

FILED

MAR 04 2024

Belinda Munson
MUNCIE CITY CLERK

ORDINANCE NO. 4-24

ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MUNCIE, INDIANA APPROVING A PILOT AGREEMENT IN CONNECTION WITH THE DEVELOPMENT AND CONSTRUCTION BY TWG KILGORE, L.P. OF AN AFFORDABLE MULTI-FAMILY HOUSING APARTMENT PROJECT IN THE CITY, AND AUTHORIZING OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the Common Council of the City of Muncie, Indiana (the “Council” and the “City”, respectively) desires to foster and encourage economic development and redevelopment of the City that will be of public benefit to the City and in connection therewith is authorized to enter into one or more agreements with project developers; and

WHEREAS, the Council has been advised by its staff and others of a PILOT Agreement by and between the City and TWG Kilgore, L.P. (the “Company”), the substantially final form of which agreement is attached hereto as Exhibit A and incorporated herein by reference (the “PILOT Agreement”), pursuant to which the Company has proposed to develop, construct and operate an affordable multi-family housing apartment project located in the City at 2380-2430 West Kilgore Avenue (the “Project”); and

WHEREAS, pursuant to the PILOT Agreement, the Company has agreed to make certain annual payment in lieu of taxes while the Project is entitled to the property tax exempt for the Project as permitted under Indiana Code 6-1.1-10-16.7; and

WHEREAS, the Council has reviewed the PILOT Agreement and considered the information provided to it by its staff and others relating to the proposed Project and finds that the terms of the PILOT Agreement will serve to foster and encourage economic and redevelopment of the City and will be of public benefit to the City;

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Muncie, Indiana, as follows:

Section 1. The PILOT Agreement, in substantially final form attached hereto as Exhibit A, is hereby approved and the Mayor of the City is authorized to execute said PILOT Agreement on behalf of the City.

Section 2. The Mayor of the City is hereby authorized and empowered to approve such amendments, additions, deletions and changes to the PILOT Agreement as the Mayor deems necessary or advisable, with the advice of counsel, and the Mayor’s approval shall be signified by the Mayor’s execution of the PILOT Agreement.

Section 3. The Mayor, the Controller and the Clerk of the City, 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 City as may be necessary or appropriate to carry out the purposes of this ordinance.

Section 4. This ordinance shall be effective from and after its passage and execution by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Muncie, Delaware County, Indiana, this _____ day of _____, 2024.

	Yeas	Nays	Abstained	Absent
Jeff Green	_____	_____	_____	_____
Nora Powell	_____	_____	_____	_____
Brandon Garrett	_____	_____	_____	_____
Sara Gullion	_____	_____	_____	_____
Jerry Dishman	_____	_____	_____	_____
Harold Mason	_____	_____	_____	_____
Dale Basham	_____	_____	_____	_____
Ro Selvey	_____	_____	_____	_____
William McIntosh	_____	_____	_____	_____

President Muncie Common Council

Presented by me to the Mayor for his approval, this _____ day of _____, 2024.

Belinda Munson, Muncie City Clerk

The above ordinance is approved/vetoed by me this _____ day of _____, 2024.

Dan Ridenour, Mayor of the City of Muncie

ATTEST:

Belinda Munson, Muncie City Clerk of the Common Council

This ordinance is proposed by Council Member _____

This ordinance is approved in form by Controller _____

This ordinance is approved in form by Legal Counsel _____

EXHIBIT A

Form of PILOT Agreement

PILOT AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this “PILOT Agreement”) is dated and made and entered into effective as of this ____ day of _____, 2024 (the “Effective Date”), by and among the CITY OF MUNCIE, INDIANA, a political subdivision of the State of Indiana (the “City”), and TWG KILGORE, L.P., an Indiana limited partnership, and its permitted successors and assigns (the “Owner”).

BACKGROUND/RECITALS

WHEREAS, the City is a duly organized political subdivision under the laws of the State of Indiana, governed by its duly elected City Council (the “Council”);

WHEREAS, the Owner desires to acquire, develop, construct and operate an affordable multi-family housing apartment project located in the City at 2380-2430 West Kilgore Avenue, which real estate is legally described on **Exhibit A** attached to and made a part of this PILOT Agreement (“Real Estate”), to be known as Kilgore Place (the “Project”) to develop, construct and make available the Project for the purpose of providing decent, safe, sanitary, affordable residential care facilities for low and middle income residents of the City and surrounding area;

