCE NORTH 01 DEGREES 13 MINUTES 18 SECONDS WEST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER DISTANCE OF 30.36 FEET TO THE POINT OF BEGINNING, CONTAINING 51.107 ACRES, MORE OR LESS.

EXCEPT THE FOLLOWING THEREFROM:

A part of the land described in Deed Book 218, Page 598 in the Office of the Recorder, Boone County, Indiana and a part of the Southeast Quarter of Section 1, Township 17 North, Range 1 East and the Southwest Quarter of Section 6, Township 17 North, Range 2 East of the 2nd Principal Meridian more particularly described as follows:

COMMENCING at the Southeast Corner of said Section 1 marked by a rebar per Boone County Surveyor reference ties; thence South 87 degrees 11 minutes 19 seconds West along the south line of said Southeast Quarter (basis of bearings in Indiana West Zone state plane coordinates on section corners) a distance of 2121.42 feet; thence North 32 degrees 52 minutes 26 seconds East a distance of 25.92 feet; thence North 16 degrees 33 minutes 21 seconds East a distance of 136.93 feet; thence North 26 degrees 25 minutes 35 seconds East a distance of 15.65 feet; thence North 19 degrees 43 minutes 47 seconds East a distance of 34.61 feet; thence North 14 degrees 08 minutes 40 seconds East a distance of 280.29 feet; thence North 08 degrees 33 minutes 18 seconds East a distance of 35.83 feet; thence North 87 degrees 06 minutes 52 seconds East a distance of 1352.90 feet; thence North 31 degrees 55 minutes 39 seconds East a distance of 382.57 feet to a rebar; thence North 50 degrees 52 minutes 55 seconds East a distance of 258.80 feet to a point being South 50 degrees 52 minutes 55 seconds West a distance of 463.40 feet from the west right-of-way line of Indianapolis Road, said point being the **POINT OF BEGINNING**; thence continuing North 50 degrees 52 minutes 55 seconds East a distance of 463.40 feet to the west right-of-way line of Indianapolis Road; thence South 40 degrees 34 minutes 26 seconds East along said west right-of-way line of Indianapolis Road a distance of 470.00 feet; thence South 50 degrees 52 minutes 55 seconds West a distance of 463.40 feet; thence North 40 degrees 34 minutes 26 seconds West a distance of 470.00 feet to the **POINT OF BEGINNING**, containing 5.00 acres more or less.

Legal Description of Area D

A PART OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 17 NORTH, RANGE 2 EAST, IN BOONE COUNTY, INDIANA, LYING SOUTHWEST OF THE CENTER OF U.S. HIGHWAY NO. 52, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER SECTION; THENCE EAST ALONG THE NORTH LINE THEREOF TO THE CENTERLINE OF THE U.S. HIGHWAY NO. 52; THENCE SOUTHEAST ALONG SAID CENTERLINE TO THE EAST LINE OF SAID NORTHWEST QUARTER SECTION; THENCE SOUTH ALONG SAID EAST LINE TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER SECTION; THENCE WEST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER SECTION TO THE SOUTHWEST CORNER THEREOF; THENCE NORTH ALONG THE WEST LINE OF SAID NORTHWEST QUARTER SECTION TO THE POINT OF BEGINNING, CONTAINING 144 ACRES, MORE OR LESS.

EXCEPTING THEREFROM:

