

Ordinance # 2011-05
Brownsburg, Indiana
April _____, 2011

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BROWNSBURG
PROVIDING FINAL APPROVAL OF THE ISSUANCE
OF AN ECONOMIC DEVELOPMENT LOAN FOR THE PURPOSE OF FINANCING
CERTAIN ROAD IMPROVEMENTS TO NORTHFIELD DRIVE AS IT RELATES TO
THE HERITAGE HILLS PROJECT**

WHEREAS, the Town of Brownsburg, Indiana (the “Town”), is authorized by Indiana Code 6-3.5-7 et seq. and Indiana Code 36-7-12, et seq. (collectively as supplemented and amended the “Act”) to issue loans to developers for the financing of economic development facilities, the funds from said financing to be used for the acquisition, construction, installation and/or equipping of such facilities; and

WHEREAS, (Rockwood Custom Builders, LLC and Rolling Hills, LLC) (collectively, the “Borrower”) has committed to the Town that it will undertake the development of certain commercial, business, and recreational facilities which may include commercial lodging, recreation, personal services, restaurants, retail stores, and general businesses as economic development facilities as further described in the Annexation and Zoning Map Amendment Ordinance as presented by the Borrower and approved by the Town Council (collectively referred to as the “Project”); and

WHEREAS, the Borrower desires to finance its completion of a portion of the Project consisting of road and curb improvements to Northfield Drive (the “Eligible Improvements”), as further described in Exhibit “D” of the Voluntary Annexation and Economic Development Agreement as presented to Council which is incorporated herein by reference (the “Agreement”), all to be located in and serving the Town of Brownsburg; and

WHEREAS, the Borrower has requested that the Brownsburg Economic Development Commission (the “Commission”) approve the issuance of certain economic development loans to Borrower in a total amount not to exceed Six Hundred Fifty Thousand and 00/100 Dollars (\$650,000,000) (the “Loan”) to finance the Eligible Improvements on the terms contained in the Agreement; and

WHEREAS, the Borrower has further represented that the Project will be operated as an “economic development facility” within the meaning of the Act and that the Eligible Improvements are a part of the Project and are considered to be necessary for the completion of the Project; and

WHEREAS, it appears that the creation and retention of opportunities for gainful employment and the creation of business opportunities to be achieved by the Project, including the Eligible Improvements will serve a public purpose and will be of benefit to the health and general welfare of the Town, and that the proposed financing complies with the provisions of the

Act; and

WHEREAS, it appears that the Project will not have an adverse competitive effect on any similar facility already constructed or operating in the Town; and

WHEREAS, after notice as required by law, the Commission held a public hearing on January 31, 2011 pursuant to Indiana Code 36-7-12-24 prior in time to the adoption of its Resolution; and

WHEREAS, the Commission has recommended that the Town finally approves and enters into the transactions referenced subject to the terms and conditions contained herein and that the Town takes all further action necessary to allocate funds to lend to the Borrower pursuant to the Act for the purpose of financing or providing reimbursement to Borrower for all or any portion of the cost of the Eligible Improvements; and

WHEREAS, there has been submitted to the Commission for its approval the financing terms and related form for the Loan (the "Loan Form and Term Sheet") (attached hereto as Exhibit "A") and the Commission recognized that as part of the Loan, there will be additional financing documents and forms which shall be evidenced by loan documents determined necessary by the Town Council and on forms used by it in similar transactions, including, but not limited to a Voluntary Annexation and Economic Development Agreement, a mortgage in favor of the Town against the Lots, a promissory note in favor of the Town securing repayment of the Loan and such other documents determined necessary by the Town Council (collectively, the "Financing Documents"); and

WHEREAS, the Commission and the Town have made and/or will make initial expenditures for the Project and the Loan (hereinafter "Town Expenditures") from funds currently available to the Town, and reasonably expects to reimburse Town Expenditures with proceeds of any debt that may be incurred by the Town; and

WHEREAS, the Town may issue taxable debt for the purposes of financing economic development projects as defined in the Act, with a portion of such debt in an amount not exceeding Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) being issued for the purpose of reimbursing costs of the Project, the Loan, and any related Town expenses; and

WHEREAS, the Town intends that this Ordinance serve as its Declaration of Official Intent to Reimburse Expenditures pursuant to Treasury Regulation Section 1.150-2.

