

RESOLUTION NO. 2023- 37

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA, CONSENTING TO AMENDING DECLARATORY RESOLUTION OF BOONE COUNTY REDEVELOPMENT COMMISSION, EXPANSION OF ECONOMIC DEVELOPMENT AND ALLOCATION AREAS AND APPROVING FORM OF TRI-PARTY AGREEMENT BY AND AMONG BOONE COUNTY, BROWNING/DUKE, LLC AND THE TOWN OF WHITESTOWN

WHEREAS, Boone County, Indiana ("County") is a county established and operating pursuant to IC 36-2-1 *et seq.*, a municipal corporation, an Indiana political subdivision and a governmental entity;

WHEREAS, the Town of Whitestown ("Town") is a municipal corporation, an Indiana political subdivision and town established and operating pursuant to IC 36-4-1 *et seq.*, and a governmental entity;

WHEREAS, Browning/Duke LLC ("Bondholder") is the holder of certain outstanding 2015A Bonds and 2015B Bonds of the County as hereinafter defined;

WHEREAS, a proposed form of Tri-Party Agreement ("Agreement") among the County, the Whitestown Town Council and Bondholder has been presented to this Town Council for its approval;

WHEREAS, on December 8, 2023, the Boone County Redevelopment Commission ("Commission") adopted its Amending Declaratory Resolution No. 2023-1 ("Amending Declaratory Resolution") amending its: (i) Declaratory Resolution No. 2004-03, as amended to date and confirmed by a confirmatory resolution adopted on November 30, 2004, as amended to date (collectively, "Area 1 Resolution"); and (ii) Declaratory Resolution No. 2004-04, as amended to date and confirmed by a confirmatory resolution adopted on November 30, 2004, as amended to date (collectively, "Area 2 Resolution");

WHEREAS, the Area 1 Resolution established the I-65 Corridor East Economic Development Area No. 1 ("Original Area 1") and the I-65 Corridor East Allocation Area No. 1 ("Original Allocation Area 1");

WHEREAS, the Area 1 Resolution approved the Economic Development Plan, as amended to date (collectively, as amended, "Original Area 1 Plan") which Original Area 1 Plan contained specific recommendations for economic development in the Original Area 1;

WHEREAS, the Original Area 2 Resolution established the I-65 Corridor East Economic Development Area No. 2 ("Original Area 2") and the I-65 Corridor East Allocation Area No. 2 ("Original Allocation Area 2");

WHEREAS, the Area 2 Resolution approved the Economic Development Plan, as amended to date (collectively, as amended, "Original Area 2 Plan") which Original Area 2 Plan contained specific recommendations for economic development in the Original Area 2;

WHEREAS, Original Area 1 Plan and Original Area 2 Plan are hereinafter collectively referred to as the "Original Plans;"

WHEREAS, Original Area 1 and Original Area 2 are hereinafter collectively referred to as the "Original Areas;"

WHEREAS, Original Allocation Area 1 and Original Allocation Area 2 are hereinafter collectively referred to as the "Original Allocation Areas;"

WHEREAS, the Commission has certain outstanding: (i) Boone County, Indiana Tax Increment Refunding Revenue Bonds of 2015 (Anson South) (Replacement), dated April 22, 2021, now outstanding in the amount of \$5,305,000 and maturing on February 1, 2026 payable from tax increment collected in the Original Area 1 Allocation Area ("Area 1 Outstanding Bonds"); (ii) Boone County, Indiana Tax Increment Refunding Revenue Bonds of 2016 (Anson North) (Replacement), dated April 22, 2021, now outstanding in the amount of \$8,190,000 and maturing on February 1, 2034; (iii) Boone County, Indiana Redevelopment District Bonds of 2013, dated April 18, 2013, now outstanding in the amount of \$5,500,000 and maturing on February 1, 2035; (iv) Boone County, Indiana Subordinate Economic Development Revenue Bonds, Series 2015A, dated November 20, 2015, now outstanding in the amount of \$5,265,708.07 and maturing on February 1, 2035 ("2015A Bonds"); and (v) Boone County, Indiana Taxable Subordinate Economic Development Revenue Bonds, Series 2015B, dated November 20, 2015, now outstanding in the amount of \$740,000 and maturing on February 1, 2035 ("2015B Bonds"), each payable from tax increment collected in the Original Area 2 Allocation Area (collectively, "Area 2 Outstanding Bonds" and collectively with the Area 1 Outstanding Bonds, the "Outstanding Bonds");