WHEREAS, the Project (the “Section 42 Property”) will be developed, constructed and operated for the purpose of providing housing to income eligible persons under the federal low income housing tax credit program under Section 42 of the Internal Revenue Code of 1986, as amended (the “Federal Tax Code”);

WHEREAS, the Project, as a Section 42 Property, will be subject to an extended use agreement under Code Section 42 (the “Extended Use Agreement”) as administered by the Indiana Housing and Community Development Authority (the “IHCDA”) for a period of at least fifteen (15) years;

WHEREAS, pursuant to the IHCDA Extended Use Agreement the Project, as a Code Section 42 Property, will may only make available and rent to residents whose income is 60% or less of the area median gross income (the “Restricted Residents”);

WHEREAS, pursuant to the IHCDA Extended Use Agreement, the Project, as a Code Section 42 Property will be limited to charges rents as determined in accordance with the IHCDA Extended Use Agreement (the “Restricted Rents”) and in no event will such IHCDA Rents exceed 60% of the area median gross income;

WHEREAS, the Owner has agreed to make certain payment-in-lieu-of-taxes (the “PILOT Agreement”) under the exemption provided in Indiana Code § 6-1.1-10-16.7

WHEREAS, the City is authorized to enter into this PILOT Agreement pursuant to Indiana Code § 36-5-2-0.1 et seq. and Indiana Code § 36-1-8-14.3; and

WHEREAS, to provide for the orderly and timely development of the Project, the Owner and the City have negotiated and seek to enter into this PILOT Agreement which has been approved by the Council.

NOW, THEREFORE, in consideration of the foregoing premises, mutual covenants, and the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

Section 1. Owner Compliance. Owner represents and warrants that it shall be at all times in compliance with the requirements of Indiana Code § 6-1.1-10-16.7 with respect to the ownership, financing and operation of the Real Estate as a multifamily rental housing facility, and during the term of this Agreement, Owner covenants and agrees it shall at all times remain in compliance with the requirements of Indiana Code § 6-1.1-10-16.7. Owner agrees to maintain a clean premises in accordance with applicable local, state and federal codes, rules and regulations at the Project. Owner acknowledges that: (i) the mere execution of this Pilot Agreement does not confer any property tax exemption on the Real Estate under Indiana Code § 6-1.1-10-16.7; (ii) in order to obtain any such property tax exemption or partial exemption under IC 6-1.1-10-16.7, the Owner must timely file its Property Tax Exemption Application, including renewal applications, if any are required, with the Delaware County Assessor requesting an exemption pursuant to IC 6-1.1-10-16.7 from Owner's obligation to pay all or any portion of its property taxes on the Real Estate; and (iii) the Owner must meet its burden of proof under Indiana law pursuant to the normal application and determination process applicable to IC 6-1.1-10-16.7 to justify and receive such exemption. The City agrees that during the term of this PILOT Agreement, the City shall not levy, collect or enforce the real estate taxes that they would be entitled to levy and collect if Owner were not exempt therefrom under the PILOT Statute and shall not contest or otherwise challenge the Owner's exemption from such real estate taxes. Owner agrees to hold at least one (1) annual collaborative meeting with the City's staff, and shall send a representative of the Owner to the meeting. The meeting shall occur at the most convenient times for all parties, including the following City staff who may attend at their own discretion: Mayor, City Controller, Building Commissioner's Office, Fire Department, Police Department, Planning and Zoning, Public Works/Utilities, and Redevelopment Department. During such meetings, the City agrees to not make unreasonable requests of the Owner or Project, with unreasonable requests being those unrelated to the life safety of tenants, employees, and cleanliness of the Project as required by local, state, and federal codes, rules, and regulations. Owner shall utilize commercially reasonable efforts to satisfy the requests made by the City, so long as such requests are not unreasonable requests.

Section 2. Payment In Lieu of Taxes. The Owner shall pay to the City Controller an annual amount calculated and determined. The amount payable hereunder shall be Thirty Thousand Dollars (\$30,000) (all as adjusted referred to as, the "Annual in Lieu of Amount"). The Annual in Lieu Amount shall increase by 3% each year for the term of this Agreement. The Annual in Lieu Amount payable by Owner with respect to the Real Estate shall be imposed as property taxes and payable in two equal installments due and payable on or before May 10 and November 10 of each successive calendar year, commencing with the first semiannual installment due and payable on or before May 10, 2026 (the "In Lieu of Payments"). Owner shall be liable for prompt payment of all In Lieu of Payments when due. Owner shall be liable for any penalties for delinquent In Lieu of Payments.