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

1. The creation and retention of opportunities for gainful employment by residents of the Town and the creation of business opportunities in the Town to be achieved by the Project will be of benefit to the health and general welfare of the citizens of the Town and it is in the public interest that the Town take such action as it lawfully may to encourage diversification of industry and promotion of job opportunities in and near the Town.

2. Based solely upon information provided to it, the Town hereby adopts and

approves the Report and Findings related to the Project attached hereto as Exhibit “B” and incorporates the same herein as if set forth in full.

3. All action taken and approvals given by the Town with regard to the Borrower are based upon the evidence submitted and representations made by the Borrower, its agents and counsel and their good faith compliance therewith. No independent examination, appraisal or inspection of the Project was made, requested, or is contemplated by the Commission or the Town.

4. The financing of the Eligible Improvements through the issuance of the Loan to the Borrower is hereby approved, subject to the forms of the Financing Documents being presented to this Council for final approval, subject to any final negotiations and modifications to terms and conditions as may be determined necessary by the Town Manager and the Town Council President to facilitate the issuance of the Loan on the terms and conditions set forth herein. All such documents, once approved and finalized, shall be kept on file by the Clerk-Treasurer of the Town.

5. The financing of the Loan and the Project as contemplated hereby complies with the provisions of I.C. 36-7-12 et seq.

6. Subject to the approval of the documents as provided for in Paragraph 4 above, the President of the Town Council and the Town Clerk are hereby authorized, empowered and directed to execute all documents relating to the transactions contemplated herein, including, but not limited to, the Financing Documents. Pursuant to the provisions of I.C. 36-7-12-25(c), the President and Clerk may, by their signatures thereon, approve such changes to any of the foregoing documents as are allowable by law without further authorization of this Council or the Commission.

7. If required by I.C. 6-3.5-7-15, the Town hereby amends its capital improvement plan for the use of Economic Development Income Tax funds to include the Project as detailed in the Report and Findings of the Commission and the Agreement, and the required details of the Project are incorporated therein as if the foregoing details were set out in full herein.

8. The Commission, on behalf of the Town, hereby declares its official intent pursuant to Treasury Regulation Section 1.150-2 to enter into the transactions contemplated by the Agreement and this Ordinance, and to finance the Project and the Loan with the intent of reimbursing certain costs of the Project and the Loan with proceeds of debt to be incurred by the Town, and to issue taxable debt (which may be part of a larger series) not exceeding Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000) in aggregate principal amount.

9. Upon the issuance of debt by the Town in compliance with Paragraph 8 above, the proper officers of the Town and the Commission are hereby authorized to take all action necessary to reimburse the Town Expenditures to the proper fund or parties.

10. This Ordinance shall be in full force and effect upon its passage, approval and publication according to law.

Passed by the Town Council of the Town of Brownsburg, Indiana this ____ day of March, 2011.

Matthew S. Bowles, President

ATTEST:

Jeanette M. Brickler, Clerk-Treasurer

EXHIBIT "A"

TOWN OF BROWNSBURG
LOAN FORM AND TERM SHEET

Economic Development Loan to
Heritage Hills, LLC (Rockwood Custom Builders, LLC and Rolling Hills, LLC)