WHEREAS, the bond resolutions authorizing the Outstanding Bonds allow alteration of the Original Allocation Areas if, in the judgment of the Commission, the alteration does not adversely affect the owners of the Outstanding Bonds in any material way; and

WHEREAS, on December 8, 2023, the Commission adopted its Amending Declaratory Resolution with respect to the Original Areas and the Original Plans ("Amending Declaratory Resolution"), for the purpose of: (i) expanding the Original Areas and the Original Allocation Areas by adding the right-of-way connecting the Original Area 1 Allocation Area with the Original Area 2 Allocation Area as set forth on the maps attached to the Amending Declaratory Resolution as Exhibit A-1 and Exhibit A-2; and (ii) amending the Original Area 1 Plan to include the pledge of tax increment collected in the Original Area 1 Allocation Area to the payment of debt service of the Area 2 Outstanding Bonds and the projects financed by the Area 2 Outstanding Bonds to the list of projects in the Original Area 1 Plan ("2023 Plan");

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

Section 1. Subject to execution of and conditioned upon the Agreement, the Town hereby consents to adoption of the Amending Declaratory Resolution and 2023 Plan of the Commission and the expansion of the Original Areas and Original Allocation Areas as set forth therein.

Section 2. The substantially final form of Agreement attached hereto as Exhibit A is hereby approved.

Section 3. The President of the Town Council and the Clerk-Treasurer are authorized and directed to execute the Agreement on behalf of the Town and to approve any changes in form or substance to the Agreement, based on advice of counsel, such changes to be conclusively evidenced by the execution thereof.

Section 4. This resolution shall be in full force and effect from and after the date of its passage.

PASSED AND ADOPTED BY THE WHITESTOWN, INDIANA TOWN COUNCIL
THIS 13th DAY OF December, 2023, by a vote of ____ in favor and _____ against.

TOWN COUNCIL OF THE TOWN OF
WHITESTOWN, INDIANA

Eric Nichols, President

ATTEST:

Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana

4682997

EXHIBIT A

Tri-Party Agreement

TRI-PARTY AGREEMENT

THIS TRI-PARTY AGREEMENT (the “Agreement”) is made and entered into this _____ day of _____, 2023 (the “Effective Date”), by and among (i) the Town of Whitestown, Indiana, by and through its Town Council (“Whitestown”), (ii) Boone County, Indiana, by and through its Board of Commissioners and Redevelopment Commission (collectively, “Boone County”) and (iii) Browning Investments, Inc., an Indiana corporation, on behalf of itself and its joint venture partner Prologis, Inc. (collectively, “Browning”). Whitestown, Boone County and Browning are collectively referenced herein as the “Parties”.

RECITALS

A. On or about _____, 2014, Whitestown and Boone County entered into an *Interlocal Cooperation Agreement Between and Among Boone County, the Boone County Redevelopment Commission, and the Town of Whitestown*, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference (the “2014 Interlocal Agreement”).

B. The Boone County Redevelopment Commission (the “Boone County RDC”) has previously established, pursuant to Indiana Code 36-7-14, as amended (the “Act”), the I-65 Corridor East Economic Development Area No. 1 (“Area 1”) and the I-65 Corridor East Economic Development Area No. 2 (“Area 2” and collectively with Area 1, the “Areas”), which Areas are depicted in the map attached as Exhibit A to the 2014 Interlocal Agreement.

C. The Boone County RDC has pledged tax increment revenues received by it from the allocation areas (within the meaning of the Act) for the Areas to the following outstanding bonds: (i) Boone County, Indiana Tax Increment Refunding Revenue Bonds of 2015 (Anson South) (Replacement), dated April 22, 2021, now outstanding in the principal amount of \$5,305,000 and maturing on February 1, 2028, payable from tax increment collected in Area 1 (the “Area 1 Outstanding Bonds”); (ii) Boone County, Indiana Tax Increment Refunding Revenue Bonds of 2016 (Anson North) (Replacement), dated April 22, 2021, now outstanding in the principal amount of \$8,190,000 and maturing on February 1, 2034 (the “2016 Bonds”); (iii) Boone County, Indiana Redevelopment District Bonds of 2013, dated April 18, 2013, now outstanding in the principal amount of \$5,500,000 and maturing on February 1, 2035 (the “2013 Bonds”); (iv) Boone County, Indiana Subordinate Economic Development Revenue Bonds, Series 2015A, dated November 20, 2015, now outstanding in the principal amount of \$5,265,708.07 and maturing on February 1, 2035 (the “2015A Bonds”); and (v) Boone County, Indiana Taxable Subordinate Economic Development Revenue Bonds, Series 2015B, dated November 20, 2015, now outstanding in the principal amount of \$740,000 and maturing on February 1, 2035 (the “2015B Bonds”), which 2016 Bonds, 2013 Bonds, 2015A Bonds and 2015B Bonds (collectively, the “Area 2 Outstanding Bonds” and collectively with the Area 1 Outstanding Bonds, the “Outstanding Bonds”) are payable from tax increment collected in Area 2.