A PART OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 17 NORTH, RANGE 2 EAST, BOONE COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER SECTION; THENCE NORTH 89 DEGREES 23 MINUTES 58 SECONDS WEST ALONG THE SOUTH LINE THEREOF A DISTANCE OF 2917.71 FEET TO THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER SECTION; THENCE NORTH 00 DEGREES 45 MINUTES 08 SECONDS WEST ALONG THE WEST LINE THEREOF A DISTANCE OF 30.08 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 12; THENCE NORTH 00 DEGREES 18 MINUTES 40 SECONDS WEST ALONG THE WEST LINE OF SAID NORTHWEST QUARTER SECTION A DISTANCE OF 1430.90 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 48 SECONDS EAST A DISTANCE OF 2360.87 FEET TO THE CENTERLINE OF U.S. 52 (INDIANAPOLIS ROAD); THENCE SOUTH 42 DEGREES 13 MINUTES 01 SECONDS EAST ALONG THE CENTERLINE THEREOF A DISTANCE OF 849.44 FEET TO THE EAST LINE OF SAID NORTHWEST QUARTER SECTION; THENCE SOUTH 00 DEGREES 23 MINUTES 48 SECONDS WEST ALONG THE EAST LINE THEREOF A DISTANCE OF 849.27 FEET TO THE POINT OF BEGINNING, CONTAINING 94.508 ACRES, MORE OR LESS.

