

## RESOLUTION NO. 2022-04

### A RESOLUTION OF THE TOWN OF WHITESTOWN REDEVELOPMENT COMMISSION PLEDGING CERTAIN TAX INCREMENT REVENUES TO THE PAYMENT OF ECONOMIC DEVELOPMENT REVENUE BONDS OF THE TOWN OF WHITESTOWN AND APPROVING FORM OF TAXPAYER AGREEMENT

WHEREAS, the Town of Whitestown Redevelopment Commission (the “Commission”), governing body of the Town of Whitestown Department of Redevelopment (the “Department”), has created the Whitestown –Patch Economic Development Area (the “Area”), has designated all of such Area as the Whitestown – Patch Allocation Area (the “Allocation Area”) for purposes of the allocation and distribution of property taxes under Indiana Code 36-7-14-39 (the “Tax Increment”), and has created an allocation fund for the Allocation Area (the “Allocation Fund”); and

WHEREAS, Patch Whitestown, LLC, or an affiliate or permitted assignee thereof (the “Company”) intends to finance all or a portion of the costs of the design and construction of the economic development project described on Exhibit A hereto (the “Project”); and

WHEREAS, the Project will be constructed on the 33.79 acres identified as Lot 1 on the attached Exhibit B (the “Lot 1”) and located in and physically connected to the Allocation Area; and

WHEREAS, the Town of Whitestown Economic Development Commission and the Town Council of the Town of Whitestown, Indiana (the “Town”) have approved the issuance of the Town of Whitestown, Indiana, Economic Development Revenue Bonds (Patch Whitestown Project), in one or more series (the “Bonds”), the proceeds of which will be provided to the Company and applied to costs of public infrastructure associated with the Project as more particularly described on Exhibit A hereto; and

WHEREAS, as an inducement to the Company to locate the Project in the Town, the Commission has agreed to pledge a portion of the Tax Increment generated from (i) Lot 1 and (ii) from Lot 2 consisting of 31.42 acres as described on the attached Exhibit B (the “Lot 2”) in the Allocation Area to the payment of the Bonds as more particularly described herein; and

WHEREAS, in connection with the issuance of the Bonds, the Commission has been advised that as additional security for the Bonds, the Town may require the owner of the real estate on which the Project is located to enter into one or more taxpayer agreements among such owner, the Town and the Commission (the “Taxpayer Agreement”) providing for certain guaranteed tax payments in an amount sufficient to ensure sufficient TIF Revenues (as hereinafter defined) are available to pay debt service on the Bonds; and

WHEREAS, the Commission finds that the securing of the Bonds with one or more Taxpayer Agreements would be appropriate and should be approved;

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

1. The Commission hereby finds that the pledge to the payment of the principal of and interest on the Bonds of (i) eighty-five percent (85%) of the Tax Increment derived solely and exclusively from Lot 1 and deposited in the Allocation Fund pursuant to Indiana Code 36-7-14-39 (the "Lot 1 TIF Revenues") and (ii) eighty-five percent (85%) of the Tax Increment derived solely and exclusively from Lot 2 on the net assessed value thereof up to but not exceeding \$10,000,000 and deposited in the Allocation Fund pursuant to Indiana Code 36-7-14-39 (the "Lot 2 TIF Revenues", together with the Lot 1 TIF Revenues, the "TIF Revenues"), from the date of issuance of the Bonds until the Bonds shall no longer be outstanding, will promote the economic development of the Town and the Redevelopment Area and comply with the plan for the Redevelopment Area, all in accordance with Indiana Code 36-7-14 and 36-7-25, each as amended (the "Act"). The Commission further finds and determines that all other Tax Increment in the Allocation Area not pledged to the payment of the Bonds (i.e., the Tax Increment from (i) fifteen percent (15%) of the Tax Increment on Lot 1, (ii) fifteen percent (15%) of the Tax Increment on Lot 2 on assessed value up to \$10,000,000, (iii) all of the Tax Increment on Lot 2 on assessed value in excess of \$10,000,000 and (iv) all of the Tax Increment on Lot 3 as hereinafter described) during the period that the Bonds remain outstanding (collectively, the "Surplus Increment"), shall be used by the Commission for any purpose permitted by law, including the release of the Surplus Increment to the taxing units in the Allocation Area as provided under the Act.

2. The Project will be located within an existing 79 acre parcel currently identified as Parcel #06-07-23-000-007.000-019 which, as described in Exhibit B, includes three separate lots (Lot 1, Lot 2 and Lot 3). As set forth in Section 1 hereof, the TIF Revenues shall be derived solely and exclusively from Lot 1 and Lot 2. The Commission has been advised that the Company intends to create separate parcel numbers for each of Lots 1, 2 and 3. Until such time, the Clerk-Treasurer of the Town, with the advice of the Town's municipal advisor, shall calculate the amount of TIF Revenues based upon the estimated assessed value of the Project located on Lot 1 and the assessed value of Lot 2. At such time as a separate parcel number shall be established for each of Lot 1 and Lot 2 and the Clerk-Treasurer shall be so notified, TIF Revenues thereafter shall be calculated solely upon the actual assessed value for Lot 1 and Lot 2.