Section 3. Security for In Lieu of Payments - Grant of Mortgage Lien. This PILOT Agreement may be recorded with the appropriate office in Delaware County, Indiana, as a mortgage to secure the obligation of the Owner to pay In Lieu of Payments and all subsequent penalties, interest and costs resulting from any delinquency related thereto (the "PILOT Mortgage"), which PILOT Mortgage lien shall be in all respects subordinate to any Mortgage to be held by the bondholders or senior lender in connection with financing procured to fund development and construction of the Project and any subsequent refinancing thereof.

Section 4. Term and Termination. This Agreement shall be in effect for fifteen (15) years, with the annual In Lieu Payments commencing for the 2026 pay 2027 tax year. The parties hereto mutually may agree to terminate this PILOT Agreement. Such termination agreement shall be in writing and executed by all parties. Upon mutual termination pursuant to this Section 3, this PILOT Agreement shall become null and void, and of no further force or effect between parties; provided, however, Owner shall pay the applicable pro rata amount of In Lieu of Payments for the year in which such termination occurs up to the date of termination and receive a credit for all In Lieu of Payments already paid for such year. Upon the last date on which applicable compliance period specified in Section 42(i)(1) of the Federal Tax Code expires, Owner may terminate this PILOT Agreement upon ninety (90) days written notice to the City; provided, however, Owner shall pay the applicable pro rata amount of In Lieu of Payments for the year in which such termination occurs up to the date of termination and receive a credit for all In Lieu of Payments already paid for such year.

Section 5. General Provisions

(a) Captions; Incorporation and Exhibit. The captions and headings of various Articles, Sections and Exhibit referenced herein are for convenience only and are not to be considered as defining or limiting in any way, the scope or intent of the provisions hereof. Notwithstanding the foregoing, each of the Recitals and the Exhibit referenced herein are incorporated and expressly made a part hereof.

(b) Entire PILOT Agreement. This PILOT Agreement constitutes the entire agreement of the parties, and all prior discussions, negotiations and document drafts are merged herein. The parties acknowledge and agree that the Original Agreement is hereby amended and restated in its entirety by the terms of this Agreement.

(c) Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing, addressed as follows and shall be deemed to have been properly given if hand delivered (effective upon delivery), if sent by reputable overnight courier, charges prepaid (effective the business day following delivery to such courier) or if mailed by United States registered or certified mail, postage prepaid, return receipt requested (effective two business days after mailing):

If to Owner: TWG Kilgore, LP
1301 East Washington Street, Suite 100
Indianapolis, Indiana 46202

With a copy to: TWG Development, LLC
Attn: General Counsel
1301 East Washington Street, Suite 100
Indianapolis, Indiana 46202

If to City: City of Muncie
Attn: City Controller
300 North High Street
Muncie, Indiana 47305

With a copy to: Bose McKinney & Evans LLP
Attn: Public Finance Group
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Notices given in any other manner shall be deemed effective only upon receipt.

(d) Modification, Amendment or Waiver. No modification, waiver, amendment, discharge or change of this PILOT Agreement shall be valid unless the same is in writing and signed by all parties to this PILOT Agreement.

(e) Governing Law. This PILOT Agreement shall be governed by and construed under the laws of the State of Indiana.

(f) Time is of the Essence. Time is hereby declared to be of the essence of this PILOT Agreement and of every part hereof.

(g) Execution in Counterparts. This PILOT Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(h) Severability. If any provision of this PILOT Agreement is determined by a court having jurisdiction to be illegal, invalid or unenforceable under any present or future law, the remainder of this PILOT Agreement will not be affected thereby. It is the intention of the parties that if any provision is so held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible that is legal, valid and enforceable.

(i) No Joint Venture. Nothing contained in this PILOT Agreement will be construed to constitute Owner as a joint venturer with City or to constitute a partnership between Owner and the City.

(j) **Construction.** The parties acknowledge that each party and each party's counsel have reviewed and revised this PILOT Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this PILOT Agreement or any amendments or schedules hereto.

(k) **Authorization.** The persons executing and delivering this PILOT Agreement on behalf of the parties hereto represent and warrant to the other party that such person is duly authorized to act for and on behalf of said party, and execute and deliver this PILOT Agreement in such capacity as is indicated below.

(l) **Assignment/Successor.** This PILOT Agreement shall be binding upon City and Owner, and all successor, grantees or assignees of Owner with respect to the Real Estate (or any portion thereof) which would otherwise be entitled to claim an exemption for real property taxes imposed on the Real Estate.