EXHIBIT B
Master Site Plan

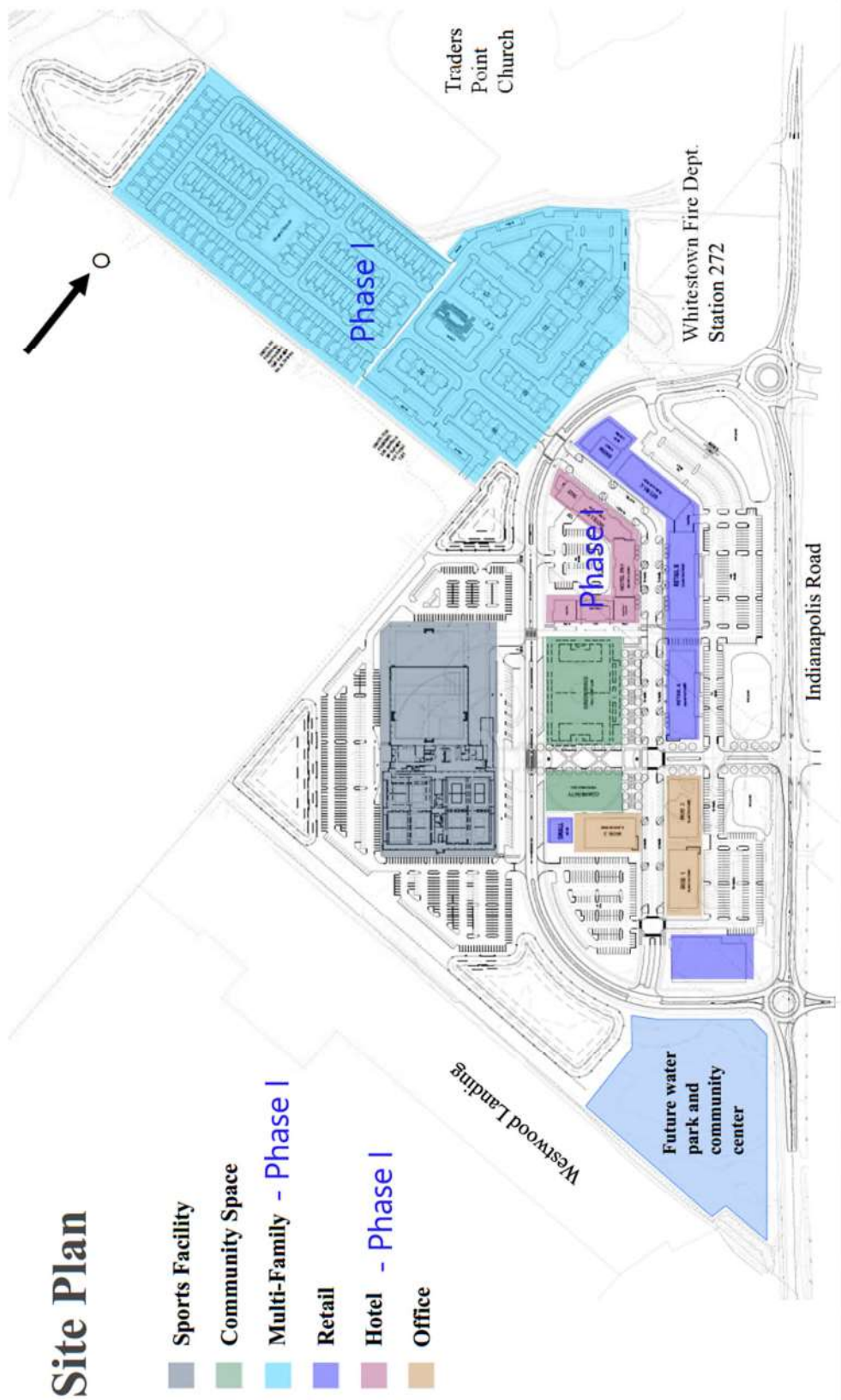


EXHIBIT C
Milestone Schedule

	Start	Duration (mths)	End
Infrastructure	10/1/2024	20	6/30/2026
Multifamily	3/1/2025	24	3/31/2027
Townhome	3/1/2025	18	9/30/2026
Hotel	6/1/2025	18	12/31/2026

EXHIBIT D
Form of Deed

SPECIAL WARRANTY DEED

THIS INDENTURE WITNESSETH, that the WHITESTOWN REDEVELOPMENT COMMISSION, an Indiana redevelopment commission and organized and existing under the provisions of I.C. § 36-7-14 and I.C. § 36-7-25 (“Grantor”), CONVEYS AND SPECIALLY WARRANTS to _____ (“Grantee”) for the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, in the following described real estate in Boone County, Indiana:

(“Property”)

Subject to all applicable taxes and assessments, zoning restrictions, easements, rights-of-way, and other restrictions, covenants, or encumbrances of record, or matters that would be disclosed by an accurate survey or inspection of the premises.

The warranty of title of Grantor is limited to a warranty against the acts of Grantor and those claiming by, through or under Grantor, and not otherwise.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed this _____ day of _____, 2023.

WHITESTOWN REDEVELOPMENT
COMMISSION
an Indiana redevelopment commission

By: _____
Adam Hess, President

STATE OF INDIANA)
)SS:
COUNTY OF BOONE)

Before me, a Notary Public in and for said State and County, personally appeared Adam Hess, President of the Whitestown Redevelopment Commission, who acknowledged the execution of this Special Warranty Deed for and on behalf of said entity.

Witness my hand and Notarial Seal this _____ day of _____, 2023.

My Commission Expires:

Notary Signature

My County of
Residence: _____

Printed

This Instrument prepared by Stephen C. Unger, Bose McKinney & Evans LLP, 111 Monument Circle, Ste. 2700, Indianapolis, IN 46204.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Stephen C. Unger

After recording return to
and send tax bill to:

EXHIBIT E
Promissory Note and Real Estate Mortgage

PROMISSORY NOTE

_____ [INSERT COMPONENT PROJECT DEVELOPER NAME] (“Developer”), an Indiana Limited Liability Company, for value received, promises to pay to the order of the Town of Whitestown, Indiana and the Whitestown Redevelopment Commission (collectively, the “Town Parties”), upon demand, at the offices of the Town Parties, Whitestown, Indiana, under an Economic Development Agreement dated _____, 2023 (the “Agreement”), among the Town Parties and the Developer, any Shortfall Payment (as defined in the Agreement) then due under the Agreement, in a total aggregate amount not exceeding \$ _____. Any Shortfall Payment so due, upon demand in writing by the Town Parties in accordance with this Note and with the Agreement, not paid by the Developer within thirty (30) days’ of demand shall bear interest at the rate of eight percent (8.0%) per annum from the date of demand. All such payments on this Note shall be payable in immediately available funds to the Town Parties in Whitestown, Indiana.