3. There is hereby created within the Allocation Fund established by the Commission for purposes of capturing the Tax Increment the following accounts: (a) Debt Service Account, (b) General Account and (c) Surplus Account. The TIF Revenues shall be deposited to the Debt Service Account and General Account as described in Sections 4 and 5 below. The Surplus Increment shall be deposited to the Surplus Account as described in Section 6 below.

4. The TIF Revenues shall be distributed in the manner set forth in this section and in Section 4 of this resolution. On or before each January 15 and July 15, the TIF Revenues shall be deposited in the Debt Service Account in an amount which, together with any moneys contained in such account, are sufficient to pay the principal of and interest due on the Bonds and any fiscal agency charges associated with the Bonds (collectively, the "Debt Service") cumulatively due on or before the following February 1 and August 1, until the amount on deposit in the Debt Service Account is sufficient to pay Debt Service payable during the next thirteen (13) months. No deposit need be made to the Debt Service Account to the extent that the available amount in the Debt Service Account is at least equal to the amount of Debt Service

becoming due and payable on all outstanding Bonds during the next thirteen (13) months. All moneys in the Debt Service Account shall be used and withdrawn solely for the purpose of paying the Debt Service as it shall become due and payable to the extent it is required therefor, including accrued interest on any such obligations purchased or redeemed prior to maturity. Monies in the Debt Service Account shall be transferred to the trustee and paying agent for the Bonds immediately upon their receipt.

5. After making the deposits described in Section 4 above, any remaining TIF Revenues shall be deposited in the General Account of the Allocation Fund and shall be used in the following order of priority: (a) to pay unpaid prior Debt Service (including any payments made under any Taxpayer Agreements); (b) to fund any reserve requirement for the Bonds; and (c) to redeem outstanding Bonds (as provided in the trust indenture securing the Bonds).

6. The Surplus Increment shall be distributed in the manner set forth in this section of this resolution. All Surplus Increment shall be deposited in the Surplus Account of the Allocation Fund and shall be used for any purposes permitted by the Act, including the release of Surplus Increment to the taxing units in the Allocation Area. When all Surplus Increment has been spent from the Surplus Account and no money remains therein, the Surplus Account shall be dissolved.

7. Pursuant to Indiana Code 36-7-14-39(b)(3)(D) and Indiana Code 5-1-14-4, the Commission hereby irrevocably pledges the TIF Revenues to the payment of the Bonds so long as the Bonds remain outstanding under the terms of the trust indenture securing the Bonds. There are no other prior liens, encumbrances or other restrictions on the ability of the Commission to pledge the TIF Revenues to the payment of the Bonds.

8. So long as the Bonds remain outstanding, the Commission shall not issue bonds, enter into leases, or enter into additional pledges payable from the TIF Revenues, in whole or in part, without the written consent of 100% of the holders of the Bonds.

9. Upon the defeasance of the Bonds, the Debt Service Account and the General Account of the Allocation Fund shall be dissolved, and any moneys remaining in such accounts shall remain in the Allocation Fund and may be used by the Commission for any purpose permitted by law.

10. Once the Bonds have been issued, the provisions of this resolution shall not be repealed or amended in any respect which would adversely affect the rights of the holders of the Bonds with respect to the pledge of the TIF Revenues hereby for so long as the Bonds remain outstanding.

11. The Commission hereby authorizes and approves the execution by the Commission of one or more Taxpayer Agreements in connection with the issuance of the Bonds by the Town. On behalf of the Commission, the President is authorized to execute and deliver, and the Secretary is authorized to attest, one or more Taxpayer Agreements in such form as they may find acceptable, with the advice of counsel and consistent with the terms and provisions of

this resolution. Any payments received by the Commission under any such Taxpayer Agreements are hereby pledged to the payment of the Bonds.

12. This resolution shall take effect immediately upon adoption by the Commission.

Adopted the 7<sup>th</sup> day of March, 2022, by a vote of \_\_\_\_\_ in favor and \_\_\_\_\_ against.

TOWN OF WHITESTOWN  
REDEVELOPMENT COMMISSION

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Adam Hess, President

ATTEST:

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Craig Arthur, Secretary

## **EXHIBIT A**

### **DESCRIPTION OF THE COMPANY PROJECT**

The Project consists of the construction of an approximate 569,248 square foot first class industrial building and an approximate 125,000 square foot commercial grade building, to be generally located at 3502 S 450 E in the Town.

#### **Public Infrastructure in Connection with the Project**

The Bond proceeds will be made available to the Company to pay the costs of the hereinafter defined Public Infrastructure in connection with the Project. The Public Infrastructure will be constructed for the benefit of the site and the surrounding areas. The Public Infrastructure includes roads, including road right of way and improvements to CR 450 E, a pedestrian bridge that shall transverse Fishback Creek, a pedestrian path on the eastern boundary of the Project site along with stormwater improvements, wastewater improvements, including a lift station, the extension of utilities (gas/water/electric) and other related public infrastructure improvements (collectively, the “Public Infrastructure”).

**EXHIBIT B**

**DESCRIPTION OF LOT 1 AND LOT 2\***

*\* Lots 1 and 2 Highlighted in Yellow Below*