(m) **Recording.** The City will cause, at Owner's expense, this PILOT Agreement and any other instruments of further assurance to be promptly recorded, filed and registered, and at all times to be recorded, filed and registered, in such manner and in such places as may be required by law to preserve and protect fully the rights of the City hereunder as to all of the mortgaged property.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the undersigned parties have caused the execution of this PILOT Agreement by their duly authorized officers as of the day, month and year first above written.

CITY OF MUNCIE, INDIANA

By: _____
Printed: Dan Ridenour
Title: Mayor

STATE OF INDIANA)
) SS:
COUNTY OF DELAWARE)

Before me, a Notary Public, in and for said County and State, personally appeared Dan Ridenour as the Mayor of the City of Muncie, Indiana, and who, having been duly sworn, stated that any and all representations and warranties contained therein are true and correct in all material respects.

Witness my hand and Notarial Seal this ____ day of _____, 2024.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

[Executions Continued on Following Page]

OWNER:

By: _____
Printed: Louis A. Knoble
Title: Member

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said County and State, personally appeared _____ in _____ capacity as the _____, who acknowledged the execution of the foregoing instrument as such _____ of the sole member of the sole general partner acting for and on behalf of said., and who, having been duly sworn, stated that any and all representations and warranties contained therein are true and correct in all material respects.

Witness my hand and Notarial Seal this ____ day of _____, 2024.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

This instrument is approved as to form this ____ day of _____ 2024 by _____.

Prepared by and return after recording to: _____

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. _____, Attorney at Law.

EXHIBIT A

Legal Description

Being a part of the Southeast Quarter (SE $\frac{1}{4}$) of Section Seventeen (17), Township Twenty (20) North, Range Ten (10) East, described as follows:

Commencing at an iron stake in the North line of Kilgore Avenue (known as Yorktown Pike), Two Hundred One and two tenths (201.2) feet East of the West line of the Southeast Quarter of Section Seventeen (17), Township Twenty (20) North, Range Ten (10) East, measured along said North line of Kilgore Avenue, and running thence Northeast along said North line of Kilgore Avenue One Hundred (100) feet to an iron stake; thence North and parallel with the said West line of said Southeast Quarter Four Hundred Sixty (460) feet more or less to the center of White River as the same is now located, and thence in a Southwesterly direction with the center line of White River to a point that is Ninety-seven and seventy-five hundredths (97.75) feet West of the last described line, running North and South and measured at right angles thereto; thence South and parallel with said West line of said Southeast Quarter Four Hundred Sixty-three and eight tenths (463.8) feet more or less, to the place of beginning, said tract containing One and three hundredths (1.03) acres, more or less.

Subject to the right of way of State Highway No. 32.

ALSO, Commencing at an iron stake in the North line of Kilgore Avenue (known as Yorktown Pike) One Hundred One and two tenths (101.2) feet East of the West line of the Southeast Quarter of Section Seventeen (17), Township Twenty (20) North, Range Ten (10) East (measured along said North line of Kilgore Avenue), and running thence Northeast along said North line of Kilgore Avenue One Hundred (100) feet to an iron stake; thence North and parallel with the said West line of said Southeast Quarter Four Hundred Sixty-three and eight tenths (463.8) feet, more or less, to the center of White River as the same is now located; thence in a Southwesterly direction with the center line of White River to a point that is Ninety-seven and seventy-five hundredths (97.75) feet West of the last described line running North and South and measured at right angles thereto; thence South and parallel with said West line of said Southeast Quarter Four Hundred Sixty-seven (467) feet, more or less, to the place of beginning, said tract containing One and four hundredths (1.04) acres, more or less. Subject to the right of way of State Highway No. 32.

ALSO, Commencing at an iron stake in the North line of Kilgore Avenue (known as Yorktown Pike) Three Hundred One and two tenths (301.2) feet East of the West line of the Southeast Quarter of Section Seventeen (17), Township Twenty (20) North, Range Ten (10) East (measured along said North line of Kilgore Avenue), and running thence Northeast along said North line of Kilgore Avenue One Hundred (100) feet to an iron stake; thence North and parallel with the said West line of said Southeast Quarter Four Hundred Fifty-six and seven tenths (465.7) feet, more or less, to the center of White River as the same is now located; thence in a Southwesterly direction with the center line of White River to a point that is Ninety-seven and seventy-five hundredths (97.75) feet West of the last described line, running North and South and measure at right angles thereto; thence South and parallel with said West line of said Southeast Quarter Four Hundred Sixty (460) feet, more or less, to the place of beginning, said tract containing One and two hundredths (1.02) acres, more or less.