All of the terms and provisions of the Agreement shall be considered a part of this Note and shall govern the obligations of the Developer hereunder. In the event the Town Parties shall determine that an event of default has occurred by Developer under the Agreement such that Shortfall Payment are due by the Developer to the Town Parties, the Town Parties shall tender written demand to the Developer that Shortfall Payment are due, the sum due (as based upon the Agreement) and instructions as to where such sum should be paid. Upon receipt of such written demand, the Developer shall in accordance with this Note and the Agreement, cause such sum to be so paid to the Town Parties.

This Note is secured, among other things, by the Real Estate Mortgage, dated as of _____, 2023, from the Developer to the Town Parties (the “Mortgage”). The Developer hereby agrees to pay all costs of collection, including attorneys’ fees and legal expenses in the event the principal sum of this Note is not paid when due, whether or not legal proceedings are commenced.

For the avoidance of doubt, the obligation of the Developer to pay under this Note is solely and exclusively conditioned upon the happening of the events under the Agreement that would give rise to the payment of Shortfall Payment by the Developer to the Town Parties. Absent the occurrence of any such events, the Developer shall not be obligated hereunder to pay any sums to the Town Parties. The obligations of the Developer under this Note shall, in any event, be discharged and no longer in effect on the date which is one day following the payoff of the Shortfall Bonds (as defined in the Agreement).

IN WITNESS WHEREOF, _____ has caused this Promissory Note to be duly executed, countersigned and delivered as of _____, 2023.

_____[INSERT COMPONENT PROJECT DEVELOPER NAME]

By: _____

Attest:

By: _____

REAL ESTATE MORTGAGE

1. DATE AND PARTIES. The date of this Mortgage (the “Security Instrument”) is _____, 2023, and the parties and their addresses are as follows:

MORTGAGOR:

_____[INSERT COMPONENT PROJECT DEVELOPER
NAME]_____

MORTGAGEE:

Town of Whitestown
6201 Veterans Drive
Whitestown, Indiana 46075

and

Whitestown Redevelopment Commission
6210 Veterans Drive
Whitestown, Indiana 46075

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor’s performance under this Security Instrument, Mortgagor grants, bargains, conveys, mortgages and warrants to Mortgagee the following described property:

REFER TO EXHIBIT “A” WHICH IS ATTACHED HERETO
AND MADE A PART HEREOF.

The property is located in Boone County, Indiana.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, all water and riparian rights, wells, ditches, reservoirs, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate above (all referred to as the “Property”).

3. OBLIGATION. This Security Instrument is given to secure the performance of the provisions hereof and the payment of that certain Promissory Note, dated _____, 2023, by Mortgagor in favor of Mortgagee in a total aggregate amount not to exceed \$ _____ (the “Note”), which Note was delivered to Mortgagee pursuant to secure the payment of Shortfall Payment, if any, from Mortgagor to Mortgagee under that certain Economic Development Agreement, dated _____, 2023, by and among Mortgagor and Mortgagee (the “Economic Development Agreement”).

4. SECURED DEBT. The term “Secured Debt” is defined as follows:

A. Debt incurred by Mortgagor from Mortgagee as evidenced by the Note.

B. Any additional sums advanced and expenses incurred by Mortgagee for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Mortgagee under the terms of this Security Instrument.

5. PAYMENTS. Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt, including the Note, the Economic Development Agreement and this Security Instrument.

6. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor has not encumbered the Property, except for encumbrances of record.

7. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security instrument or other lien document that created a prior security interest or encumbrance on the Property, if any, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Mortgagee any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Mortgagee’s prior written consent and compliance with the terms and provisions of the resolution related thereto.

8. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Mortgagee may require Mortgagor to provide to Mortgagee copies of all notices that such amounts are due and the receipts evidencing Mortgagor’s payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Mortgagee, as requested by Mortgagee, any rights, claims or

defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

9. DUE ON SALE. If all or any part of the Property, or any interest therein, is sold, transferred, assigned or otherwise disposed of, or further encumbered by mortgage or otherwise, excluding permitted encumbrances as set forth in EXHIBIT B hereto (the “Permitted Encumbrances”), without Mortgagee’s prior written consent, Mortgagee, at its option, may declare all sums secured by this Security Instrument immediately due and payable. Any contract of sale of any kind including, without limitation, land contract, conditional sales contract, installment sales contract, lease with option to purchase (whether such option is oral or contained within such lease or in any other document) or any other transfer of interest in the Property shall be deemed a transfer requiring prior written consent of Mortgagee. Mortgagee reserves the right, in its unlimited discretion, on any basis deemed appropriate to Mortgagee, to refuse such consent and/or otherwise change the terms of this Security Instrument. If Mortgagee exercises its option to accelerate payment of the Secured Debt, all such Secured Debt shall become due and payable within thirty (30) days after the mailing of notice from Mortgagee to Mortgagor setting forth the total sums due. In the event of the failure of Mortgagor to pay such sums prior to expiration of such thirty (30) day period, Mortgagee may, without further notice or demand, invoke any remedy permitted hereunder for default.

10. ENTITY WARRANTIES AND REPRESENTATIONS. Mortgagor makes to Mortgagee the following warranties and representations which shall continue as long as the Secured Debt remains outstanding:

A. Mortgagor is a limited liability company duly organized and existing under the laws of the State of Indiana. Mortgagor has the power and authority to own the Property and to carry on the business operated by Mortgagor on said Property.

B. The execution, delivery and performance of this Security Instrument by Mortgagor and the obligations evidenced by the Secured Debt are within the power of Mortgagor, have been duly authorized by the Mortgagor and will not violate any provision of any existing agreement or obligation of the Mortgagor.

C. Mortgagor has not changed its name within the last five years and has not used any other trade or fictitious name. Without Mortgagee’s prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

11. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Mortgagee’s prior written consent. Except with respect to Permitted Encumbrances, Mortgagor

will not permit any change in any license, restrictive covenant or easement without Mortgagee's prior written consent. Mortgagor will notify Mortgagee of all demands, proceedings, claims and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Mortgagee's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security instrument or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor shall not partition or subdivide the Property without Mortgagee's prior written consent.

Subject to any conditions of the Economic Development Agreement to the contrary, Mortgagee or Mortgagee's agents may, at Mortgagee's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Mortgagee shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Mortgagee's benefit and Mortgagor will in no way rely on Mortgagee's inspection.

12. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Mortgagee may, without notice, perform or cause them to be performed. Mortgagor appoints Mortgagee as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Mortgagee's right to perform for Mortgagor shall not create an obligation to perform, and Mortgagee's failure to perform will not preclude Mortgagee from exercising any of Mortgagee's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Mortgagee may take all steps necessary to protect Mortgagee's security interest in the Property, including completion of the construction.

13. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Security Instrument or any other document executed for the purpose of creating, securing or guarantying the Secured Debt, including the Note and the Economic Development Agreement;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Mortgagee that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt; and

D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any other person or entity obligated on the Secured Debt.

14. REMEDIES ON DEFAULT. In some instances, federal and state law will require Mortgagee to provide Mortgagor with notice of the right to cure or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Mortgagee may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default.

At the option of Mortgagee, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Mortgagee shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents. All remedies are distinct, cumulative and not exclusive, and the Mortgagee is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Mortgagee of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Mortgagee's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Mortgagee does not waive Mortgagee's right to later consider the event a default if it continues or happens again.

15. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Mortgagee's expenses if Mortgagor breaches any covenant in this Security Instrument. Mortgagor will also pay on demand any reasonable amount incurred by Mortgagee for insuring, inspecting, preserving or otherwise protecting the Property and Mortgagee's security interest. These expenses will bear interest from the date of the payment until paid in full at the interest rate of eight percent (8%) per annum. Mortgagor agrees to pay all reasonable costs and expenses incurred by Mortgagee in collecting, enforcing or protecting Mortgagee's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. This Security Instrument shall remain in effect until released. Mortgagor agrees to pay for any recordation costs of such release.