- BORROWER and COMMITMENT:** Economic Development Loan to Heritage Hills, LLC, an Indiana Limited Liability Company (Rockwood Custom Builders, LLC and Rolling Hills, LLC)(collectively, the "Borrower") made pursuant to I.C. 36-7-11.9, -12 and -14 *et seq.* and I.C. 6-3.5-7-13.1 to Borrower has committed to the Town that it will undertake the development of certain commercial, business, and recreational facilities, which may include commercial lodging, permitted recreation, personal services, restaurants, retail stores and other general business considered as an economic development facility further described in the Annexation and Zoning Map Amendment Ordinance as approved by the Town Council and as to be more particularly described in the Voluntary Annexation and Economic Development Agreement Regarding the Heritage Hills Project (the "Agreement") to be attached hereto as Exhibit "A".
- LOAN AMOUNT and PURPOSES:** A maximum amount not to exceed \$650,000.00 (the "Loan") for the construction and installation of Eligible Improvements (defined below) directly related to development of certain commercial, business, and recreational facilities commonly known as the Village of Heritage Hill to be located in the southwest portion of the Town of Brownsburg and Lincoln Township, or such other designated location within the corporate jurisdiction of the Town of Brownsburg, Indiana (the "Town") and development consistent with the descriptions set forth in the Agreement (the "Project").
- LOAN TERM:** Eight (8) years from the date of execution of the Agreement.
- LOAN DISBURSEMENT:** The Loan shall be issued in two (2) separate installments with the first installment being issued in the amount of One Hundred Thirty Thousand and 00/100 Dollars (\$130,000.00) (the "First Installment") and the second installment to be issued in an amount not to exceed Five Hundred Twenty Thousand and 00/100 Dollars (\$520,000.00), subject to supporting documentation to be submitted by the Developer as may be required by the Town in the final form of the Loan Documents as those terms are hereinafter defined.
- LOAN REPAYMENT:** The Developer shall pay the Town Three Thousand Five Hundred and 00/100 Dollars (\$3,500.00) per lot (the "Lot Payments") for each building permit requested and issued for each lot contained in the Hamptons or Annsdale portions of the Project (the "Lots") consisting of 182 Lots, as payment towards the Loan balance. In the event that the total number of the Lots is less than 182 at the time of platting by the Developer, the Lot Payments shall be adjusted by dividing \$650,000 by the total number of the Lots which shall then total the per lot payment required for the Lot Payments to be made by the Developer.
- ELIGIBLE IMPROVEMENTS:** Borrower shall apply the Loan proceeds solely to the costs of construction and installation of certain road and curb improvements to Northfield Drive as further described in Exhibit "D" of the Agreement, all in compliance with I.C. 36-7-12 and 6-3.5-7 ("Eligible Improvements"). All Eligible Improvements shall be constructed in accordance with the then current approved zoning agreements,

planned unit development ordinances, commitments and development standards applicable to the Project, including, but not limited to, the proposed development standards as formally approve by the Town.

FUNDING OF LOAN:

It is anticipated that the Town will pledge funds available to it to facilitate the Loan. In the event the Town desires to issue debt instruments to provide funding for the Loan, or to reimburse the Town for funding the Loan (“Bond”), Borrower shall take all reasonable action, at its own expense, to assist the Town in such issuance.

LOAN DOCUMENTS

The Loan shall be evidenced by loan documents determined necessary by the Town and on forms used by it in similar transactions (collectively, the “Loan Documents”). The Loan Documents shall, including, but not be limited to an the Agreement, a Mortgage in favor of the Town against the Lots, a Promissory Note in favor of the Town and such other documents as determined necessary by the Town Council. The Developer shall provide the Town with all of the legal description for the Lots to effectuate the lien within three (3) business days after execution of the Agreement. The Developer hereby represents and warrants that it is the record owner of all of the Lots and shall not transfer all and/or any portion of the Lots prior to the Town’s recording of its lien against all of the Lots. In the event the Annexation is not completed, the zoning ordinance is not adopted by the Town, and the Loan is not issued by the Town, the liens against the Lots shall be released by the Town. The Note and the lien documents shall be in a form acceptable to the Town. Priority of the lien shall be according to Indiana law. The Developer shall pay for all costs and expense incurred by the Town for the filing and recording of the liens against the Lots and shall reimburse the Town for all such costs and expenses within five (5) business days after receiving written notice thereof.

CONDITIONS TO PROCEED:

The Town Council must review and approve the Loan transaction and the final form of all Loan Documents, and all documentation related to any Bond as required by Indiana law. All Loan Documents and the Ordinance and documents necessary to issue the Loan and any Bond shall be subject to final adoption and approval by the Town Council. Other Town agency approvals will be required as provided under applicable law. The Agreement shall be subject to final approval by the Borrower, and the Town Council. The Town’s commitments are further conditioned upon the approval by all necessary Town agencies and boards, including, but not limited to, the Commission and the Town Council.

TERMINATION:

The Town reserves the right to cancel its commitments and terminate its obligations to make the Loan upon the failure by Borrower to comply with any of its obligations contained herein or in the Agreement. If at any time during the term of the Project, the Borrower becomes insolvent, the Town may immediately find the Borrower in default and require the immediate repayment of the outstanding balance on the Loan.