D. Browning is the holder of and/or represents the holder(s) of the 2013 Bonds, the 2015A Bonds and the 2015B Bonds.

E. On September 13, 2023, Whitestown adopted Resolution No. 2023-27, *A Resolution of the Town Council of the Town of Whitestown, Indiana Terminating the 2014 Interlocal Agreement* pursuant to which Whitestown, on its behalf, terminated the 2014 Interlocal Agreement.

F. In light of Whitestown's termination of the 2014 Interlocal Agreement, the Parties now desire to memorialize by this Agreement certain rights and obligations of the Parties with respect to the Areas.

AGREEMENT

In consideration of the promises and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1. Within seven (7) days of execution of this Agreement, Whitestown shall pay to the Boone County RDC a final payment in the amount of One Million Dollars (\$1,000,000), as full accord and satisfaction for all past and/or future payments as may have been owed or in the future be owed by Whitestown under the 2014 Interlocal Agreement (the "Town Payment"). Except for the Town Payment, Whitestown shall have no further obligations with respect to the 2014 Interlocal Agreement, any payments contemplated thereunder or any other duties, obligations or covenants in respect thereof, and all Parties hereby acknowledge and agree that the 2014 Interlocal Agreement is terminated, no longer in effect nor binding upon either of Whitestown or Boone County.

2. In order to provide for the earlier defeasance of the Outstanding Bonds, Boone County will undertake the necessary and appropriate procedures to pledge the tax proceeds allocated to the Boone County RDC from Area 1 to the Area 2 Outstanding Bonds (the "Area 1 Pledge"). Whitestown will adopt such approvals as may be necessary and appropriate to consent to the Area 1 Pledge and the Boone County RDC shall apply the Town Payment and all tax proceeds allocated to the Boone County RDC from the Areas to the Outstanding Bonds until such Outstanding Bonds are fully defeased. Schedules showing the anticipated payoff and defeasance of the Outstanding Bonds by the Boone County RDC (assuming the most recent assessed values) are attached hereto as Exhibit 2 and incorporated herein by reference. Following the defeasance of the Outstanding Bonds, the Parties hereto agree and acknowledge that the Areas will expire in accordance with and pursuant to the Act. Any funds allocated to the Boone County RDC from the Areas not needed for the defeasance of the Outstanding Bonds will be used exclusively by the Boone County RDC for eligible projects requested in writing by Whitestown that are in, serving or benefitting the Areas. Upon written request from Whitestown at any time so long as the Areas remain in effect, Boone County shall provide a written accounting summary of the current balance outstanding on the Outstanding Bonds and the balance of tax increment funds from the Areas received by the Boone County RDC.

3. Browning may take one additional draw in 2024 from the 2015A Bonds in an amount not to exceed One Million Dollars (\$1,000,000) which draw is contemplated within the schedule attached as Exhibit 2 and incorporated herein by reference. Browning shall submit all

necessary documentation in accordance with the 2015A Bonds to effect such draw by December 31, 2024 and thereafter no additional draws shall be made on the 2015A Bonds. For the avoidance of doubt, with respect to all other Outstanding Bonds the County agrees that no additional draws may or shall be made on such Outstanding Bonds.

4. This Agreement represents the entire agreement between the Parties concerning the matters herein. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the Parties. No change or addition shall be made to this Agreement except by a written agreement executed by the Parties.

5. This Agreement may be executed in several counterparts, which may be facsimiles or original signatures, all of which shall constitute one (1) agreement, binding on all Parties hereto, notwithstanding that all the Parties are not signatories to the same counterpart.

6. By signing this Agreement, the Parties each represent and warrant that: (a) they are authorized to enter into and execute this Agreement and have the authority to perform the same; (b) the information furnished in this Agreement is true and accurate; (c) they understand the terms and conditions of this Agreement; (d) they have knowingly and voluntarily entered into this Agreement; and (e) this Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns.

The Parties have caused this Agreement to be executed by their proper duly authorized officials as of the dates indicated below.