16. CONDEMNATION. Mortgagor will give Mortgagee prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Mortgagee to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Mortgagee the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument.

17. INSURANCE. Mortgagor agrees to maintain insurance as follows:

A. Mortgagor shall keep the Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Mortgagee requires. If Mortgagor fails to maintain the coverage described above, Mortgagee may, at Mortgagee's option, obtain coverage to protect Mortgagee's rights in the Property according to the terms of this Security Instrument. All insurance policies and renewals shall be acceptable to Mortgagee and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Mortgagor shall immediately notify Mortgagee of cancellation or termination of the insurance. If Mortgagee requires, Mortgagor shall immediately give to Mortgagee all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Mortgagee. Mortgagee may make proof of loss if not made immediately by Mortgagor.

B. All insurance proceeds shall be applied to restoration or repair of the Property or to the Secured Debt, whether or not then due. Any application of proceeds to principal shall not extend or postpone the due date of scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Mortgagee, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Mortgagee to the extent of the Secured Debt immediately before the acquisition.

18. ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Mortgagee funds for taxes and insurance in escrow.

19. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Mortgagee upon request, any financial statement or information Mortgagee may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Mortgagee may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Mortgagee's lien status on the Property.

20. SUCCESSORS AND ASSIGNS BOUND. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Mortgagee.

21. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Security Instrument is governed by the laws of the State of Indiana. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural

and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.

22. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate address on paragraph 1 of this Security Instrument with respect to Mortgagor and Mortgagee, or to any other address designated in writing.

23. TERMINATION OF SECURITY INSTRUMENT. Mortgagee shall promptly, upon final satisfaction that any amounts owing the Mortgagee by the Mortgagor under the terms of the Economic Development Agreement have been so paid or satisfied in full, release and discharge the lien and security interest of this Security Instrument of record.

[Signature Page Follows]

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

_____[INSERT COMPONENT PROJECT DEVELOPER NAME]

By: _____
_____, _____

ATTEST:

By: _____

STATE OF INDIANA)
) SS:
COUNTY OF BOONE)

On this ___ day of _____, 2023, before me a notary public in and for said county and state, personally appeared _____, to me personally known and known to me to be the same person who executed the within and foregoing mortgage, who, being duly sworn, did depose, acknowledge and say: That he is the _____ of _____, the _____ described in and which executed the foregoing mortgage; that said instrument was signed on behalf of _____, and that _____, the _____ of the _____, acknowledged the execution of said mortgage to be the voluntary act and deed of said _____.

Witness my hand and seal this ___ day of _____, 2023.

Notary Public

(Printed)

My Commission Expires: _____

County of Residence: _____

** This instrument prepared by Stephen C. Unger, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204; Telephone (317) 684-5465. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

/s/ Stephen C. Unger
Printed Name of Declarant**

EXHIBIT A

Description of Property

EXHIBIT B

Permitted Encumbrances

“Permitted Encumbrances” means as of any particular time the following:

- (1) this Mortgage and the Economic Development Agreement;
- (2) liens for taxes and special assessments which are not then delinquent;
- (3) (5) zoning laws and similar restrictions; liens arising in connection with workmen’s compensation, unemployment insurance, statutory obligations or social security legislation; undetermined liens and charges incidental to the renovation or expansion of the Property, or other similar charges arising in the ordinary course of operation and not overdue; and such liens and charges at the time required by law as a condition precedent to the normal activities of _____ or the exercise of any privilege or license necessary to _____; and
- (7) any exceptions to title as set forth in Schedule B-1 attached hereto.

SCHEDULE B-1

Exceptions to Title

EXHIBIT F
Site Access Agreement
SITE ACCESS AGREEMENT

This Site Access Agreement is made as of the ____ day of _____, 2023, by and between _____ (“_____”) and the Town of Whitestown Redevelopment Commission (the “Commission”) (collectively, the “Parties”), for good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged.