**This Loan Form and Term Sheet is subject to and conditioned upon the final form and terms and condition of a Voluntary Annexation and Economic Development Agreement and all related Loan Documents being formally approved by the Town Council. The EDC hereby consents to the Town Council’s modification of the terms and conditions of this Loan Form and Term Sheet so long as: 1) the maximum principal amount of the Loan does not exceed \$650,000; 2) the final maturity date of the Loan does not exceed 8 years from the execution of the Agreement; and 3) the Loan is secured by a mortgage in favor of the Town.

EXHIBIT “B”

REPORT AND FINDINGS OF FACT OF THE TOWN OF BROWNSBURG ECONOMIC DEVELOPMENT COMMISSION CONCERNING THE PROPOSED FINANCING OF ECONOMIC DEVELOPMENT FACILITIES TO BE CONSTRUCTED BY HERITAGE HILLS, LLC

The Town of Brownsburg Economic Development Commission (the “Commission”) proposes to recommend to the Town Council of the Town of Brownsburg, Indiana (the “Town”), that it loan available Economic Development Income Tax (EDIT funds) and/or other eligible funds available to the Town in the form of an economic development loan pursuant to I.C. 6-3.5-7 *et seq.* and I.C. 36-7-12 *et seq.* in the total principal amount not to exceed Six Hundred Fifty Thousand Dollars (\$650,000) (the “Loan”) to Heritage Hills, LLC (Rockwood Custom Builders, LLC and Rolling Hills, LLC) (collectively, the “Applicant”), for the financing of certain infrastructure improvements for economic development facilities in the Town as set forth in the Resolution of the Commission of even date herewith.

In connection therewith, the Commission hereby reports and finds as follows:

A. The proposed economic development facility consists of the development of certain commercial, business, and recreational facilities which may include commercial lodging, recreation, personal services, restaurants, retail stores, and general businesses as further described in the Annexation and Zoning Map Amendment Ordinance as presented by the Applicant and approved by the Town Council which development shall include certain infrastructure improvements including the completion of a portion of road and curb improvements to Northfield Drive (the “Eligible Improvements”) (collectively referred to as the “Project”) all to be located in and directly serving and benefitting the Town of Brownsburg.

B. The Commission estimates that, other than those Eligible Improvements to be constructed and installed with the proceeds of the Loan, no additional public works or services, including public ways, schools, water, sewer, street lights and fire protection, will be made necessary or desirable by the Project because any such works or services already exist or will be provided by the Applicant or other parties.

C. The Commission estimates that the total costs of the construction and installation of the Eligible Improvements will be approximately \$650,000 in addition to other related expenses that may be financed by the Loan if bonds are issued, including capitalized interest, fees and financing costs for the Eligible Improvements and the Loan. The Applicant will invest a considerable amount more in the acquisition, construction, installation and improvement of the Project as a whole as an economic development facility.

D. There will be numerous construction jobs created through the construction and installation of the Eligible Improvements in addition to other jobs that will result from the completion of the Project. The types of jobs created for construction and installation of the Eligible Improvements may include, but not be limited to, general

laborers, plumbers, electricians, heavy hauling, highway painters, pipefitters, steamfitters, and mechanics. Based upon the Common Construction Wage established as recently as January 2011 for Hendricks County, those jobs listed may pay an hourly rate ranging from approximately \$22.00 per hour to \$33 per hour. In addition, there will be numerous other jobs created through the continued development of the Project and that result from the completion of the Eligible Improvements. A specific listing of the type and number of all jobs created by the Project including payroll associated with those jobs is not yet capable of final calculation as of the date hereof, but it is believed that they will be of benefit to the health and general welfare of the Town.

E. Based on the uncontroverted evidence received at the public hearing held by the Commission on the date hereof, there are no facilities similar to the Project that are already constructed or operating in or near the Town, and consequently, the Project will have no adverse competitive effect on similar facilities already constructed or operating in the Town.

F. The proposed financing of the Eligible Improvements for the Project complies with the purposes and provisions of Indiana Code 36-7-11.9, -12 and -14, et seq., and Indiana Code 6-3.5-7 et seq. as supplemented and amended.

Adopted this 31st day of January, 2011.