[Signature Page Follows]

TOWN OF WHITESTOWN, INDIANA

Signed: _____

Printed: _____

Title: _____

Date: _____

**BOARD OF COMMISSIONERS OF
BOONE COUNTY COMMISSIONERS**

Signed: _____

Printed: _____

Date: _____

Signed: _____

Printed: _____

Date: _____

Signed: _____

Printed: _____

Date: _____

**BOONE COUNTY REDEVELOPMENT
COMMISSION**

Signed: _____

Printed: _____

Title: _____

Date: _____

BROWNING INVESTMENTS, INC.

Signed: _____

Printed: _____

Title: _____

Date: _____

EXHIBIT 1
2014 Interlocal Agreement

EXHIBIT 2

Outstanding Bonds Defeasance Schedules (Estimated)

BOONE COUNTY (INDIANA) REDEVELOPMENT COMMISSION						
<i>I-65 Corridor East Economic Development Area No. 1</i>						
COMPARISON OF ESTIMATED ANNUAL TAX INCREMENT AND ANNUAL DEBT SERVICE - NO MOU REVENUES						
Tax Payable Year	Fund Balance (1)	Estimated Tax Increment (1)	Less Reserve Requirement (1)	2015 Refunding Bonds (2)	Funds Available for Projects or Debt Repayment (3)	
2023	\$2,302,594	\$1,990,780	(\$1,251,563)	(\$1,249,500)	\$1,792,311	
2024	1,251,563	2,165,130	(1,252,875)	(1,251,563)	912,255	
2025	1,252,875	2,165,130	(1,258,375)	(1,252,875)	906,755	
2026	1,258,375	2,165,130	(1,253,125)	(1,258,375)	912,005	
2027	1,253,125	2,165,130		(1,253,125)	2,165,130	
Totals	\$7,318,531	\$12,394,580	\$10,651,300	(\$6,265,438)	\$6,688,456	

(1) See page 4.

(2) See page 6.

(3) Available balance represents portion of funds on hand that could be used to prepay debt.

BOONE COUNTY (INDIANA) REDEVELOPMENT COMMISSION

\$1 million MOU payment up front, No Annual MOU, Area 1 Extension

I-65 Corridor East Economic Development Area No. 2

**COMPARISON OF ESTIMATED ANNUAL TAX INCREMENT AND ANNUAL DEBT SERVICE -
\$1 MILLION PAYMENT UP FRONT, NO ANNUAL MOU AND EXTENSION OF AREA NO. 1**

Tax Payable Year	Fund Balance	Estimated Area #2 Revenues	Estimated Area #1 Tax Increment	Less: 2016 Reserve Requirement	Outstanding Debt Service			Funds Available for Deficiency & Redemption Payments	Outstanding Accrued Interest & Deficiency Amounts	Accrued Interest & Deficiency Amounts After Payments
					2016 Refunding Bonds	Future Years 2016 Ref Bonds	2013 Bonds			
2023	\$1,613,061	\$1,527,040	\$1,792,311	(\$891,150)			\$2,798,337	\$5,814,768	\$3,016,431	
2024	906,125	1,757,096	912,255	(906,125)		(\$357,500)	1,179,601	3,406,802	2,227,201	
2025	919,975	1,875,083	906,755	(919,975)		(598,600)	4,001	2,650,072	2,646,072	
2026	922,925	2,005,181	912,005	(922,925)		(1,871,713)	1,311	3,101,443	3,100,132	
2027	925,125	2,190,137	2,165,130	(925,125)		(1,996,900)	968,046	3,100,132	2,132,086	
2028	926,500	2,289,505	2,165,130	(926,500)		(2,008,925)	2,134,414	2,132,086	0	
2029	924,528	2,352,114	2,165,130	(922,200)		0	1,776	0	0	
2030	919,076	2,399,513	2,165,130	(917,300)		(618,659)	706,315	0	0	
2031	1,628,040	2,434,622	2,165,130	(921,725)	(\$920,250)	0	3,468,517	0	0	
Totals		\$18,831,291	\$15,348,976		(\$8,216,725)	(\$920,250)				
						(\$6,833,638)				(\$824,338)

(1) Includes \$1 million from Town to pay off portion of outstanding MOU amount.

(2) Assumes excess Area #1 Revenues are used to pay Area #2 Debt Service.

(3) Represents future debt payments to be escrowed until call date.

(4) Includes recent and anticipated draws.

(5) Includes accrued interest through 2/1/23 and outstanding deficiency payment amount of \$476,203.45, per Browning.