PROPERTY. The Commission owns a certain parcel of real estate located at _____ Indianapolis Road in Whitestown, Boone County, Indiana (the “Property”).

ECONOMIC DEVELOPMENT AGREEMENT. The Commission, the Town of Whitestown, Indiana and _____, entered into an Economic Development Agreement dated _____, 2023 (“Economic Development Agreement”), wherein the Commission has agreed to allow _____ access to the Property in order to address site development and begin preliminary site development work for the development of the Property (as defined in the Economic Development Agreement).

SITE ACCESS. The Commission grants access from the date of this Agreement to _____ to address site development costs and begin preliminary site development work for the development of the Property until further direction from the Commission. This Agreement is intended and shall be construed only as a temporary grant of access until further notice from the Commission or transfer of the Property to _____, and not a grant of an easement or any other interest in the Property.

_____ shall comply with all local, state, and federal laws, rules, and regulations applicable to any of its activities on the Property.

NOTICE. The Commission will provide notice to _____ if/when the Agreement is terminated. Notice may be provided via email or telephone to:

RESPONSIBILITY FOR ACTIVITIES AND DAMAGE. _____ shall be responsible for any and all its activities and/or damage that occurs on or about the Property caused by _____ or any of its equipment or activities on the Property, including but not limited to environmental damage, responsibility, or liability caused by _____ activities on or around the Property. Should _____ cause any damage or liability on or about the Property, then the Commission may at its option, at the sole cost and expense of _____, perform such repairs as are necessary, and _____ shall reimburse the Commission for said costs, expenses, and reasonable attorneys' fees.

RELEASE AND INDEMNIFICATION OF THE COMMISSION. _____, and its officers, owners, members, shareholders, or sole proprietors, jointly and severally, shall assume the risk of, be responsible for, and, to the fullest extent permitted under applicable laws, release, indemnify, defend and hold the Commission, and its officers, members, managers, agents, contractors, employees and invitees, harmless from any and all claims, actions, suits, damages, liabilities, responsibilities, remediation, mitigation, costs, and expenses, including but not limited to reasonable attorneys' fees and disbursements, relating to or arising out of: (i)

_____ use of the access to the Property; (ii) activities to address site development costs and begin preliminary site development work; (iii) any default or failure of _____ to perform its obligations under this Agreement; (iv) the condition of the Property; or (v) the acts or omissions of _____ or _____ employees, contractors, or agents on or about the Property. Milhaus shall bear the risk of any loss or damage to _____ personal property in, on or about the Property. _____ indemnification as described herein shall survive the termination of this Agreement.

CONDITIONS OF PROPERTY. _____ has personally inspected the Property and accepts the same "AS IS", and it is understood and agreed that the Commission is not making and has not at any time made any representations or warranties of any kind or character, express or implied, with respect to the Property. The Commission assumes no obligation to make any improvements to, or to provide any security for, the Property, or to ensure that the Property complies with applicable ordinances or other laws and regulations. _____ agrees that all of _____ personal property of every kind or description which may at any time be on the Property shall be on the Property at _____ sole risk or at the risk of those claiming through or under _____, and in no event shall the Commission be liable for the same.

INSURANCE. _____ will add the Commission as an additionally named insured on their Comprehensive General Liability ("CGL") insurance policy. The CGL insurance policy shall provide coverage on an occurrence basis with a per occurrence limit of no less than two million dollars (\$2MM) for bodily injury and broad form property damage. _____ shall furnish certificates of insurance provided by the insurer, and the

certificates shall provide that such insured is in effect and will not be cancelled during the required period without thirty (30) days prior written notice of such cancellation to the Commission.

REVOCATION. The Commission retains the right to terminate _____ access to the Property for any reason with twenty-four (24) hours advance notice to _____ by email. Upon the Commission giving notice of such revocation, _____ shall have forty-eight (48) hours to remove its equipment from the Property. If _____ fails to timely remove its equipment, the equipment shall be deemed abandoned. _____ shall be responsible for all costs, expenses, and reasonable attorneys' fees the Commission incurs as a result of _____ abandoning the equipment.

ENFORCEMENT. This Agreement is entered into in the State of Indiana and shall be construed in accordance with the laws of the State of Indiana. Any action to enforce the terms of this Agreement shall be brought in Boone County Court. The Commission shall be entitled to recover its reasonable and necessary costs, including attorney fees, in any action brought as a result of this Agreement.

EXECUTION OF AGREEMENT. Each of the undersigned Parties hereby represents and warrants that he is authorized to execute this Agreement on behalf of the respective Party to the Agreement and that this Agreement, when executed by those Parties, shall become a valid and binding obligation, enforceable in accordance with its terms. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and of equal force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

Town of Whitestown Redevelopment Commission

By: _____

Print/Type Name: _____

Print/Type Title: _____

Date: _____

By: _____

Print/Type Name: _____

Print/Type Title: _____

Date: _____

4008974

EXHIBIT G
Public Improvements

Public Improvements to be completed by Milhaus include (see map):

- All earthwork & drainage/ponds in areas shaded yellow;
- All sewer and water mains (not laterals) for service within Property (areas shaded yellow and within shaded road work areas (orange and green); and
- All right of way and street improvements in areas shaded orange and green.
- All completed in accordance with Town's standards, specifications, and sizing requirements.

Public infrastructure not the obligation of Milhaus under this Agreement include (see map):

- All right of way, roundabout, and street improvements in areas shaded pink and red;
- All sewer and water mains for service within shaded road work areas (pink and red);
- All improvements in blue and red cross-hatched areas, including all aquatics related infrastructure.

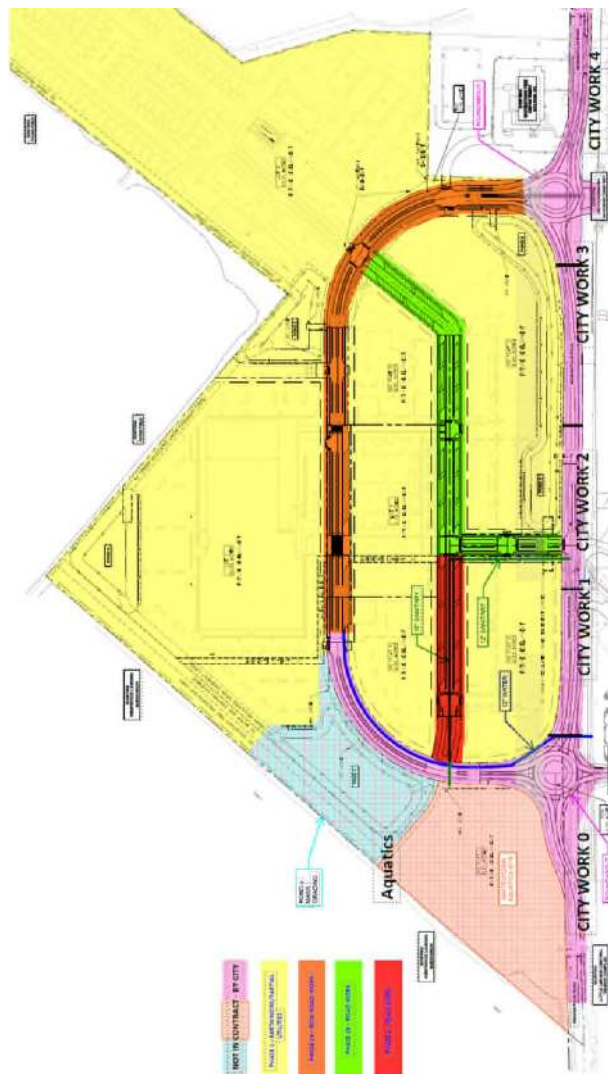


EXHIBIT H
Certificate of Completion and Covenant Not to Sue